



The Obligation to Use Letter of Credit as Method of Payment in Goods Export

by Vinton Rasil Taris

The Ministry of Trade has issued Regulation No. 04/M-DAG/PER/12015 ("**Reg No. 04/2015**") concerning Letter of Credit Usage in Certain Goods Exports. Reg No. 04/2015 is an advance on Article 40, Law No. 7, 2014 in regards to trading. The purpose of the regulation is to support natural resources sustainability, increase national economy and industry development, and create efficient and well-regulated administration procedures.

The Letter of Credit is a letter from an issuing bank guaranteeing that the recipient's payment will be made on time in satisfaction of the terms of payment. The application of the letter of credit in export practices is relied upon to uphold the optimization and accuracy of foreign exchange export revenue. Article 2, Reg No. 04/2015 stipulates that the export of certain goods must use the letter of credit as a method of payment, and in which the goods threshold price has to be equal to the world market price. The goods that are mentioned in Article 2 are limited to the list described in the appendix of Reg No. 04/2015.

To support the system and ease the supervision process, every exporter must mention the letter of credit as a method of payment in the export notification ("**PEB**") document and/or in the surveyor report, otherwise the export of goods cannot proceed. The selection of the goods for export falls into certain categories, which are:

- the eminent commodity and its substantial value to the Indonesian economy;
- the substantial commodity value to total export;
- the commodity in a sellers' market position;
- the commodity which is under sustainability protection; and
- the primary commodity the value of which is enhanced.

Supervision of the letter of credit usage will later be integrated in the electronic system called Indonesia National Single Window ("**INSW**"), which is accessible by the public-network (internet). The INSW integrates the flow of information processes and provides data and information security assurance. This enables documents to be integrated with related information regarding customs administration and other documents in respect of the export and import.



The letter of credit usage in certain goods exports will be effective from 1 April 2015. Based on the description above, letter of credit usage is limited to the list of exported goods as mentioned in the appendix to Reg No. 04/2015. The infringement or violation of Reg No. 04/2015 is subject to sanction under the law (Article 8 Reg No. 04/2015).





Circular Letter of the Minister of Employment concerning Constitutional Court Decision No.100/PUU-X/2012

by Athalia Devina

The Constitutional Court made a decision on the judicial review of Article 96, Law No. 13, 2003 (hereafter "Article 96") concerning Employment ("**Employment Law**") on 19th September 2013, as stated in Constitutional Court Decision No. 100/PUU-X/2012. The background of the judicial review concerns the expiration of demands for payment of wages of workers/laborers and all payments arising from an employment relationship. Constitutional Court Decision No. 100/PUU-X/2012 approved all aspects of the appellant's appeal as follows:

Article 96. The MoE stipulates the following regarding the Constitutional Court Decision No. 100/ PUU-X/ 2012.:

1. Article 96 will be applied concerning demands for payment of wages of workers/laborers and all payments arising from an employment relationship before the enactment of Constitutional Court Decision No. 100/PUU-X/2012;
2. there will be no time limit expiration concerning demands for payment of wages of workers/laborers and all payments arising from an employment relationship after the enactment of Constitutional Court Decision No. 100/PUU-X/2012;



1. Article 96 of the Employment Law conflicted with the Constitution of the Republic of Indonesia , 1945;
2. Article 96 of the Employment Law has no binding legal force.

The Minister of Employment ("**MoE**") has enacted Circular Letter No. 1/MEN/I/2015 concerning Constitutional Court Decision No. 100/PUU-X/2012 regarding Article 96 ("**Circular Letter No. 1/MEN/I/2015**"), in order to create uniformity in the handling of cases regarding

Claims for the payment of wages of workers/laborers and all payments arising from an employment relationship that is made after the enactment of Constitutional Court Decision No. 100/PUU-X/2012, must be calculated from 19th September 2011 at the latest.



