

Highlights on the New Plantation Licensing Regulation



Indonesia is known as one of the largest producers of palm oil in the world. Plantations in Sumatra, Kalimantan and Papua have expanded in years with private investors, both local and foreign, dominating the sector. Therefore, to support the palm oil industry, Indonesia must support investment on palm oil sector by improving the regulation for investors, especially in the licensing sector.

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 implementation. The sectoral regulations generally set forth: (i) types of license (whether business licenses and/or operational licenses) for any applicable line of business; (ii) 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, on 14 January 2019, the Minister of Agriculture of Republic of Indonesia (“Minister”) issued a new regulation concerning the business licensing procedures for the agricultural sector, Minister of Agriculture Regulation No. 05 of 2019 (“MoA Regulation 05/2019”). The purpose of the issuance of this regulation is to optimize the licensing services in the agricultural sector through the OSS system as previously governed by Minister Regulation No. 29/PERMENTAN/PP.210/7/2018.

We set out below some of the key provisions in MoA Regulation 05/2019, particularly those related to the palm oil plantation sector.

What’s New?

Prior to the effectiveness of the OSS system, all business licenses applications had to be made in hard copy, all of which had to be made manually through various government institutions, which was very time consuming. The government of the Republic of Indonesia, with this new licensing system, is trying to introduce a simpler licensing application system where all the processing up to the issuance of the license is performed online through the integrated OSS system, i.e.: <https://oss.go.id/>.

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

Business License

According to GR 24/2018 and MoA Regulation 05/2019, a business license must be obtained by the business practitioners (plantation companies) once they have obtained the NIB and are ready to start the business and/or activity prior to the commercial or operational stage. The plantation business license will be issued by the OSS agency (on behalf of the Minister) in the form of an electronic document.

Previously, under Minister Regulation No. 98/PERMENTAN/OT.140/9/2013 concerning Guidelines for Licensing of Plantation Businesses as amended lastly by Minister Regulation No. 21/PERMENTAN/KB.410/6/2017 ("MoA Regulation 98/2013"), there were 3 (three) types of plantation business licenses that was issued to the plantation companies, depending on the business activity: (i) an IUP-B (plantation business license for cultivation); (ii) an IUP-P (plantation business license for processing); or (iii) an IUP (plantation business license for integrated cultivation and processing). Under this OSS regime, those differences in the type of license will no longer exist because the OSS system only recognizes the IUP as the business license in the plantation sector as stipulated in the Attachment of GR 24/2018.

MoA Regulation 05/2019 states that any provisions relating to plantation business licenses regulated under other Minister regulations are still applicable unless they are not contradictory with MoA Regulation 05/2019. Given the above, any plantation business licenses, whether IUP-B, IUP-P or IUP, issued prior to the OSS system coming into effect will still be valid for as long as the plantation companies run their business activities. However, in the event a plantation company intends to change its business activity, for instance from cultivation to processing, the company is required to apply for new IUP through the OSS system.

After obtaining the IUP and satisfying the commitments for obtaining the business license, the OSS system will issue the plantation company with a commercial or operational license, the commitments in which are in the forms of (i) standardization and/or certification and/or license; and/or (ii) registration of goods/services.

Commercial/Operational License

According to GR 24/2018, this type of license is issued after the business practitioners obtain validation of the business license and have satisfied the commitments for the business license in order for the business practitioner to start its commercial or operational implementation. Please note MoA Regulation 05/2019 provides numerous types of commercial/operational license depending on the needs of the company.

Palm oil plantation companies, for instance, may need a license for import and export of plant seeds license (*izin pemasukan dan pengeluaran benih tanaman*) in order to support their business activities. However, please note that there will also be commitments to fulfill in relation to the license.

Commitments

In order to get the business license and commercial or operational license, a plantation company must fulfill and satisfy the commitments. In this regard, the company must take into account the commitments as stated in GR 24/2018 and MoA Regulation 05/2019.

In principle, GR 24/2018 provides general basic commitments to be fulfilled by a business practitioner, depending on the relevant business activities, such as: (i) location permit; (ii) water location permit; (iii) environmental permit; and/or (iv) building construction permit, depending on the line of business. In light of the aforesaid regulation, for the plantation sector, MoA Regulation 05/2019 sets out that location permit and environmental permit is the 2 (two) basic commitments that need to be fulfilled by plantation companies after obtaining an IUP. In addition to those 2 (two) commitments, there are other specific commitments which must be fulfilled by plantation companies as set out in MoA Regulation 05/2019.

Further, as provided in GR 24/2018 and MoA Regulation 05/2019, as a part of the fulfillment of commitments, a plantation company must also pay an administration fee, which can be in the forms of: (i) non-tax state revenues (*penerimaan negara bukan pajak*); (ii) import duties and/or export duty; (iii) excise; and/or (iv) regional tax or regional fees.

