

Implementation of Online Single Submission (OSS) and Electronic Registration Systems at Directorate General of Sea Communication

The territory of the Republic of Indonesia consists of thousands of islands along the equator between two continents and oceans. Globally, Indonesia is home to the world's largest archipelago where 2/3 (two-thirds) of Indonesia's territory is sea. Among the plethora of Indonesian islands, transportation is still limited to vessels and planes as there are no highways and/or roads connecting the myriad of Indonesian islands. Sea transportation, being one of the alternative ways to reach inaccessible islands yet, is a noteworthy business opportunity.

It is important to note that sea transportation in Indonesia is not only still prevalent, but very much a growing industry as seen from the increasing volume of cargo loaded and unloaded in domestic and international voyages. Indonesia has an essential and strategic position and role in sea transportation along with a plethora of business opportunities to be cultivated in this sector.

Given Indonesia's important and strategic role in the sea transportation sector, it is vital for businesses to understand the procedures for vessel registration, obtaining a Sea Transportation Business License (Surat Izin Usaha Perusahaan Angkutan Laut or "SIUPAL"), and registration of hypothec over vessels as security. Understanding these three forms of registration is crucial for any party which wants to operate vessels and enter any financing activities in Indonesia.

Objectives

Since the Online Single Submission ("OSS") system was effectively implemented in Indonesia and due to the provisions in Government Regulation No. 24 of 2018 concerning Electronic Integrated Business Licensing Services ("GR 24/2018"), relevant ministries, governmental agencies and/or regional governments are required to issue their own sectoral regulations to conform with the OSS system.



The sectoral regulations generally set forth: (i) the types of license (whether business licenses and/or operational licenses) needed for any particular line of business; (ii) the validity of the licenses; (iii) conditions for the fulfilment of commitments for each license; and (iv) period for the fulfilment of commitments.

Following the enactment of GR 24/2018 and to conform with the OSS system, the Minister of Transportation of the Republic of Indonesia issued regulation No. PM 89 of 2018 concerning Norms, Standards, Procedures and Criteria of Business Licenses through the Electronic System in the Sea Transportation Sector ("PM 89/2018").

What's New?

Prior to the effectiveness of the OSS system, all business licenses applications had to be made in hard copy and submitted manually through various government institutions, which was time consuming. In this new licensing system, the government of the Republic of Indonesia has simplified the licensing system so then all processing and issuance of the business licenses is not conducted online through the integrated OSS system, i.e. <https://oss.go.id/oss/>.

Unlike the previous regime, under this new system, there are 2 (two) types of licensing that will be issued to companies after they obtain a Business Identification Number (*Nomor Induk Berusaha* or “NIB”) through the OSS system, which are: (i) business license and (ii) commercial or operational license, each of which will have certain commitments to be fulfilled following the issuance of such licenses.

The following are the procedures applicable at this time with regard to the OSS system related to vessel registration, SIUPAL registration and registration of hypothec over a vessel:

1. Vessel Registration

The procedure to register a vessel is provided in the Minister of Transportation Regulation No. PM 39 of 2017 concerning Registration and Nationality of Vessels (“PM 39/2017”). To register the ownership rights of a vessel, the vessel owner submits an application to the Official Registrar of Transfer of Titles to Vessels (“Official for Registration”) along with the required documents (amongst others builder certificate, bill of sale, protocol of delivery and acceptance, original deletion certificate, etc.) through the Electronic Vessel Registration System (*Sistem Pendaftaran Kapal Elektronik* or “SPKE”), which can be accessed online.

In practice, however, after the registration in the SPKE, the applicant must still provide the required documents to the relevant registration office where the applicant intends to register the Vessel. Based on such application and submitted documents, the Official for Registration will comprehensively examine the documents submitted within a certain period as from the receipt of the complete application. Afterwards, the official will prepare and issue the Deed of Registration of the vessel at the relevant registration office where the applicant submitted the documents and the applicant must sign the Deed of Registration of the vessel in the presence of the relevant authorities. ,

Despite the process being performed through the online system, it still requires the applicant to appear before the Official for Registration in order to sign the Deed of Registration of vessel. A similar process (appearing before the Official for Registration) also applies to a vessel which had been registered in a foreign country, whereby the applicant must provide and show the original copy of the deletion certificate before the official upon completing the process.

In that context, the SPKE system seems not completely favorable for the investor, as the applicant is still required to be physically present at the Official for Registration, which can be costly and time consuming.

Regulatorily, the process takes around 5 (five) business days. In practice, the process maybe more lengthy as it may take up to 10 (ten) business days as it also depends on the availability of the relevant official and/or fulfilment of any additional required documents. The registration fee, depends on the gross tonnage (“GT”) of the vessel which ranges from Rp. 100,000 (one hundred thousand Rupiah) to Rp. 30,000,000 (thirty million Rupiah) pursuant to Government Regulation No. 15 of 2016 concerning the Types and Tariffs on the Types of Non-Tax State Revenue Applicable at the Ministry of Transportation (“GR 15/2016”).

By having this SPKE system, although the process of vessel registration still involves a manual procedure, the registration process is beginning to be more sophisticated and hopefully registration will be conducted in a more efficient, organized and systematic manner, which would definitely be more convenient for a potential investor.

