

TERMS ON UNEQUAL PURCHASE COMPENSATION (IMBAL BELI) FOR PROCUREMENT OF IMPORTED GOODS FOR GOVERNMENT USE

**(Regulation of the Minister of Trade of R.I
Number 44/M-DAG/PER/6/2016, dated June 20, 2016)**

WITH THE BLESSING OF THE ONE AND ONLY GOD
MINISTER OF TRADE OF THE REPUBLIC OF INDONESIA

Considering:

- a. Whereas, Unequal Purchase Compensation is one of Export stimulants to motivate domestic industrial development, to expand market access for Indonesia Exported Goods, and strengthen the State reserve of exchange;
- b. Whereas, based on the consideration referred to in letter a, it is necessary to govern provision on Unequal Purchase Compensation for procurement of imported goods for Government use;
- c. Whereas, based on the consideration referred to in letter a and letter b, and to implement the provision in Article 40 of Law Number 7 Year 2014, concerning Trade, and Article 3 of Government Regulation Number 1 Year 1982, concerning operation of Export, Import, and Exchange traffics, it is necessary to stipulate Regulation of the Minister of Trade concerning provision on Unequal Purchase Compensation for Procurement of Imported Goods for Government use;

In view of:

1. Law Number 16 Year 2012, concerning Agrarian industry (Statute Book of the Republic of Indonesia Year 2012 Number 183, Supplement to Statute Book Republic of Indonesia Number 5343);
2. Law Number 7 Year 2014 concerning Trade (Statute Book of the Republic of Indonesia Year 2014 Number 45, Supplement to Statute Book of the Republic of Indonesia Number 5512);
3. Government Regulation Number 1 Year 1982, concerning operations of Export, Import, and Exchange traffic (Statute Book of the Republic of Indonesia Year 1982 Number 1, Supplement to Statute Book of the Republic of Indonesia Number 3210) as amended by Government Regulation Number 24 Year 1985,

concerning amendment to Government Regulation Number 1 Year 1982, concerning operations of Export, Import, and Exchange traffic (Statute Book of the Republic of Indonesia Year 1985 Number 32, Supplement to Statute Book Republic of Indonesia Number 3291);

4. Government Regulation Number 76 Year 2014, concerning Mechanism for Unequal Trade Compensation for procurement of equipment for Defense and Security against attack from overseas (Statute Book of the Republic of Indonesia Year 2014 Number 262, Supplement to Statute Book of the Republic of Indonesia Number 5596);
5. Presidential Regulation Number 54 Year 2010, concerning procurement of Goods / Services for Government use as amended several times and lately amended by Presidential Regulation Number 4 Year 2015, concerning Fourth Amendment to Presidential Regulation Number 54 Year 2010, concerning procurement of Goods / Services for Government use (Statute Book of the Republic of Indonesia Year 2015 Number 5, Supplement to Statute Book of the Republic of Indonesia Number 5655);

DECIDES:

To stipulate:

REGULATION OF THE MINISTER OF TRADE CONCERNING TERMS ON UNEQUAL PURCHASE COMPENSATION FOR PROCUREMENT OF IMPORTED GOODS FOR GOVERNMENT USE.

Article 1

What is meant in this Regulation of the Minister by:

1. Trade shall be coordinated activity pertaining to transaction of local Goods passing beyond regional borders of the country of destination to assign the right to the Goods to obtain compensation.
2. Unequal Purchase Compensation shall be any means for payment of Goods obliged by overseas supplier for purchase and/or for marketing particular Goods as payment for the whole or part of the Goods purchased from overseas supplier.
3. Goods shall be any items, either tangible or intangible, mobile or immobile, either may be used up or cannot be used up, and may be traded, used, utilized, by consumer or business player.
4. Ministry shall be Government instrument in charge of particular matter of administration.
5. Non-Ministry Government Institution hereinafter referred to as LPNK shall be State Institution duly

established to carry out Administration duty as instructed by the President.

