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INDONESIA PORT POLICY MEMO

GUIDANCE MEMO FOR DEVELOPMENT OF IMPLEMENTING
REGULATIONS FOR SHIPPING AND PORT ACT, NO. 17/2008

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INTRODUCTION AND BACKGROUND

The effectiveness of the new Shipping & Port Act, No. 17/2008 will depend on the quality of the Implementing Regulations (IR) and how they frame the structure of the industry.

The Government of Indonesia is seeking to improve its rate of economic development and spread that development across the archipelago. To do this the cost of transport across the archipelago and the cost of importing and exporting from the archipelago must be reduced. A key element of transport cost in Indonesia is the high cost and operating inefficiency of the countries ports. These are accentuated by inadequate investment in the country's port infrastructure. The Government's policy goal is to reduce these costs.

The policy intent of the new law is to introduce competition into Indonesian ports by removing the state monopoly on developing and operating ports. Through the introduction of competition it seeks to reduce logistics costs, improve port operating efficiency and attract private sector investment into the port sector.

The previous monopoly on port operations had been enforced through all ports in the archipelago being operated by or in association with State Owned Enterprises (Pelindo I through IV). For petroleum related terminals Pertamina replaced the Pelindo companies as the relevant State Owned Enterprise.

IMPLEMENTATION CONTEXT FOR GUIDELINES

If the new law is to successfully introduce competition into the port sector the IR must be drafted in a manner that convinces the private sector that the three C's will be achieved:

- Competition in Indonesian ports which is both free and fair.
- Consistency of application across the archipelago and through time is guaranteed.
- Clarity of meaning and interpretation are achieved in the law and IR.

The first of these is not explicitly addressed within the new law; it is however critical if the policy intent of the law is to be achieved in practice and therefore must be addressed in the IR.

The others are fundamental to the successful implementation of the new law. The port industry has high initial entry costs and the investment returns are made over long periods of time. These characteristics require; clarity of regulation to ensure that private sector equity and debt can be raised to fund development; and consistency of regulation to mitigate the length of time over which the investment is at risk before a return is achieved (thereby reducing the cost of the capital invested).

A final area that needs clarification if the introduction of competition is to be achieved but which will not be covered directly within the IR is the future strategy of Pelindo. Without addressing their future it is probable rather than possible that any IR will not achieve their policy objectives because the majority of the industry is controlled by Pelindo who will have been left to develop their own strategy. This internally developed strategy will have the dominant influence on the real direction of the port operation and investment.

The six guidelines for developing strong implementing regulations for the *Shipping and Port Act, No. 17/2008* are as follows:

GUIDELINE 1: ESTABLISHING FREE AND FAIR COMPETITION

In an industry where one or two participants control a substantial share of capacity those participants are able to exert monopolistic market influence; regulation is essential to ensure the development of effective competition. To ensure free and fair competition the dominant position of Pelindo and Pertamina has to be addressed.

In the absence of clear and effective regulation of Pelindo (and to a lesser extent Pertamina) the development of competition within the port industry will be at best be slow. More probably competition will simply not develop. Private sector capital will view the risk to be taken as being excessive when compared with the potential reward.

The main areas where the actions of Pelindo (and Pertamina) will need to be regulated are:

- A ban on predatory pricing to ensure new entrants are not “starved” out of the market.
- Tight monitoring and control of cross subsidy between port operations.
- Ensuring users decisions in one port do not affect service levels or pricing in others.
- Ensuring equality of access and the release of unproductive land in existing port areas.

The regulatory framework designed could be applied to all port operators with one caveat. The compliance procedures for small port and terminal operators must not impose inappropriate cost or management burdens. A key element of the required IR will be to ensure clear and accurate reporting from port operators. This should include the provision of discrete annual accounting and operational returns for each port operation they control. The discrete accounts will ensure that each port carries the costs of providing the services in the port and takes benefit from income derived only from the provision of services in that port.

One consequence of discrete accounting for port operations will be to make explicit which ports are not commercial operations at present. The response of a commercial port operator to this information would be to cease those operations. The social and economic impact of such decisions will need to be mitigated through local or national Government action. Mechanisms through which complaints can be made by users and port operators related to pricing, cross subsidy and unfair competitive practices are required within the IR. The IR must also ensure that the body reviewing such complaints must be provided effective methods through which it can ensure redress for justified complaints. This may include punitive actions as well as the ability to order compensation payments and/or changes to the management of offenders.

Access to land is of particular concern where Pelindo nominally control the land but are not making effective use of that land to provide port operations. Such land needs to be released to other potential users. Potential users should have a clear process through which they can apply for the release of land (or sea areas) within existing port areas for development. This process must be documented in the IR.

