

## Implementing Regulations for Patent Applications

by Shaskia Putri Ramadhani

As mandated by the Law concerning Patent,\* the Minister of Law and Human Rights (the **Minister**) issued new Regulations concerning Patent Applications \*\* (**Regulation No. 38**). Regulation No. 38 implements and clarifies the requirements and procedures for the submission of patent applications.



In addition, Regulation No. 38 deals with:

- priority rights;
- applications based on the Patent Cooperation Treaty (PCT);
- the procedure for changes and divisional applications;
- withdrawal of applications;
- the requirements and procedures for substantive examinations;
- certification; and
- the requirements and procedures for recording data changes.

In Indonesia, there are two types of patents; the traditional patent and a simple patent. All patent applications may be submitted electronically or manually to the Minister through the Directorate General of Intellectual Property. The applicants may submit

an application on their own behalf or through an attorney. For applicants who do not live in Indonesia, a patent application must be made through an attorney.

All patent applications must include:

- the title of the invention;
- a description of the invention;
- at least one claim relating to the invention;
- the invention abstract;
- any drawings that can clarify the invention;
- a power of attorney, if needed;
- a statement letter of ownership of invention by the inventor;
- a letter of transfer of the ownership rights, if the application is not submitted by the inventor; and

- evidence letter in relation to the storage of microorganisms, if the application is related to microorganisms.

Regulation No. 38 implements certain provisions relating to the PCT, of which Indonesia is a signatory, and confirms the status of the PCT as applying in Indonesia.

Similarly, as a member of the Paris Convention for the Protection of Industrial Property and of the World Trade Organization, Indonesia recognizes patent priority rights. In order to claim a priority right, the applicant must submit a priority document, authorized by officials in the country of origin, no later than one year after the patent date of the country of origin.

Regulation No. 38 states that prior to grant, a traditional patent application can be changed to become an application for a simple patent or vice versa. Further, a patent application may be withdrawn prior to grant.

Once the Minister has granted a patent, the Minister will issue a certificate of patent, and the grant will be recorded and announced to the public. At this stage, any mistakes in relation to the patent may only be corrected with the permission of the Minister.

\* Law No. 13 Year 2016 concerning Patents.

\*\* Regulation of the Minister of Law and Human Rights No. 38 Year 2018 concerning Applications For Patents.

## Updates on the Primary Industrial Business License for Forest Products

by Galih Adi Prasetya

With vast and beautiful rainforests, Indonesia is firm in its commitment to reduce deforestation. Global demand for paper, palm oil and other forest-based products has put significant pressure on Indonesia's rainforests. As a result, the government has enacted new laws regulating the production of products made from the forest, including the requirement to obtain a license (the **Regulations**). In addition, the Regulations ensure that new procedures are integrated with the new Online Single Submission System (the **OSS System**).



Image source: akalforestproducts.com

The Regulations introduce several new obligations including the requirement that:

- any legal entity that creates products from the forest must obtain an Industrial Forest Products Business License (the **Forest Products License**);
- a Forest Products License applicant must implement the financial management standards of the relevant district public service agency;
- a Forest Products License applicant must obtain a Business Identification Number prior to application;
- a Forest Products License applicant must obtain an Environmental License, Location Permit, and a Building Construction Permit, where relevant, prior to application; and
- a Forest Products License holder must recognize, respect and comply with the local community's customary forest use (*hutan adat*).

The Regulations also include sanctions for the breach of its provisions, which vary in severity and include revocation of the Forest Products License.

*\*The Minister for Environment and Forestry Regulation No. P.1/MENLHK/SETJEN/KUM.1/1/2019 of 2019 on the Primary Industrial Business License for Forest Products.*

## E-Commerce Players Required to Pay Taxes in Indonesia

by Shaskia Putri Ramadhani

Driven by the differences in tax treatment between conventional commerce and e-commerce, at the end of last year, Indonesia's Minister of Finance issued Regulations concerning the Tax Treatment of E-Commerce (**Regulation No. 210**).\*



Regulation No. 210 is intended to introduce a level of fairness in the taxation system by giving equal treatment to revenue created from both traditional commerce and e-commerce. It is also intended to clarify the e-commerce taxation system to ensure that compliance is easy.

Regulation No. 201 does not include new taxes, rather it sets out the procedures by which e-commerce taxes must be collected.

The Regulations clearly set out the mechanisms for the collection of:

- Value Added Tax (VAT), Luxury Goods Tax (LGT), and Income Tax (the **First Category**); and
- Import Duties and Taxes (the **Second Category**).

In relation to the First Category, taxes are levied on standard e-commerce routes such as products bought on an online marketplace platform and products sold via online retail through classified advertisements or through social media.

