

New Regulation on Government's Goods /Services Procurement System

by Galih Adi Prasetya

On 16 March 2018, President Joko Widodo issued Presidential Regulation No. 16 of 2018 on the Government's Goods/Services Procurement System ("**16/2018 Regulation**"). This 16/2018 Regulation supersedes previous regulations that govern the goods/services procurement system for government interests. Furthermore, this new regulation appears to support the government program to accelerate the development of the country by simplifying several provisions and implementing best practice in procurement systems by way of this regulation.



16/2018 Regulation governs several provisions that differ from the previous regulations, such as:

- the new provision on the Procurement Agent (*Agen Pengadaan*) that conducts part or all the work of the goods/services procurement system, which is trusted by the Ministry/Institution/Regional Institution ("**K/L/PD**") as employer of the Procurement Agent (as stipulated in article 14 of 16/2018 Regulation);
- the new provisions on self-management procurement type which is planned and supervised by the K/L/PD responsible and held by Mass Organization (*Organisasi Masyarakat*) (as stipulated in article 18 and 23 (3) of 16/2018 Regulation);

- the provisions regarding the type of contract to be used for the Consultation Procurement (which consists of lump sum, time of assignment, and umbrella contracts) and for Other Procurement (which consists of lump sum, unit price, combination of lump sum and unit price, turnkey, and umbrella contract) (as stipulated in article 27 of 16/2018 Regulation);
- the new provisions on the submission of a Bidding Guarantee (*Jaminan Penawaran*) and Appeal Guarantee (*Jaminan Sanggah Banding*) for construction work procurement with an Estimated Self- Price (*Harga Perkiraan Sendiri*) of at least Rp10.000.000.000, - (ten billion rupiah) (as stipulated in article 30-35 of 16/2018 Regulation);

- the provision on Direct Consultation Service Procurement which can be conducted for a contract with a total value of no more than Rp100.000.000, - (one hundred million rupiah) (as stipulated in article 41 of 16/2018 Regulation); and
- the removal of obligations on using at least 2 (two) products with no less than 25% of Domestic Component Levels (*Tingkat Komponen Dalam Negeri*) (as stipulated in article 66 of 16/2018 Regulation).

Other than aforementioned provisions, the 16/2018 Regulation also has several additional provisions such as the introduction of an E-reverse Auction for a fast bidding system, usage of the E-marketplace for the procurement of goods/services, and the most important thing is a new alternative dispute resolution service that is accommodated in article 85 of 16/2018 Regulation. This new alternative dispute resolution service will be conducted by *Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah* ("**LKPP**"). Further explanation and mechanism of this dispute resolution service will be regulated in Head of LKPP regulation (as stipulated in article 91 of 16/2018 Regulation).

The Utilization of Foreign Employees

by Monica Sonya Ginanti

The President of the Republic of Indonesia has issued a new regulation on foreign employees: President Regulation Number 20 of 2018 on The Utilization of Foreign Employees (“**Regulation**”). This Regulation was issued in order to support the national economy and the expansion of employment opportunities through increased investment.

The utilization of foreign employees is to take up certain positions in a working environment for a specific duration. The utilization itself is also undertaken with due regard to the conditions of the domestic labour market. Employers are obliged to realize that it is their obligation to prioritize the utilization of Indonesian employees first for every position available. If such positions cannot be held by Indonesian employees, only then may the role be given to the foreign employee. Foreign employees are forbidden to be given positions in which they must manage personnel at work or any other role as determined by the Minister of Manpower of the Republic of Indonesia (“**Minister**”).

Every employer who hires foreign employees must have a foreign employees utilization plan (“**Plan**”). The Plan must at least consist of: (i) the reason for the utilization of foreign employees; (ii) the title/position given to the foreign employee; (iii) the duration of the utilization of foreign employees; and (iv) the appointment of Indonesian employees who will support the foreign employees hired. The Plan is required in all cases except for the foreign employees who are (i) shareholders which hold title as member of the Board of Directors or member of the Board of Commissioners in the employer’s office; (ii) diplomatic and



consular employees in the representative offices of foreign countries; or (iii) foreign employees for certain work needed by the government.

The employers shall also: (i) appoint Indonesian employees as support staff for the foreign employees; (ii) conduct education and training for the Indonesian personnel in accordance with the qualification level of the titles held by the foreign employees; and (iii) facilitate the education and training of the Indonesian language for foreign employees. Furthermore, employers

are obliged to report the implementation of the utilization of the foreign employees once a year to the Minister.

The foreign employees shall have a limited stay visa. Both employers or foreign employees can apply to the Minister for the visa. The application of a limited stay visa may also include an application for A limited residence permit. Employers who do not fulfil the terms and conditions as stated in the Regulation will have sanctions imposed on them pursuant to the regulation governing manpower.