Commitments for Business License under MoA Regulation 05/2019

In order to validate the IUP, a plantation company must fulfil the commitments required as provided under MoA Regulation 05/2019, evidence of which must be uploaded into the OSS system within 2 (two) months from the issuance of an IUP, which applies for both existing plantation companies and newly established plantation companies. Accordingly, upon their completion the commitments can then be forwarded to the relevant officials (i.e. directorate general of plantation, regional government) by the OSS for examination and approval. At the end of the process, OSS notifies the applicant that the issued IUP is now effective.

For ease of reference, as provided in the MoA Regulation 05/2019, additional commitments for cultivation and integrated plantation activities are, among others, as follows:

- i. Permit to release forest area (if applicable);
- ii. Right of cultivation certificate; and
- iii. Statements from the applicant that the status of the plantation company is an independent business or part of a group of plantation companies that does not possess land in excess of the limit on area in accordance with the laws and regulations.

As for processing activities, the additional commitments may be in the form of, among others:

- i. The documents on self-procured raw material supplies, which must be at least 20% (twenty percent) of the total need for raw materials;
- ii. The documents on raw material supplies other than the 20% (twenty percent) self-procured supplies (partnership agreement);
- iii. Right to build certificate; and
- iv. Statement on the ability to conduct partnership.

Given the above and as informed by the official, a scanned copy of these commitments must be uploaded to the OSS system instead of the company providing a statement to cover the above commitments. We see that obtaining and fulfilling the above commitments within 2 (two) months, as required by regulation, is impossible. For example,

in our experience, to acquire an environmental permit or right to build certificate would take around 4–6 months, and therefore, the timeframe as provided in the regulation seems not favorable for the investor. Moreover, it may also lead to uncertainty with regard to the effectiveness of the IUP since any related sectoral authorities (i.e. the ministry of environment and forestry) have yet to issue the implementing regulations to support and speed up the process in issuing the relevant commitment.

The other question that maybe asked by the potential investor is whether a business practitioner fails to fulfill one of the commitments within the required time period, the issued IUP will be automatically revoked and the investor must re-apply and follow the previous procedure or will there be an additional time period for the business practitioner to fulfill such commitments. Unfortunately, MoA Regulation 05/2019 and other sectoral regulation does not provide any solution to the above issues or questions.

It is also relevant to note that the MoA Regulation is related with Presidential Instruction No. 8 of 2018 concerning Moratorium on New Palm Oil Development and Review of Existing Plantations as well as Boost the Productivity of Palm Oil Plantations (“Inpres 8/2018”), which ordered all central and provincial governments, including governors, mayors and relevant ministries and institutions to re-evaluate the IUP issued for palm oil plantation and stipulated that the moratorium would be valid until 2021. The question for investors is whether the OSS system has connected the provision in MoA Regulation 05/2019 with the restriction provided in Inpres 8/2018.

Furthermore, Inpres 8/2018 implies that the Minister of Environment and Forestry would postpone the issuance of release and exchange of forest areas, and in that regard, the enforceability of the MoA Regulation 05/2019 also comes into question.

Commitments of Commercial/Operational License

As mentioned above, upon the IUP has been validated, the plantation companies may be required to obtain a commercial/operational license to support their business activities. There are several commercial/operational licenses set out in MoA Regulation 05/2019, among others, licenses for the import and export of plant seeds, registration of agricultural machinery tools, and registration of pesticides.

In general, the process for obtaining the commercial/operational license is similar to that for the IUP, in which any plantation companies must also fulfil several commitments depending on their required commercial/operational license. Such commitments must be submitted to the OSS system within a certain timeframe as set out in MoA Regulation 05/2019 with several documents attached, some of which are (i) IUP; (ii) location permit/land title certificates; (iii) statement from the plantation companies regarding the need for such license; and recommendation from the relevant authority.

The commercial/operational license will become legally effective once the relevant official (e.g. directorate general of plantations) approves the commitments.

Sanctions

Failing to comply with the requirements as provided in the MoA Regulation 05/2019 (i.e. unfulfilled commitments, certifications and/or licenses, etc.) any sanctions may be imposed on a plantation company in the form of warning, temporary suspension of business activities, penalty and/or revocation of the business license, which will be notified through the OSS system.

Conclusion

Indeed, MoA Regulation 05/2019 is necessary for any stakeholders as guidance for running plantation business activities in Indonesia. However, as we have noted in this summary, there are still some questions or issues, which need to be answered and confirmed. On top of that, to support the enforceability of OSS system in plantation business activities, we are of the view that sectoral ministries must coordinate with each other before issuing a policy and regulation.

-o0o-

*The article above was prepared **Maurice Maulana Situmorang** (Partner), **Dinda Triwijanarko** (Senior Associate), **Vanya Edria Rahmani** (Associate).*

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at dentons.hrp@dentons.com.

No part of this publication may be reproduced by any process whatsoever without prior written permission from Hanafiah Ponggawa & Partners (Dentons HPRP).