

ISSUANCE PROCESS DILEMMA OF *SURAT IZIN USAHA PENJUALAN LANGSUNG* (SIUPL)

(Regulation Implementation study on the Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008, 55/M-DAG/PER/10/2009 and the regulation of Head Indonesian Investment Coordinating Board Number 5 of 2013)

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Abstrak

Letak kawasan Indonesia yang strategis menjadi salah satu pusat perdagangan karena Indonesia terletak diantara 2 benua yaitu benua Asia dan benua Australia, serta diantara 2 samudra yaitu Samudra Hindia dan Samudra Pasifik. Perusahaan yang akan melakukan sebuah perdagangan di Indonesia harus memiliki izin dari Kementerian Perdagangan. Penerbitan izin usaha penjualan langsung (SIUPL) pada awalnya melalui Kementerian Perdagangan namun dengan terbitnya Keputusan Presiden Republik Indonesia Nomor 27 Tahun 2009 tentang Pelayanan Terpadu Satu Pintu Di Bidang Penanaman Modal menimbulkan pendelegasian SIUPL kepada Badan Koordinasi Penanaman Modal (BKPM).

Kata kunci : Dilema, Penjualan Langsung, Izin, Surat Izin Usaha Penjualan Langsung (SIUPL) dan Penanaman Modal.

Abstract

Indonesia became the center of the trading due the strategic place which is located between the two continents, Asia and Australia, as well as between the two oceans, namely the Indian Ocean and Pacific Ocean. Firm which undertake any trading in Indonesia is obligated to have a permission from the Ministry of Trade. At the first, the issuance of *Surat Izin Usaha Penjualan Langsung* (SIUPL) is through the Ministry of Trade. However, with the issuance of President Decree of Republik Indonesia Number 27 in 2009 about One Stop Services of invesment sector, SIUPL is delegated to Indonesia Invesment Coordinating Board (BKPM).

Keywords: Dilemma, Direct Selling, *Surat Izin Usaha Penjualan Langsung* (SIUPL), Capital Investment

A. Introduction

Indonesia as a developing country has strategic area to support the trading center, which is a aspect of social life in Indonesia. Direct selling or multi-level

marketing (MLM) is one of the growing trading in Indonesia. The presence of Indonesian positive law is the basis of the direct selling arrangements. Indonesia has had a direct selling organization which is *Asosiasi Penjualan Langsung Indonesia* (APLI). APLI is the member of the World Federation Direct Selling Association (WFDSA). Act that specifically regulate direct selling does not exist but it can refer to the Act of the Republic of Indonesia Number 8 in 1997 related to Firm Document and the Act of the Republic of Indonesia Number 3 in 1982 related to firm register compulsory.

The existence of regulation related of direct selling on the Indonesia Minister of Trade Decree Number: 73/MPP/kep/3/2000 related to the Selling Tiered Business Provisions. The Selling Tiered Business Provisions is declared void by the Indonesian Minister of Trade Regulation Number: 13/M-DAG/PER/3/2006. The improvement of legislation process continues to achieve the maximum results as the issuance of the Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008 related the organization of business activities with direct selling system. These regulations govern the issuance of *Surat Izin Usaha Penjualan Langsung* (SIUPL). SIUPL is a business license that is used in running a business in direct selling.

Indonesian Minister of Trade Regulation Number: 55/M-DAG/PER/10/2009 is an authority delegation of SIUPL to the Indonesian Head of Investment Coordinating Board in the Context of continuous implementation related to Investment One Stop Services. The issuance of this regulation to states that article 10 paragraph (2) and (3) Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008 is revoked and no longer valid. The issuance of the Indonesian Minister of Trade Regulation Number: 55/M-DAG/PER/10/2009 becomes the initial publication of the legal products related to the regulation Indonesian Head Investment Coordinating Board Number 5 of 2013. This regulation contains the procedures for the issuance of SIUPL through Indonesia Investment Coordinating Board (BKPM).