6. Regional Administration hereinafter referred to as Pemda shall be Head of Region constituting operating instrument of Regional Administration that leads implementation of regional affairs constituting authority of Autonomous Region.
7. State-owned Business Entity hereinafter referred to as BUMN shall be business entity which share is entirely or majority belongs to the State by means of direct participation which share originates from split assets of the State.
8. Regional-owned Business Entity hereinafter referred to as BUMD shall be company duly established and belongs to Regional Administration.
9. Procurement of Goods for Government use shall be procurement of Goods for the need of the Ministry, LPNK, Pemda, BUMN, and BUMD by using the fund from State Revenue and Expenditure Budget, Regional Revenue and Expenditure Budget, Export Credit, Commercial Credit, Government Capital participation and/or company budget obtained from profit.
10. Export shall be activity to clear Goods from Customs area.
11. Import shall be activity to import Goods to Customs area.
12. Supplier company shall be company decided as the bid winner for procurement of Goods for Government use by means of Unequal Purchase Compensation.
13. Overseas supplier shall be company in overseas procuring and supplying Goods for Government use.
14. Third Party Company shall be company in the form of limited liability, either as domestic capital investor or foreign capital investor that obtains assignment to fulfill obligatory Unequal Purchase Compensation from the Supplier Company that has obtained recommendation from the Ministry of Trade.
15. Minister shall be Minister exercising Administration matter on Trade.
16. Director General of Overseas Trade of the Ministry of Trade.

Article 2

- (1) Procurement of Goods for Government use originating from Import with specific value and/or based on the provision in the statutory regulation must be exercised by means of Unequal Purchase Compensation.
- (2) Type and value of procurement of Goods for Government use as referred to in paragraph (1) and obligatory percentage of Unequal Purchase Compensation shall be determined by the Team of Unequal Purchase Compensation duly established by the Minister .

Article 3

The Unequal Purchase Compensation as referred to in Article 2 must be complied with by Indonesia Export Goods.

Article 4

Value of Indonesia Export Goods as referred to in Article 3 shall be calculated in US Dollar US\$ current or in other currency equivalent to US Dollar (US\$).

Article 5

Indonesia Export Goods for compliance with obligatory Unequal Purchase Compensation as referred to in Article 3 is subject to the provisions in the statutory regulation on compliance with the requirements on origin of goods.

Article 6

- (1) Indonesia Export Goods referred to in Article 3 shall be only in the form of non-oil and gas commodity.
- (2) Indonesia Export Goods referred to in paragraph (1) that are not useful to comply with the obligatory Unequal Purchase Compensation are as follows:
 - a. Goods that are prohibited from Export;
 - b. Goods that are Exported are meant to comply with offset, buyback, work contract;
 - c. Goods Exported not for Trade transaction, in the form of Goods in transfer but not for Trade transaction, sample of Goods, Goods meant to assist, Goods constituting gift, and other form of Goods; and
 - d. Other types of Goods which are decared by the statutory regulation as Goods not for use to comply with the obligatory Unequal Purchase Compensation.
- (3) List of Indonesia Export Goods as referred to in paragraph (1) that may be used to comply with the obligatory Unequal Purchase Compensation must be stipulated periodically by Decision of the Director General.

Article 7

- (1) Obligatory Unequal Purchase Compensation may be complied with only by supplier company that has complied with the provisions below:
 - a. has obtained approval in the form of Statement Letter of Commitment to exercise Unequal Purchase Compensation or (Letter of Undertaking);
 - b. is decided as bid winner; and
 - c. has obtained approval for Unequal Purchase Compensation Contract (Annex-A).
- (2) The Director General shall grant approval for Letter of Undertaking to exercise Unequal Purchase Compensation (Letter of Undertaking) and approval for Unequal Purchase Compensation Contract (Annex-A) as referred to in paragraph (1) letter a and letter c.

Article 8

Supplier company shall be obliged to export Indonesia Export Goods in the value equivalent to the obligatory value of Unequal Purchase Compensation for procurement of Goods for Government use originating from Import.

Article 9

- (1) If supplier company fails to comply with obligatory Unequal Purchase Compensation by itself as referred to in Article 8, the supplier company may assign the obligatory compliance with Unequal Purchase Compensation to third party company.
- (2) List of companies that may be appointed as Third Party Company referred to in paragraph (1) shall be stipulated under Decision of the Director General.

Article 10

- (1) Goods exported for compliance with obligatory Unequal Purchase Compensation as referred to in Article 6 must be exported directly to the country of overseas supplier.
- (2) If the Goods from Import originate from several countries, destination of Exported Goods for compliance with obligatory Unequal Purchase Compensation may be delivered to the country of origin of overseas supplier or country of origin of the Goods.
- (3) Goods for compliance with obligatory Unequal Purchase Compensation may be exported to third country if::

- a. such third country is not in the form of traditional market for such Exported Goods; and
- b. the Export thereof does not harm the existing marketing channel.