Prohibition of the Usage of Trawls and Seine Nets

by Athalia Devina



Indonesia is known as an archipelago, of which two thirds of the total area is mostly covered by water. According to the data of the Food and Agriculture Organization in 2012, Indonesia currently ranks third amongst the world's largest fish providers following China and India.¹ Unfortunately, fishing practices in Indonesia are still not environmentally friendly and it is common to see the usage of ecologically dangerous fishing tools.

The usage of trawls and seine nets has resulted in the decrease of fish resources and threatens their environmental sustainability, making it is necessary to prohibit the usage of trawls and seine nets. The Minister of Marine and Fisheries ("MoMF") has therefore enacted Regulation No. 2/PERMEN-KP/2015, entitled Prohibition on the Usage of Trawls and Seine Nets in the Fisheries Management Area of the Republic of Indonesia ("**Regulation No. 2/PERMEN-KP/2015**").

The following trawls are prohibited by Regulation No. 2/PERMEN-KP/2015:

1. bottom trawls, which consist of (i) beam trawls, (ii) otter trawls, (iii) pair trawls, (iv) nephrops trawls, and (v) shrimp trawls;

2. midwater trawls, which consist of (i) otter trawls, (ii) pair trawls, and (iii) shrimp trawls;
3. otter twin trawls; and
4. push trawls.

The following seine nets are prohibited by Regulation No. 2/PERMEN-KP/2015:

1. beach seines; and
2. boat or vessel seines, which consist of (i) danish seines, (ii) scottish seines, (iii) pair seines, (iv) *payang*, (v) *cantrang*, and (vi) *lampara dasar*.

Fishing permits with trawls and seine nets as fishing tools that have been granted before the enactment of Regulation No. 2/PERMEN-KP/2015 remain valid until their expiration date. The provisions concerning the usage of trawls and seine nets as regulated in Article 23, Article 24, and Appendix of Regulation No. PER.02/MEN/2011 entitled Fishing Routes and Placement of Fishing Tools and Fishing Aids in the Fisheries Management Area of the Republic of Indonesia, as amended by Regulation No. 42/PERMEN-KP/2014, is revoked and declared invalid when Regulation No. 2/PERMEN-KP/2015 comes into force.

¹ <http://ekonomi.metrotvnews.com/read/2014/10/22/308561/potensi-indonesia-sebagai-negara-maritim>



One Stop Service for the Issuance of Foreign Manpower Utilization Licenses

by Ignatia Oktavia Simorangkir

The Minister of Manpower has enacted Minister of Manpower Regulation No. 3, 2015 regarding Operational Procedure Standard for the Issuance of Foreign Manpower Utilization Licenses by One Stop Service of the Investment Coordinating Board, dated January 26, 2015. By issuing this new rule, the Government of Indonesia increasingly signifies its earnest intention to support the evolution of investment in Indonesia and its readiness now to face the liberalization of labor markets due to international agreements, untying opportunities for the movement of foreign manpower into the country. This new rule is virtually contrary to the commitment of the Government of Indonesia to protect local manpower by controlling the utilization of foreign manpower in Indonesia. It simplifies the licensing process for foreign manpower by placing it under centralized control, namely the Investment Coordinating Board.



The scope of this new rule covers the following: the ratification of the new Foreign Manpower Utilization Plan ("RPTKA"), the ratification of RPTKA renewal for work location across provinces, the issuance of a recommendation letter for a work visa, the issuance of a new expatriate work permit ("IMTA"), and the issuance of an IMTA renewal for foreign manpower for work location across provinces. All of these documents will be issued by the Director for the Control of the Utilization of Foreign Manpower. In Appendix I, this new rule specifies in detail all requirements for the license application, the time period for the issuance of the license, services mechanisms, and the licensing ratification process. Appendix II describes the process procedure and flowchart for RPTKA ratification, the recommendation for the work visa, and the issuance of the IMTA. The last appendix, provides the template form for RPTKA and IMTA applications.