Once having the SIUPL, there are some restrictions on Article 21 Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008 which prohibits firms who already have SIUPL related direct selling. Article 21 paragraph m inscribed "selling and/or marketing of goods which are not listed on the product label name of the company which markets the direct selling system". When the prohibited regulation is violated, the penalty should be run. There are 2 firms that violate this prohibited regulation, which are Cozmobis with ginseng mask product and Oriflame Swaden with Giordani Gold Bronzing Pearls product. It is supposed to be there is no any violations related administration when the licensing arise exist. Then any of violation will be punished with law.

B. Legal Issue

Based on the above description, the examined problem research areas follows:

1. Why dilemma occurs in the issuance of SIUPL?
2. How is the issuance mechanism of SIUPL?
3. How is law enforcement of SIUPL offices publisher in the event of a breach of the Article 21 paragraph m Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008?

C. Research method

1. Research and method type

This study uses normative juridical method along with comparative approach, statute approach, and case approach.

2. Law Material Types and Sources

There are three law material used in this study, namely the primary law material, the secondary law material, and the tertiary law material.

Primary legal law consist of, Indonesian Law Number 3 of 1982, the Indonesia Law Number 25 of 2007, Indonesian Minister of Trade Regulation Number: 13/M-DAG/PER/3/2006, Indonesian Minister of Trade Regulation Number: 32/M-Dag/Per/8/2008, Indonesian Minister of Trade Regulation Number: 47/M-Dag/Per/9/2009, Indonesian Minister of Trade Regulation Number: 55/M-Dag/Per/10/2009, Indonesian Presidential Regulation Number 77 of 2007, Decree of Indonesian President Number 90 of 2007, Decree of Indonesian President Number 27 of 2009, Decree of Indonesian President Number 24 of 2010, Decree of Indonesian President Number 36 of 2010, Decree of Indonesian President Number 92 of 2011, Decree of Indonesian President Number 86 of 2012, Decree of Indonesian Minister Number 73/Mpp/Kep/3/2000, Regulation of Head Indonesian of Investment Coordinating Board Number 5 of 2013, Regulation Indonesian Head Investment Coordinating Board Number 7 of 2013, and the Regulation Indonesian Head Investment Coordinating Board Number 13 of 2013.

The secondary legal laws consist of legal expert opinion, books, article, the National Fatwa Council of Sharia, scientific journals, legal dictionaries and dictionary.

The Tertiary law material consists of mass media, the Internet, the data WFDSA (world federation of direct selling association), brochures, and Cosmobiz products.

3. Law material collecting technique

Study of literature by quoting from books, supporting literature, *Perpustakaan Pusat Dokumentasi Ilmu Hukum* (PDIH) Faculty of Law Brawijaya University, Central library of Brawijaya University,

Malang library, internetarticles, journals, papers, and legal experts opinion.

4. Law material analysis technique

Law and non-law material obtained in this study will be analyzed using qualitative juridical methods. Qualitative juridical method is a method to examine the hierarchy of act, one with other regulation should not contradicted, and examine the principles and legal certainty that the legislation is implemented either by the authorities or law enforcement officials and then support from the another law.

D. Analysis

1. Process dilemma of SIUPL

Before 2000, there was no specific regulations on business license of trading with direct sales simply use SIUP (Surat Izin Usaha Perdagangan). Until 2000, Decree of Indonesian Minister of Trade Number: 73/MPP/Kep/3/2000 was published on Selling Tiered Business Provisions which is concerned about began *Izin Usaha Penjualan Berjenjang* (IUPB). In 2006 Indonesian Minister of Trade Regulation Number: 13/M-DAG/PER/3/2006 was published which is IUPB turned into a *Surat Izin Usaha Penjualan Langsung* (SIUPL) and revoke Decree of Indonesian Minister of Trade Number: 73/MPP/Kep/3/2000. Improvement process in direct selling do not stop until Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008 was published. This regulation governs the operation of business activities with direct selling system and Indonesian Minister of Trade Regulation Number 13/M-DAG/PER/3/2006 is invalid. Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008 still valid nowadays. The necessity of developing the economics is rising with Indonesian Minister of Trade Regulation Number: 55/M-DAG/PER/10/2009 on the Delegation of issuance authority SIUPL to the Head Indonesia of Investment Coordinating Board in the Context of the Implementation of One Stop Services Investment. Since the issuance of the regulation of Indonesian Minister of trade publishing trade, the responsible of SIUPL issuance handled by Indonesia of Investment Coordinating Board (BKPM).