The Regulations state that online marketplace platform providers must have a Taxpayer Identification Number and be confirmed as a Taxable Entrepreneur. The Regulations state that those selling through online classified advertisements, etc, must provide their Taxpayer Identification Number or their Business Identification Number to the marketplace platform provider.

Those confirmed as Taxable Entrepreneurs must pay their taxes electronically through a marketplace platform provider and shall collect, deposit, and report all the VAT and LGT that has not been paid. After that, the marketplace platform provider will submit a report to the Ministry listing all transactions conducted by the merchants or service providers.

In relation to the Second Category, taxes are levied on imported goods which:

- have been imported through an online marketplace platform registered with the Directorate General of Customs and Excise;

- are delivered via the post; and
- have a value of up to USD1,500.

The Regulations require all online marketplace platform providers to register for approval with the Head of the Customs Office. Once the providers have been approved, they must submit e-invoices and e-catalogues to the Directorate General of Customs and Excise.

Failure to perform the obligations set out in the Regulations, may result in the freezing of the online marketplace platform provider's approval. The Regulations state that a marketplace platform provider's approval may also be revoked if:

- it does not use the online tax payment scheme for 12 consecutive months;
- its business license is no longer valid or has been revoked;
- it has breached any customs laws;
- requested by the provider; or
- it is declared bankrupt by the commercial court.

Regulation No. 210 shall come into effect on April 1, 2019.

\* Regulation of the Minister of Finance No. 210/PMK.010/2018 concerning the Tax Treatment of E-Commerce



## Offshore Bank Loans and Other Bank Liabilities in Foreign Currencies

by Margareth Nita Gunawan

On 1 March 2019, Bank Indonesia issued Regulation 1\*, which is intended to uphold the government's commitment to international banking standards. Regulation 1 introduces rigorous banking standards that are intended to maintain the stability of the economy and the financial systems. Regulation 1 essentially revokes\*\* the Previous Regulation.\*\*\*



Regulation 1 introduces new standards in relation to offshore loans (*Utang Luar Negeri - ULN*) and other foreign currency liabilities (**Currency Liabilities**).

Regulation 1 includes:

- a) a clear description of ULN and Currency Liabilities;
- b) principles for short-term liabilities;
- c) principles for long-term liabilities; and
- d) supervision and sanctions.

The Previous Regulation allowed banks to obtain ULN on the condition that they implemented prudential principles. However, Regulation 1 empowers banks to take on Currency Liabilities in addition to obtaining ULN in foreign currencies. Regulation 1 also states that both ULN in foreign currencies and Currency Liabilities may cover both short-term and long-term obligation periods.

In relation to short-term liabilities, Regulation 1 obliges banks, which have ULN and Currency Liabilities, to implement prudential principles, as in the Previous Regulation.

However, Regulation 1 differs from the Previous Regulation on this point by setting out differences in the way the principles are implemented for long-term and for short-term loans.

Banks are still required to limit their daily short-term liabilities balance to a maximum of 30% of their capital. However, Regulation 1 sets out a number of exceptions to this limit, including:

- a) if the short-term ULN is provided by controlling shareholders for the purpose of solving bank liquidity problems or to extend credit to the business activities of an entity in Indonesia that produces goods and services, excluding business activities in financial sector (real sector - sektor riil);
- b) if the liability exceeds the limit because of hedging transactions carried out with non-residents; and
- c) if the liability exceeds the limit because non-resident are demanding deposits.

Prior to entering into long-term foreign liabilities, Regulation 1 requires banks to obtain market entry plan approvals (the **Approvals**) from the Bank of Indonesia. Generally, market entry plans must be included in a bank's business plan, prior to the bank's obtaining the Approvals. Approvals will remain valid for 3 months. Once the Approvals have been given, a bank is requir-

ed to submit reports to the Bank of Indonesia on the liabilities they incur within:

- a) 7 business days after the relevant market entry date for ULN in the form of loan agreements, ULN in the forms of bonds issued through private placements, bonds issued through private placement and risk participation transactions (Transaksi Partisipasi Risiko - TPR); and
- b) 7 business days after the relevant transaction settlement date for ULN in the form of bonds and bonds which are issued through exchange.

Under the Previous Regulation, banks were required to submit applications for Approvals at least 1 month prior to the relevant market entry date. Regulation 1 does away with this arbitrary timeframe.

\* Regulation No. 21/1/PBI/2019 on Offshore Bank Loans and Other Bank Liabilities in Foreign Currencies.

\*\*With the exception of Articles 6 (1) and 7.

\*\*\* Regulation of BI No. 7/1/PBI/2005 on Offshore Bank Loans, which has been amended several times, most recently through the issuance of Regulation of BI No. 16/7/PBI/2014.