

New Policy of Special Terminals/Terminals For Own-Interest

On July 22, 2022, the Government through the Directorate General of Sea Transportation (“**DGST**”) has just issued the Decree of the Director General of Sea Transportation No. A.402/AL.308/DJPL regarding the Arrangement of Business Licensing To Support Business Activities of Special Terminals/Terminal For Own-Interest (“**Private Interest Terminal**”), and/or Stipulation of the Use of Special Terminals/Terminals For Own-Interest To Temporarily Serve Public Interest in the Directorate General of Sea Transportation (“**Decree No. A.402/2022**”).

1. What exactly are the functions of the Special Terminal/Private Interest Terminal?

First and foremost, the function of the Special Terminal/Private Interest Terminal is as a port facility consisting of a docking pool and a place for ships to lean or moor, a place for stacking, a place for waiting and getting on and off passengers, and/or a place for loading and unloading goods built and operated to support business activities that are not served by the port because (i) the nature of the goods or their activities require special services; or (ii) the location of business activities is far from the port. (*vide* Article 2 of the Regulation of the Minister of Transportation No. PM 52 of 2021 concerning Special Terminals and Private Interest Terminal)

In practice, many Special Terminals or Private Interest Terminal are built and operated by business actors whose primary activities such as mining and quarrying to carry out loading and unloading of cargo at the Special Terminal/Private Interest Terminal. Furthermore, business actors who have business licenses for Special Terminals or Private Interest Terminal can also cooperate with other business actors so that other business actors can carry out loading and unloading of cargo at terminals owned by business actors who have business permits as Special Terminals or Private Interest Terminal. In the event that the Special Terminal or Private Interest Terminal is used by other business actors, a business permit called the Special Terminal or Private Interest Terminal to serve the public interest will be issued through a decision of the DGST for a specified duration.

2. Highlight points of Decree No. A.402/2022

Of all the provisions contained in Decree No. A.402/2022 there are several important things that are the essence of the regulation and summarized as follows:

1.1 Suspension of Service

Decree No. A.402/2022 stipulates that there are 2 (two) points that are suspended in connection with the Special Terminal/Private Interest Terminal, namely:

- (a) Applications for new Special Terminals and Private Interest Terminal are submitted through the Sea Transportation Integrated Electronic System (*Sistem Elektronik Terintegrasi Hubla* - SEHATI) and/or Online Single Submission which includes (i) licensing services for the construction of Special Terminals; and (ii) licensing services for Private Interest Terminal construction (“**Suspension of Special Terminal Construction Services/Private Interest Terminal**”).
- (b) Arrangement of the use of the Special Terminal/Private Interest Terminal which includes (i) a new application for the use of the Special Terminal/Private Interest Terminal to temporarily serve the public interest; and (ii) the extension of the use of the Special Terminal/Private Interest Terminal to temporarily serve the public interest (“**Suspension of Arrangement of the Use of the Special Terminal/Private Interest Terminal**”).

1.2 Criteria for Suspension of Service

- (a) Criteria for Suspension of Special Terminal Construction Services/Private Interest Terminal are: (i) having access to the location of the main business activities with the location of Public ports/Special

- (b) Terminals/Private Interest Terminal or Special Terminals/Private Interest Terminal temporarily serving the public interest, which already have legal permits; and/or (ii) the location of the Special Terminal/Private Interest Terminal applied for, has a distance of less than 30 (thirty) kilometers from the location of the Public Port/Special Terminal/Private Interest Terminal temporarily serving the public interest, which already has legal permits.
- (c) Criteria for Suspension of Arrangement of Use of Special Terminals/Private Interest Terminal are:
 - (i) having available access between the location of the main business activities of the prospective user and the location of the Port; and (ii) The port has facilities to support the main business activities of the prospective users.

1.3 Exception to Suspension of Service

However, even though the DGST has suspended the stipulation on the use of the Special Terminal/Private Interest Terminal, this can be excluded by the statement of the capability of the Special Terminal/Private Interest Terminal permit holder to transfer the use of the Special Terminal/Private Interest Terminal to temporarily serve the public interest into a Public Terminal that is part of the nearest port ("**Statement Letter of Capability to Become a Public Terminal**"). It is highly important to note that the Statement Letter of Capability to Become a Public Terminal is only temporary and is given for a maximum validity period of 8 (eight) months.

In connection with the above, should the holder of the Special Terminal/Private Interest Terminal business license temporarily serves the public interest, it will change its business license to become a Public Terminal, then this is carried out by granting concessions or other forms of cooperation from the Government.

1.4 National Strategic Projects

Herefore, business permits for Special Terminals/Private Interest Terminal and/or Special Terminals/Private Interest Terminal temporarily serve the public interest may be granted to business actors who have main business fields that support national strategic projects, shipyard business fields, or government activities, after first consulting with the DGST.

3. **Implications of Decree No. A.402/2022**

Among all the key aspects described in Section 2 above, there are at least 4 (four) crucial aspects that business actors with a Special Terminal business license temporarily serving the public interest must consider after Decree No. A.402/2022:

- (a) Business actors holding a Special Terminal/Private Interest Terminal permit temporarily serve the public interest must immediately communicate with the Special Terminal/Private Interest Terminal business license holder so that the Special Terminal/Private Interest Terminal business license can be turned into a Public Terminal. As it is known that the special terminal/Private Interest Terminal business license is to serve the public interest (e.g., 2 (two) years) and can only be extended twice so that the enactment of Decree No. A.402/2022 business actors holding business licenses for Special Terminals/Private Interest Terminal temporarily serving the public interest cannot extend their business licenses or use Special Terminals/Private Interest Terminal if the owners of Special Terminals/Private Interest Terminal do not change their business permits to become Public Terminals.
- (b) Moreover, the owner of the Special Terminal/Private Interest Terminal business license must immediately prepare the necessary documentation to convert his business license into a Public Terminal, if indeed the Special Terminal/Private Interest Terminal is also used by other business actors. Owners of business licenses for Special Terminals/Private Interest Terminal along with business actors who own Special Terminals/Private Interest Terminal temporarily serving the public interest should also

- (c) prepare a Statement Letter of Capability to Become a Public Terminal in order to get 8 (eight) months which can be used to prepare the documents needed in the context of changing into a Public Terminal.
- (d) For business actors whose primary activities that support national strategic projects, shipyard business fields, or government activities, the DGST must immediately carry out the construction and operation of Special Terminals/Private Interest Terminal and/or Special Terminals/Private Interest Terminal to serve the public interest.
- (e) For business actors who plan to build a Special Terminal/Private Interest Terminal and have met the Criteria for Suspension of Special Terminal Services/Private Interest Terminal to immediately communicate with the DGST to inquire further about the period of Suspension of Special Terminal Services/Private Interest Terminal.

In the upcoming client update, we will strive to address these developments as well as the most recent developments from Decree No. A.402/2022. If you would like to discuss this with us, please contact us by email at info@tnklaw.id or phone at (021) - 2528636.

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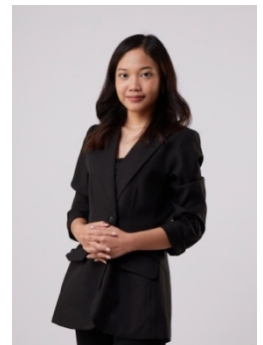
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