The adjustment of legislation to formal legal product is running slow. The adjustment starts from Indonesian Minister of Trade Regulation Number: 55/M-DAG/PER/10/2009 in 2009 until the Regulation of Head Indonesian Investment Coordinating Board Number 5 of 2013. It takes approximately 4 years to prepare a thorough administrative process to SIUPL issuance. Surprising, the fact that the Indonesian is not able to provide data to the development of WFDSA in

2012.¹ Then, Indonesia is one of the country that is not able to report the development of direct selling in Indonesia. At the annual datain WFDSA, Indonesian information column is described by(na) which mean the information is not available. This fact indirectly bad impact the name of Indonesia and an evidence that the law administration has not been running as desired. The issuance delegation of SIUPL from the Ministry of Trade to BPKM has been accomplished but the requirment is increased. Initially, the issuance of SIUPL according to the Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008 need 11 requirement which is splitted to 38 sections that have to be fulfilled along with different 9 documents with BPKM requirement which have to fulfill 7 requirement splitted into 21 sections and another 14 documents. Before submitting the documents to the BPKM, it is requiring the recommendation letter from Indonesian Minister of Trading. This recommendation requires fulfilling the requirements of the Ministry of Trade in accordance with the Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008. Indirectly, the more requirements that must be fulfilled to obtain the SIUPL, it is necessary to fulfill the two requirements, namely the requirements of the Ministryof Trade and BPKM with the provisions of the regulation of Head Indonesian Investment Coordinating Board Number 5 of 2013.It is not only have the obtained recommendation from BKPM but al so from Ministry of trade. This is the dilemma in the process of issuance SIUPL when a firm wants to get SIUPL to start a business can not use the the Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008 because it has been delegated to the BPKM. Therefore, the firm must follow the new regulation which is the regulation of Head Indonesian Investment Coordinating Board 5 of2013. The sequence of this order is the more requirement is needed.

The licensing does have 12 elements include the authority, the statute permits, the government agencies, the concreteevents, the processes and procedures, the requirements, the completion time permits, the licensing fees, the implementation supervisi on permit, the settlement of complaints and disputes, as well as the rights and obligations sanctions. Regulation(*Regeling*) has properties set and the enactment is in tended to everyone. The Indonesian Minister of Trade Regulation Number: 32/M-DAG/PER/8/2008 have have fulfilled all the elements but different permissions with Regulation of Head Indoensian Investment Coordinating Board number 5 of 2013. This regulation

¹ <http://wfdsa.org> , Laporan tahunan 2013 , diakses tanggal 10 januari 2014

does not specify at the completion of time permits, the supervision monitoring the implementation of the settlement of complaints and disputes. This is the real fact that BPKM regulation still not fulfill the licensing elements. When don't have decision , not commitment to perform excellent service.

SIUPL issuance process that refers to the the regulation of Head Indonesian Investment Coordinating Board 5 of 2013 is contrary to *Asas-Asas Umum Pemerintahan yang Baik (AAUPB)* and investment principles. This contrary due to the contrary of the principle of legal certainty, the principle of act carefully or accuracy principle, the principle of motivation for any decisions, the principles of justice and fairness, the principles of trust and respond to reasonable expectations, the principle of prudence and the principle of public interest. This is also contrary with the principle of investment which are the principle of solidarity, the principle of fair efficiency and sustainable principles. This explanation hints that BKPM regulation is still far from idealized. If there is no improvement in the issuance SIUPL, this will impact the investment objectives which is the long-term welfare of the society.

2. SIUPL Implementation

Currently, the issuance implementation of SIUPL is through the 3 stages of investment phase, which are Preparation, construction, and production/operations. The investment phase is the phase in general. The issuance of SIUPL must follow this procedures as regulated in article 34 of the regulation of Head Indonesian Investment Coordinating Board 5 in 2013.