Besides this new rule, the Minister of Manpower also issued several new regulations related to the delegation of authority from the Ministry of Manpower to the One Stop Service of the Investment Coordinating Board, such as:

i) Minister of Manpower Regulation No. 5, 2015 regarding Operational Procedure Standard for the Issuance of Business Licenses for Work Training by One Stop Service of the Investment Coordinating Board, ii) Minister of Manpower Regulation No. 4, 2015 regarding Operational Procedure Standard of Business Licenses for Indonesian Employment Services by One Stop Service of the Investment Coordinating Board, and iii) Minister of Manpower Regulation No. 6, 2015 regarding Operational Procedure Standard for the Issuance of Business Licenses for Labor Provision Services by One Stop Service of the Investment Coordinating Board. The integration of the licensing process under the Investment Coordinating Board has also been followed by other ministries as part of the programs of the President of Indonesia, Joko Widodo.



Procedures for the Establishment and Implementation of Advance Pricing Agreements

by Athalia Devina

According to Article 18.3a, Law No. 7, 1983 entitled Income Tax that has been amended lately by Law No. 36, 2008, the Directorate General of Taxation is authorized to enter into an agreement with the taxpayer and cooperate with the tax authorities of other countries to determine the price of transactions between parties to a special relationship that is valid for a certain period, and to oversee its implementation and renegotiation after a certain period has ended. The agreement between the Directorate General of Taxation and the taxpayer aims to provide certainty and avoid mistakes in determining the price of the transaction between the parties to the special relationship. The government considers that it is important to regulate these matters and to implement the mandate on Article 59 of Government Regulation No. 74, 2011, entitled Procedures on Implementation of Rights and Compliance of Tax Obligations. The Minister of Finance ("MoF") has thus enacted Regulation No. 7/PMK.03/2015, entitled Procedures on the Establishment and Implementation of Advance Pricing Agreements ("**Regulation No. 7/PMK.03/2015**"). Regulation No. 7/PMK.03/2015 will be valid 90 (ninety) days from the date of promulgation, January 12, 2015.

The submission of an Advance Pricing Agreement ("**APA**") can be made by (i) the domestic taxpayer in Indonesia and the overseas taxpayer that conducts business or engages in activities through a permanent establishment in Indonesia and (ii) the domestic taxpayer in a partner country or a jurisdictional partner. The domestic taxpayer in Indonesia and the overseas taxpayer can submit an APA as long as they have been operating or conducting business in Indonesia for at least 3 (three) years. The domestic taxpayer in a partner country or a jurisdictional partner can submit an APA through tax authorities in a partner country or a jurisdictional partner. The submission of the APA covers all or part of the transactions conducted by the taxpayer with the party to the special relationship.

The following matters at least must be stated in the APA: (i) the parties to the special relationship, (ii) transactions that are included in the scope of the APA, (iii) the method of transfer pricing, (iv) comparables, (v) a time period, (v) critical assumptions and (vii) transfer pricing adjustment. In terms of time period, the APA may be granted for



(i) a maximum of 3 (three) tax years or (ii) a maximum of 4 (four) tax years for the APA in discussions involving the tax authority of a partner country or a jurisdictional partner.

The establishment of an APA is conducted through the following stages:

- (i) application for initial talks between the taxpayer and the Director General of Taxation,
- (ii) initial talks between the Director General of Taxation and the taxpayer,
- (iii) delivery of an invitation by the Director General of Taxation to the taxpayer on submission of the APA based on the preliminary talks,
- (iv) the submission of the APA to the Director General of Taxation,
- (v) the Director General of Taxation forms a reviewer team,
- (vi) analysis, evaluation, and discussion regarding the the APA application between the reviewer team and the taxpayer,
- (vii) discussion of the APA through the Mutual Agreement Procedure in terms of the APA involving the tax authority of a partner country or a jurisdictional partner, the script of the APA will be drafted, and
- (viii) the Director General of Taxation will issue a decision regarding the script of the APA and its implementation.

The APA will be enforced commencing from the tax year when the script of the APA is agreed. In terms of the APA involving the tax authority of a partner country or a jurisdictional partner, the APA will be enforced in accordance with the results of the joint agreement.