GUIDELINE 2: IMPLEMENTING REGULATIONS TO CREATE THE STRUCTURE OF INDUSTRY

The key regulatory areas that need to be addressed are:

- The scope of activity, geographical areas of control and the funding mechanisms of the Port Authorities — in particular does the remit include the facilitation of investment and if so how is this to be undertaken.

- The scope and intent of the National Master Plan for Port Development.
- The scope and intent of Port Authority Master Plans.
- Tugs, pilotage and relate marine industries.
- Clarification of the operating status of all existing ports.
- Regional Governments relationship with Port Authorities.
- Land.

The clarification of the operating status of existing ports requires a standard concession agreement of approval of operation between or from the Port Authorities and or to the existing ports to be provided within the IR. The final two of these are in many ways outside the scope of the IR, except when related to the release of existing port land discussed previously is concerned. In addition to the basic regulatory structure the IR need to resolve they also need to provide clarity on how the Port Authorities will be funded and staffed.

GUIDELINE 3: THE NATIONAL PORT MASTER PLAN

The IR should state that the National Master Plan will be maintained as a rolling five year program and state:

- What level of Government investment will be made in ports?
- The timetable for Government investment in ports.
- The basic design of key infrastructure projects that the Government intends to undertake.
- The order of priority of the key infrastructure investment projects.

The IR should also make clear that the National Master Plan does not restrict in any way private sector investment in ports. The process for the development of the National Master Plan should be set out in the IR and be a process driven by consultation.

GUIDELINE 4: PORT AUTHORITY MASTER PLANS

The IR should state that the Port Authority Master Plans will maintain a Master Plan for their areas based on a rolling ten year period. The Master Plan should clearly outline:

- The basic layout of the infrastructure and in particular marine access to the ports that will be maintained by the Port Authority.
- What infrastructure investments will be made by the Port Authority (channel depth, breakwaters, navigation aids, etc.).
- What new landside infrastructure is planned, when this infrastructure will be built and by whom.

In what areas port development will not be approved and the reason either social, environmental or other reasons why this is the case. This final point is critical to encouraging private sector investment. It is important to say where development cannot take place rather than insisting where development must take place. This approach is flexible and provides the basis for the private sector to be creative and develop competition. It also has the benefit of requiring infrequent revision.

The IR should also state clearly the application procedure to be followed to achieve approval to develop new ports or terminals. The procedure should be as brief as possible and have a defined in terms of days, weeks and months a timetable for the application process. The application process should allow for public and private consultation of all stakeholders. The IR should make it clear that if an application

is not rejected within the set timetable it is automatically approved. The IR should provide clear the criteria against which applications will be judged and be approved. The criteria for rejection of applications should be objective and limited.

GUIDELINE 5: TUGS AND PILOTAGE

Tugs and pilotage are the “quick win” for introducing competition into the port sector in Indonesia. This is because the demand for new tug and pilotage service is substantial, the investment required to enter the market is relatively low and if venture fail there are alternative uses or exit strategies that should secure the return of most of the funds invested.

From the perspective of port users and reducing the cost of transport in Indonesia competition in tugs and pilotage should also provide quick wins. At present substantial time delays are incurred by ships in Indonesian port waiting for wither tugs or pilots or both. A clear certification process with objective standards for the provision of tugs and pilotage need to be stated within the IR; this need to cover:

- Certification of the quality of crews, training and management systems for tug operators.
- Stating quality and performance requirements for tugs operating in Indonesian waters; these to vary depending on local requirements.
- Stating clear and verifiable certification procedures for pilots this may be in the form of National Certificates and Local Operating Approvals.
- Making pilot’s certificates personal rather than company related (like those for ships Masters).

GUIDELINE 6: REMIT, FUNDING AND STAFFING PORT AUTHORITIES

Ensuring that the principal of the new law is not compromised, that is “the Port Authorities are not to be port operators”, the remit of the Port Authorities needs to be stated in detail in the IR. Their remit should include:

- The maintenance of basic port infrastructure.
- The maintenance of a Master Plan for port development under their control.
- The development and improvement of basic port infrastructure.
- The facilitation of investment by Government, Local Government and the Private Sector within ports under their control.
- Encouraging competition within ports under their control.
- Ensuring effective port operations are undertaken within each port under their control.

The methods through which the Port Authorities are to be funded needs to be stated in the IR. It should be made clear that they are to be self funding and they should be empowered through the IR to raise revenue by the encouragement of port development and the provision/maintenance of basic infrastructure. The ability for Port Authorities to commit advanced revenue to raise funds to invest should be included within the IR. The obvious source of experienced staff for any of the new Port Authorities is the Pelindo companies. If this source of staff is to be permitted the IR regulations need to state which staff can move from Pelindo to Port Authority and establish methods through which the loyalty of such staff can be assured by the Port Authority.

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