- A. The applicant must have a principle license to conduct business in the field of direct sales;
- B. The SIUPL request for foreign investment and domestic investment is submitted to PTSP BKPM;
- C. SIUPL request is using the form contained in Annex IA, the regulation of Head Indonesian Investment Coordinating Board 5 in 2013. To avoid the mistakes in Attachment III-A, it has been accompanied by technical instructions of SIUPL.
- D. The application should be accompanied by requirements that include:
 - 1. Proof of held licenses of registration/consent principle;
 - 2. Proof of certificate of incorporation and amendments along with the the articles of association end or sement

- and approval/notification of changes, if any, from the minister of law and human rights, and firm NPWP;
3. Proof of legality and project location or address of the company;
 - a. Proof of land ownership and/or over the buildings for office/warehouse in the form of:
 1. The deed of buying and selling by PPAT on behalf of the company: or
 2. Certificate of land rights: and
 3. IMB
 - b. Proof of lease agreement of land and/or building/buildings, evidence of a lease agreement with the land and building lease term of at least 1 (one) year for service business/trading, as of the date the application is submitted: or
 - c. Proof of affiliation and lease agreement, if:
 1. The locus of the company headquarters in 1 (one) buildings fully and integrated with several other companies that have affiliates: or
 2. The locus of the company headquarters is located in land or buildings controlled by another company that has an affiliate:
 3. Affiliation referred to above, if 1 (one) group of companies, as evidenced by a deed of ownership of shares in the company: Affiliation includes 1 (one) group of companies, as evidenced by a deed of ownership of shares in the company or inter-company cooperation successor agreement is evidenced by the cooperation agreement signed by the Board of Directors the respective companies.
 4. Licensing Completeness for the project site regions in accordance of firms located in the office buildings, shall attached disturbance permit record (UUG/HO) and/or SITU on behalf of the manager/owner of the building that is still valid and appropriate project location or address of the new company;
 5. Statement proof of management capability and environmental monitoring live (SPPL) for warehouse;
 6. LKPM submission receipt from BKPM, PDPPM or PDKPM and LKPM in last period;
 7. Recommendation of the Ministry of Trade Directorate of business;

8. Proof of license or registration from the ministries/agencies for the type of products traded in accordance with the laws and regulations with a minimum of two (2) types of products;
 9. Proof of contract over the letter of appointment (if the company gets the goods/services from other companies/manufacturers/suppliers);
 10. Proof of identity or managing director in charge of corporate and 4x6 color photograph 2 pieces;
 11. Venture partner compensation program design, codes and regulations;
 12. Application signed by the directors/ Company Liability and corporate seal;
 13. Application is not submitted directly by the applicant must be accompanied by the original power of attorney duly stamped as provided for in Chapter IX of this rule section unity.
- E. The BKPM will check for complete ness using the checklist. There are 17 check lists that will be checked. Documents submitted in 2 copies (1 original and 1 to BKPM for Business Development Directorate, Ministry of Trade). In this checklist the applicant is required to show the original document, photocopy document which should be clear and readable and arranged in the order. Submission of a resume collected with the data check list for a business license issuance process.
- F. Once the requirements received, the further information is to make a presentation about the marketing program/marketing plan and code of conduct in the presence of officials BKPM, Business Development Directorate Ministry of Trade, and *Asosiasi Penjualan Langsung Indonesia* (APLI) in PTSPBKPM

Letter D point 7 is a commendation from the Ministry of Trade that is dedicated to the directorate for Business Development. After having the commendation of the Ministry of Trade, this recommendation is included in BKPM files. Even though, in the end of this file collected, there will be a presentation on marketing programs/marketing plan and code of conduct in the presence of BKPM authorities, Business Development Directorate of the Ministry of Trade, Indonesia and *Asosiasi Penjualan Langsung Indonesia* (APLI). This recommendation should be removed because Directorate of Business Development can provide feasible recommendations or not after the applicant is able to ensure that the marketing plan made by the applicant will generate profits to the society. Requirements and issuance process SIUPL must be met and carried out one by one until SIUPL is issued and can be used to make direct selling.

