

Regulation of The Minister of Environment and Forestry in Supporting the Acceleration of Electronic Integrated Licensing Implementation

by *Yohannes Halim*

In order to accelerate development, one of the prime routes of which is through the acceleration of investment, on June 21 2018 the Indonesian government promulgated Government Regulation Number 24 of 2018 concerning Electronic Licensing Services Businesses Integration (PP OSS). Government Regulation Number 24 of 2018 regulates the implementation of Online System Submission (OSS). The OSS system will also be applied to permits that were issued before the PP OSS was in effect and which require new licenses to develop its business followed by the coming into force of the Minister of Environment and Forestry Regulation No. P.26 / MENLHK / SETJEN / KUM.1 / 7/2018 Year 2018 concerning Guidelines for Preparation and Assessment as well as Examination of Environmental Documents in the Implementation of Electronic Integrated Business Licensing Services (PERMEN LHK). The promulgation of the PERMEN LHK is based on Article 35 paragraph (4) PP OSS and to support the acceleration system in terms of document checking and licensing services that were once very complicated and which required a long time.



PERMEN LHK regulates 2 (two) scopes, namely those concerning obligatory Amdal or UKL-UPL businesses and activities that are included in the OSS system and compulsory Amdal or UKL-UPL businesses and activities that are or have not been included in the OSS system. In the LHK PERMEN there are several crucial or strategic aspects that are regulated, namely regarding the enactment of businesses and activities included in the OSS system, not applicable to businesses and activities that are not included in the OSS system and that do not revoke the existing related Ministerial Regulations. For the process regarding environmental permits, affirming the cancellation of an environmental permit because it does not fulfill the commitment cannot be prosecuted or sued civilly. The

integration of permits in the environmental field in environmental documents and environmental permits, the contents of SKKL and the contents of recommendations are an integral part of the environmental permit and there are detailed liability requirements related to the PPLH aspects of environmental permits that have been issued by the OSS institution. These are based on the following: the supervision of environmental permits, time management arrangements in business actors and the government and its relation to failure / success in fulfilling the commitment of environmental permits, and the obligation to have complete data and information before to the OSS system to avoid failure to fulfill commitments. Public consultation can be carried out before

obtaining an environmental permit based on commitments, information systems for environmental documents and environmental permits for the application of digitizing environmental documents at the central and regional levels.

In order to fulfill the UKL-UPL commitment and time system related to the OSS system, one must complete and submit the UKL-UPL forms by business actors no later than 10 (ten) working days from the OSS institution issuing the environmental permits based on commitments. For the UKL-UPL checks and approval of UKL-UPL recommendations by the government it is no later than 5 (five) working days and in the case of improvement of UKL-UPL and the resubmission of UKL-UPL to the environmental agency with the authority of the business actor, no later than 5 (five) working days. With this application, investors can directly monitor the progress of the proposed permit. So if the license becomes stuck in local government, for example, it can be dealt with immediately and quickly by the task force. Investors no longer have to wait and neither do they need to meet directly with the Regional Government or ministry for licensing.

Simplification of Foreign Labour Permits in Indonesia

by Yohannes Halim

The Ministry of Manpower has issued Minister of Manpower Regulation No.10 of 2018 concerning Procedures for the Use of Foreign Workers (**Permenaker No. 10 of 2018**), which revokes the previous foreign labour usage regulations, namely Permenaker No. 16 of 2015 jo Permenaker No. 35 of 2015. There are at least 10 new provisions regulated in Permenaker No. 10 of 2018.



First, related to permits for the use of foreign workers, now only a Plan for the Use of Foreign Workers (**RPTKA**) is needed, no longer requiring a License to Employ Foreign Workers (**IMTA**). *Secondly*, ratification of the use of foreign workers through the RPTKA and Notification, no longer requiring a RPTKA and IMTA. *Third*, regarding service time, previously for IMTA it took three days and RPTKA three days; now it is four days for the RPTKA two days and Notification two days. *Fourth*, remove recommendations from relevant ministries and institutions. Ministries and institutions have the right to determine what positions are and are not allowed to foreign workers. Proposals from various ministries and institutions will be included in a regulation issued by the Minister of Manpower. Previously the employer had to request a recommendation from the relevant ministry or institution before hiring a foreign worker. *Fifth*, the form of service used now uses a full online mechanism and is integrated between relevant ministries / institutions. *Sixth*, the validity period of the RPTKA is more flexible, in accordance with the employment

agreement between foreign workers and employers. Previously, the validity period of the RPTKA was only one year and could be extended.

Seventh, foreign workers who serve as directors or commissioners as well as shareholders do not need to take care of licensing. Previously, both high positions in the company were required to have an IMTA. But for directors and commissioners whose positions are not as shareholders, Permenaker No. 10 of 2018 mandates the possession of an RPTKA. Eighth, currently employers are required to facilitate foreign workers to obtain Indonesian language education and training. Although this is not a requirement that must be fulfilled by foreign workers before coming to Indonesia, it becomes mandatory when foreign workers are already working in Indonesia. The goal is that foreign workers who occupy technical, expert and professional positions can transfer their knowledge to local workers. Ninth, now concurrent positions are not only for directors and commissioners. There are three other sectors that can support more than one position, namely education, oil and gas, and the digital economy. Tenth, in an emergency, foreign workers can work first and then take care of the RPTKA. Previously, the RPTKA was managed along with the entry of foreign workers. Permenaker No. 10 of 2018 provides for four types of RPTKA, namely emergency and urgent, temporary, long term, and change. The emergency and urgent RPTKA is only for unplanned work and needs to deal quickly with natural disasters, engine damage and riots. Request for a RPTKA must be made no later than two days after the foreign

worker as begun work in Indonesia. The RPTKA issuance process takes one day and has a validity period of one month and cannot be extended. The temporary RPTKA can only be used in work related to commercial film making, conducting audits, quality control of production, or inspection at branch companies in Indonesia, to include the installation of machinery and after-sales service and impresariat services. The RPTKA issuance process is two days and the validity period is no longer than six months and cannot be extended.