2. SIUPAL Registration

Unlike the previous regime, currently, the process of obtaining of SIUPAL can now be processed online through the OSS system. As provided under PM 89/2018, the following is the general process for obtaining SIUPAL:

- a. the applicant must firstly obtain the NIB through the OSS system. After obtaining the NIB from the OSS system, the applicant will also obtain a SIUPAL which will not yet be effective until the applicant has fulfilled all of the required commitments mentioned therein;
- b. following the above process, the applicant must also submit an application for a SIUPAL to the Sea Transportation Traffic Management Information System (*Sistem Informasi Manajemen Lalu Lintas Angkutan Laut* or “SIMLALA”) and fulfill the administrative and technical requirements (i.e. deed of vessel registration) to be reviewed and examined by the officers concerned. Regulatorily, the process to fulfil the requirements should take 20 (twenty) days;

- c. Subsequently, the applicant is required to pay Non-Tax State Revenues (*Penerimaan Negara Bukan Pajak* or “PNBP”) in the amount of Rp. 2,000,000 (two million Rupiah) through the SIMLALA online system;
- d. an Approval Letter will be sent automatically through the OSS system in order to effectuate the SIUPAL.
- e. the Approval Letter for SIUPAL will be printed at the Directorate General of Sea Communication of the Ministry of Transportation of the Republic of Indonesia (“Ministry”) through the SIMLALA application as the basis for the issuance of SIUPAL;
- f. the applicant may then visit the Ministry to obtain the Approval of SIUPAL providing evidence of payment of the PNBP;
- g. the applicant then has to submit a report/notification of the issued permit to the OSS Institution; and
- h. the applicant will then be able to retrieve the effective SIUPAL from the OSS system.

In brief, the SIUPAL will be given directly when the applicant obtains a NIB through OSS system, but the SIUPAL will not yet be effective. At this stage (until the SIUPAL becomes effective), however, the company is still not allowed to conduct business activities and the violation of such provision may subject the company to an administrative sanction.

In addition to foregoing, as provided in the regulation, the applicant is given a period of 20 (twenty) days to fulfill the requirements, including measurement certificate and procurement of vessel in order to acquire the SIUPAL, which in our experience, is time consuming, and it may take up to 1 (one) month or more. In procurement of a vessel, for example, the business practitioner needs to conduct reflagging and financing activities, which is quite a lengthy process. Given that, our view is that the enforceability of this regulation and procedures renders whether the timeframe given can be implemented or not questionable.

Prior to the enactment of PM 89/2018, as explained by Ministerial Regulation No. PM 93 of 2013 concerning Management and Business of Sea Transportation as lastly amended by Ministerial Regulation No. PM 24 of 2017 concerning Revocation of Requirements for Capital Ownership in Sea Transport Businesses, Ship Agencies, Cargo Handling Companies and Port Businesses (“**PM93/2013**”), SIUPAL registration was conducted by submitting an application for registration and the relevant administrative and technical documents, such as, among others, the original registration deed of the vessel, to the Ministry. It is important to note that PM 93/2013 is currently still effective, as PM 89/2018 does not entirely revoke PM 93/2013. Rather, if there are provisions enacted prior to PM 89/2018, which contradict the provisions of PM 89/2018, then such provisions will not be effective. The method of SIUPAL registration through the SIMLALA system referred to in PM 89/2018 is the current method of registration relevant today and an applicant will be able to obtain a SIUPAL from the Ministry upon the fulfillment of the commitments and requirements for SIUPAL registration.

3. Hypothec Registration

A vessel that has been registered with register of Indonesian vessels can be used as a security for debt by encumbering it with a hypothecation. Practically, the hypothecation would be in the form of a deed of hypothecation made before the authorized official.

The procedure to register hypothecation over a vessel is provided in PM 39/2017. With regard to the registration of hypothecation over a vessel, the practice to register hypothecation is conducted by the formulation of a hypothec deed, in hard copy, by the Official for Registration.

The owner of the vessel (hypothecation grantor) and the hypothecation grantee will manually submit an application to the Official for Registration where the vessel was registered. The application for registration must include (i) the loan/credit agreement; and (ii) the original registration deed or deed of transfer of title to the vessel.

The hypothecation deed will then be signed by the vessel owner, hypothecation grantee, Official for Registration and his/her assistant. The hypothecation deed will be given to the hypothecation grantee as an evidence that the vessel has been encumbered with hypothecation. As for the fee, like the registration of vessel it depends on the GT of the vessel, with a maximum amount of Rp. 30,000,000 (thirty million Rupiah).

Conclusion

In essence, the arrival of the online registration system to facilitate vessel and hypothecation registrations, and SIUPAL applications has shown a very significant change in the outlook for registration at the Ministry, especially in the licensing issues for the shipping industry. The stakeholders involved in that industry are feeling more comfortable about investing their money in Indonesia as the system makes the process more advanced, simpler and faster.

However, we note that there are some areas which need improvement or should take into account as the aforementioned online systems may not entirely meet the expectations of investors where, ideally, an online system would no longer require the literal presence of any party for the formulation of a document like the database system in the Ministry of Law and Human Rights or BKPM in the past. Furthermore, considering that the process of SIUPAL application as well as both vessel and hypothecation registrations involve multiple and variegated online systems (SPKE, SIMLALA and OSS), the use of those systems, in our view, undermines efficiency.

On top of that, aside from these shortcomings, we view that online systems have made the application or registration system in Indonesia more advanced, and hopefully they can be made more effective and efficient in the near future by, for instance, replacing any signing requirements with electronic signatures and changing the obligation of providing an original deed of registration of vessels to submitting a statement from a public notary. In addition, the SPKE and SIMLALA online systems should be integrated with the OSS system so that future vessel or hypothecation registrations and SIUPAL application can be implemented solely through the OSS system. These changes would accelerate the process of application of SIUPAL and vessel or hypothecation registrations, and provide more convenience for all parties involved therein.

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