3. Law Enforcement conducted By SIUPL Officer if violation Occurred In Article 21 paragraph m of the Indonesian Minister of Trade regulation number: 32/M-Dag/Per/8/2008.

Indonesian Minister of trade regulation number: 32/M-Dag/Per/8/2008 published in 2008 provide detailed rules on the procedure for the issuance of SIUPL and restrictions. This restrictions contains things not to do after having SIUPL. The prohibition contained in Article 21 of Minister Regulations: 32/M-Dag/Per/8/2008. The restrictions were made up of several things as follows:

- a. offering, promoting, advertising good sand/or services in correctly,different, or contrary to the actual circumstances;
- b. offering goodsand/or services by means of coercion or other means that cancause disruption, both physically and psychologically to the consumer;
- c. offering goodsand/or servicesby making a listof standard clauses or document sand/or agreements that do not comply with the statutory provisions in the field of consumer protection;
- d. the establishment of norms, standards, and procedures for the implementation of activities and investment services;
- e. the development of opportunities and investment potential in theregi on by empowering business entities;
- f. map making investment in Indonesia;
- g. coordinating the implementation of promotion and investment cooperation;
- h. the development of investment sector through investment coaching such as,enhance the partnership, improve competitiveness, createhealthy competition, and disseminate information within broadest possiblescope ofthe investment implementation;
- i. fostering the implementation of capital investment, and assistance the completion of various obstacles and problems faced consultations investors in carrying out investment activities;
- j. coordination and implementation of the integrated one-stopservice;
- k. coordinating domestic investors who run their investment activities outside the territory of Indonesia;
- l. licensing service delivery and investment facilities;
- m. coaching and general administrative services in the field of general planning, administration, organizationand management, staffing, education and training, financial, legal, filing, processing of data and information, and household supplies; and
- n. Implementation of other functions in the field of investment in accordance with the provisions of the legislation.

Each country has a different authority. When a violation of SIUPL appears, there is responsible institution that has the

authority to impose sanctions. Article 26 paragraph 2 The Indonesian Minister of trade regulation number : 32/M-Dag/Per/8/2008 regulates the case of violation of article 21 of the paragraph m. There will be written warning given at most three (3) times in a row it has grace period of each 2 (two) weeks from the date of the warning letter. If the Company does not meet the provisions of the warning letter, the company will be subject to administrative sanction of suspension SIUPL with a maximum period of 1(one) month. Meanwhile, the Regulation of Indonesian Investment Coordinating Board number 5 of 2013 do not set up any sanctions administrative. This indicates the weakness of imposing sanctions of BKPM.

E. Conclusion

1. SIUPL issuance process which refers to the Regulation of head Indonesian Investment Coordinating Board number 5 of 2013 is not in accordance with the licensing elements, contrary to *Asas-Asas Umum Pemerintahan yang Baik* (AAUPB), investment objectives and investment principles. legal product from BKPM is still far from idealized. If there is no improvement in the SIUPL issuance, it will have an impact in Indonesian investment.
2. Companies do not have any option, the regulation of Head Indonesian Investment Coordinating Board number 5 of 2013 is a reference to the issuance of SIUPL.
3. The regulation of head Indonesian the Investment Coordinating Board number 5 of 2013 and the Indonesian minister of trade regulation number: 32/M-Dag/Per/8/2008 are still used now a days. However, the Indonesian minister of trade regulation number: 32/M-Dag/Per/8/2008 regulates detailed sanctions. Weak imposing sanctions by BKPM to SIUPL offense. The weakness of imposing sanctions against violations to SIUPL

F. Suggestions

it is need to do an appropriate reexamination of BKPM performance permissions. This is for the appropriate permissions as aspired and the issuance of SIUPL does not require a longtime. Then, the investment can be done maximumly. The Indonesian ministry of trade should be able to do better control to minimize any violations of the issuance of SIUPL. The Indonesian Ministry of Trade should implement better guidance and supervision as well as mandated in laws and legislations.