Regulation on Due Diligence Procedure and the Declaration of Imported Forest Products

by Vincent

On 25 January 2018, the Director General of Sustainable Forest Production Management (“DGSFPM”) issued DGSFPM Regulation No. P.3/PHPL/PPHH/HPL.3/1/2018 regarding Due Diligence and Forest Products Import Declaration Procedure (“Regulation No. 3/2018”). The issuance of Regulation No. 3/2018, revoked the previous regulation, DGSFPM Regulation No. P.7/PHPL-SET/2015 regarding Due Diligence Procedure, Import Declaration Issuance and Forest Products Import Recommendation. The effective date of Regulation No. 3/2018 was on 2 February 2018.



Regulation No. 3/2018 requires the importer to hold an Importer’s Identification Number (locally known as *Angka Pengenal Importir* or “API”): either the General API (locally known as *API Umum* or “API-U”) or Producer API (locally known as *API Produsen* or “API-P”) shall conduct due diligence on the imported forest products through the Legal Timber System Information Portal (locally known as *Portal Sistem Informasi Legalitas Kayu* or “SILK”). Such a due diligence requirement shall satisfy the following:

1. collection and distribution of data and information in regard to:
 - exporter legality;
 - produce legality;
 - data and information including kinds/species of timber, harmonized system (HS) code, goods description, country of harvest/country of origin (in the event such imported product in the form of

‘logs’ (locally known as *kayu bulat*), shall include the area of harvest and concession owner/its owner);

- product legality; must be correct and accurate;

2. risk analysis by:

- assuring the source of such imported products; it must be from a sustainable, legal or traceable source;
- information cross check on the imported forest products through the country of origin official information documentation (in the event such products are in the form of ‘logs’, the cross check must be conducted from its country of origin to its permanent destination);
- the above cross check requirement including but not limited to export ban from its country of origin;

risk analysis is to prevent such imported products that have been illegally cut down/harvested, traded, and/or information concealment or fraudulent information.

3. risk mitigation is to ensure the information reliability and accuracy which is used in conducting risk analysis and to prevent information concealment or fraudulent information.

4. data and information documentation for the period of 5 (five) years.

Upon the completion of the due diligence report (completed and accurate), the importer must make the import declaration through the SILK. Such declaration must be digitally signed (as registered through the SILK) by the company director. API-U and API-P holders must produce the Supplier Conformity Declaration (locally known as *Deklarasi Kesesuaian Pemasok* or “DKP”) on the imported products; the API-U holder must also submit the DKP to its buyer. However, it is noteworthy that the API-P holder may only import forest products that serve as raw materials in the production process (shall not be traded/non-transferable). In contrast, The API-U holder may only import forest products for the purpose of trading.

Regulation No. 3/2018 also requires the procedure and implementation of the regulation I based on the attachments therein: such as the due diligence based on Attachment 1, import declaration based on Attachment 2, and DKP based on Attachment 3.

As for the supervision duty, the above-mentioned importing activity will be under the supervision of the timber legality verification institution (locally known as *lembaga verifikasi legalitas kayu*).

New Regulation on the Tourism Business in Jakarta

by Galih Adi Prasetya

On 12 February 2018, the Governor of the Capital Special Region of Jakarta (“**DKI Jakarta**”) issued the Governor of DKI Jakarta Regulation No. 18 of 2018 on the Implementation of Tourism Business (“**DKI Jakarta Regulation No. 18/2018**”). DKI Jakarta Regulation No. 18/2018 replaced the previous regulation that governed the licensing and procedure on conducting the tourism business in DKI Jakarta.

In this new regulation, the government’s main objective is to ease the procedure for obtaining the business licence (*Tanda Daftar Usaha Pariwisata* or “**TDUP**”) as the requirement for conducting the tourism business in Indonesia, specifically in DKI Jakarta. The government has enhanced the function of the TDUP, which could be used as a single licence for the businessman that has multiple tourism services in one business place. It differs from the last regulation where the businessman had to obtain multiple licences if they operated multiple tourism services in one business place. After obtaining the TDUP, the businessman will acquire the business certification, competent certification, and halal certification (if necessary) at the latest 6 months after obtaining the TDUP in order to start their tourism business (article 37 of DKI Jakarta Regulation No. 18/2018). Other than that, DKI Jakarta Regulation No. 18/2018 also aims to ease the control of tourism business. With only a single licence required, in the event the businessman violates the regulation, the TDUP can be revoked and affect to all tourism services that consists and written in TDUP.

Furthermore, the DKI Jakarta Regulation 18/2018 appears to accommodate the function of mass media and society as the social controller of tourism business. In order to ensure that busi-



ness people comply with the provisions in this regulation, mass media and/or society reports could be used as the basis for conducting a full scale investigation by the government to discover whether any particular business person is violating this regulation or not (article 49 of DKI Jakarta Regulation No. 18/2018). In the event the business person is proven guilty of violating the provisions in this regulation, the provisions on article 52 and 53 of DKI Jakarta Regulation No. 18/2018 shall prevail.

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