Article 11

If more than one (1) supplier companies exist, the respective supplier company shall be responsible to comply with the obligatory Unequal Purchase Compensation by Exporting Goods which value is equivalent to the value of obligatory Unequal Purchase Compensation for procurement of Goods for Government use originating from Import.

Article 12

(1) Supplier company shall be obliged to provide Exported Goods to comply with obligatory Unequal Purchase Compensation within six (6) months effective as of the date the Unequal Purchase Compensation Contract (Annex-A) is signed or as approved by the Director General with due observance of availability and characteristic of the Goods for compliance with obligatory Unequal Purchase Compensation.

(2) If compliance with obligatory Unequal Purchase Compensation is assigned to Third Party Company, then Third Party Company shall be obliged to provide Export Goods within six (6) months as of the date the Unequal Purchase Compensation Contract (Annex-A) is signed or as approved by the Director General with due observance of availability and characteristic of the Goods provided to comply with obligatory Unequal Purchase Compensation.

Article 13

(1) Supplier company or Third Party Company shall be obliged to submit report on accomplishment of Export Goods in writing for compliance with the obligatory Unequal Purchase Compensation either accomplished or not accomplished.

(2) Report on accomplished Exported Goods as referred to in paragraph (1) must be submitted to the Director General periodically once in three (3) months on the 15th of the following month.

(3) Report on accomplished Exported Goods as referred to in paragraph (1) must also be submitted electronically through <http://inatrade.kemendag.go.id>.

(4) The report on accomplished Export as referred to in paragraph (1) must be supported by:

- a. Notification of Exported Goods (PEB);
- b. Note on Export (NPE) service;

- c. original copy of Bill of Lading (B/L), Air Way Bill (AWB), or Cargo Receipt,
- d. Invoice; and
- e. other evidences as required.

- (5) With respect to the Report on accomplished Export as referred to in paragraph (1), the Director General shall submit confirmation letter to the supplier company or Third Party Company with copy to the Ministry, LPNK, Pemda, BUMN, and BUMD procuring the Goods by means of Unequal Purchase Compensation.
- (6) Final Report on accomplished Export must be submitted within six (6) months at the latest as of expiry of the term of obligatory Unequal Purchase Compensation.

Article 14

Pelaksanaan Exported Goods untuk pemenuhan kewajiban Unequal Purchase Compensation terhadap Barang yang dibatasi Export dilakukan sesuai dengan ketentuan Regulation perLawan.

Article 15

- (1) Supplier company or Third Party Company that fails to accomplish Export to comply with the obligatory Unequal Purchase Compensation, is subject to penalty in the form of obligation to pay penalty 50% (fifty percent) of the amount of obligatory Unequal Purchase Compensation for procurement of Goods for Government use originating from Import.
- (2) If supplier company or Third Party Company may only accomplish part of the obligatory Unequal Purchase Compensation, such company is subject to 50% (fifty percent) penalty of the value of obligatory Unequal Purchase Compensation for procurement of Goods for Government use originating from Import not accomplished yet.

Article 16

Goods are Exported to comply with the provision of Unequal Purchase (Unequal Purchase Compensation) post audit conducted by the Ministry of Trade.

Article 17

Violation of the provisions in this Regulation of the Minister is subject to penalty in line with the provisions in the statutory regulation.

Article 18

Technical guideline for implementation of this Regulation of the Minister shall be determined by the Director General.

Article 19

This Regulation of the Minister comes to force on the date it is enacted.

For public cognizance, this Regulation of the Minister shall be announced by placing it in the State Gazette of the Republic of Indonesia.

Stipulated in Jakarta

Dated June 20, 2016

MINISTER OF TRADE OF THE REPUBLIC OF INDONESIA,

sgd.

THOMAS TRIKASIH LEMBONG

Enacted in Jakarta

Dated June 27, 2016

DIRECTOR GENERAL OF STATUTORY REGULATION
OF THE MINISTRY OF LAW AND HUMAN RIGHTS
OF REPUBLIC OF INDONESIA,

sgd.

WIDODO EKATJAHJANA

STATE GAZETTE OF THE REPUBLIC OF INDONESIA

YEAR 2016 NUMBER 941

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