Permenaker 10 of 2018 also affirms administrative sanctions for those who violate the rules on the use of foreign workers. The form starts from service delays, temporary suspension of the foreign workers permit process, and revocation of notifications, and does not rule out the possibility of other sanctions in accordance with the legislation. Service delay sanctions are imposed on employers who do not include foreign workers in national insurance programs and national social security programs. There are also sanctions for not providing regular reports every year to the Minister regarding the implementation and expiration of the use of foreign workers. The suspension of the foreign workers permit process is imposed if the employer does not have a RPTKA, does not appoint a companion worker, and does not carry out education and training for the accompanying workforce. Finally, sanctions for revocation of notifications is imposed on employers who employ foreign workers in prohibited positions and do not pay into the Compensation Fund for the Use of Foreign Workers (**DKP-TKA**).

Updated Guidelines for the Establishment and Implementation of an Indonesia National Single Window

by Galih Adi Prasetya

As the member of Association of South East Asian Nations (“ASEAN”), the Government of Republic of Indonesia is committed to supporting the existence of an ASEAN Single Window that aims to eliminate several trade barriers among ASEAN State members. In order to support that, on 21 June 2018, the Minister of Trade issued a Minister of Finance Regulation No. 63/PMK.01/2018 on the Guidelines for the Establishment and Implementation of an Indonesia National Single Window (“**MoF Regulation No. 63/2018**”). Besides supporting the ASEAN Single Window, the Indonesia National Single Window (“**INSW**”) appears to enhance the performance of Indonesia’s trade sector (such as its efficiency and supervision, and service integration of domestic and foreign trade).

MoF Regulation No. 63/2018 supercedes the previous regulation, which is Minister of Finance Regulation No. 132/PMK.01/2008 on the Guidelines for the Establishment and Implementation of an Indonesia National Single Window. In the previous regulation, the INSW system was only implemented in several ports and/or airports. Tanjung Priok seaport, Tanjung Emas seaport, Tanjung Perak seaport, Belawan seaport and Soekarno-Hatta airport are the only ports in Indonesia that had a mandatory status for implementing the INSW system. 10 (ten) years after the previous regulation, almost all ports in Indonesia are required to implement the INSW system in its operational activity. There are at least 6 (six) phases that need to be completed by the Government of Indonesia before they can implement the INSW system to all seaports and airports listed in the Attachment B of MoF Regulation No. 63/2018. These are:

a) First Trial (conducting a trial or test for the INSW portal prototype, which was successfully done in 2007);

b) First Implementation Phase (integrating the INSW-Import system into an INSW system which was successfully done on 17 December 2007);

c) Second Implementation Phase (expanding the INSW system by adding an INSW-Seaport system to the INSW system, which was successfully done on 11 August 2008);

d) Third Implementation Phase (expand the INSW system by adding INSW-Export and INSW-Airport system to the INSW system, which was successfully done in early 2009);

e) National Implementation Phase (the implementation of the INSW system in Tanjung Priok, Tanjung Emas, Tanjung Perak, Belawan Seaports and Soekarno-Hatta international Airports which was successfully done in July 2009); and

f) Integration with the ASEAN Single Window (the integration of INSW with the ASEAN Single Window which was successfully done in 2009).

After passing those 6 (six) phases, from now on every seaport and airport listed in the Attachment B of MoF Regulation No. 63/2018 shall have a mandatory status to implement the INSW system.



Minister of Trade Regulation on the Implementation of the OSS System

by Galih Adi Prasetya

Business licensing in Indonesia has acquired a new regime since the enactment of Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services (“**Regulation No. 24**”) which integrate several business licensing procedures from inter-government institutions into one single system, in the Online Single Submission (“**OSS**”) system. In order to comply with the Regulation No. 24 and supporting the OSS system, on 20 July 2018, the Minister of Trade issued the Minister of Trade Regulation No. 77 of 2018 on Electronic Integrated Business Licensing Services in the Trade Sector (“**MoT Regulation No. 77/2018**”). MoT Regulation No. 77/2018 appears as an implementing regulation in the trade sector to allow several business and operational or commercial licenses in the trade sector to be issued through the OSS system.



In MoT Regulation No. 77/2018, any business person that wants to obtain their business licenses in the trade sector must possess a Business Identification Number or *Nomor Induk Berusaha* (“**NIB**”). The NIB serves as an “identity card” to access the OSS system. It is important for every business person to have the NIB, either for the new business person that wants to obtain their first business licenses or for

the existing business entities that still had their licenses, because from now on the issuance, renewal, supervision, even the annulment of any business license in the trade sector must be done through the OSS system. Other than that, the NIB also subsumes some other licenses and registrations that previously had to be obtained by a business entity (such as Company Registration Certificate, the Importer Identification Number, and the customs access right).

Other than NIB, MoT Regulation No. 77/2018 also regulates several new provisions on the Commitment and Service Level Arrangement (“**SLA**”), which are mandatory documents containing several requirements that need to be fulfilled by a new business person before the issuance of the business

license for the first time. Those documents shall be fulfilled within a designated time (depends on the sectors of the businesses) and the business person must pay some fees for several business sectors (if required). The business license in the trade sector shall be effective once the business person has fulfilled the Commitment and SLA documents and paid its fee (if any).

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