



Competition Law: New Regulations

by Willy Putra



On 2 February, the Government introduced new competition law regulations (the Regulations*) – in accordance with the Job Creation Law.** The Regulations amend two important areas of the Antimonopoly Law***; these are the appeals procedure and sanctions.

Appeals Procedure

The new Regulations make significant changes to the procedures by which an entity can appeal against a decision of Indonesia's Competition Commission (ICC). Appeals will now be made in the commercial court rather than a district court. The Regulations also significantly extend the period during which the court may consider a case – from 30 days to a maximum of 12 months.

The Regulations introduce a further appeals process; an appeal may be filed with the Supreme Court against a Commercial Court decision within 14 days of that decision.

The Regulations also introduce the requirement to pay at least 20% in a form of bank guarantee of any fine imposed by the ICC within 14 days after the ICC decision has been made.

Sanctions

The Regulations introduce a framework for the imposition of sanctions on businesses that breach competition rules. ICC must now consider a number of factors when determining sanctions for competition rules breaches. These factors include the:

- degree of breach of the law and/or the impact of the breach; and/or
- impact of any sanctions on business continuity.

Further, the Regulations require that any sanctions handed down by ICC must be accompanied by detailed and clear explanation.

The Regulations update the cap on fines that may be imposed for breach of competition law, which was previously IDR 25 billion. Under the new Regulations, fines are calculated for the period of the breach, measured in half yearly increments, and are capped at either:

- maximum 50% of net profit; or
- maximum 10% of total sales.

The ICC will determine which measurement to use depending on the type of breach and any mitigating/aggravating factors.

Fines for criminal breaches of the competition law have increased to IDR 5 billion or up to one year in prison.

All ICC cases that have not yet been decided will be decided in compliance with the new Regulations.

* Government Regulation No. 44/2021 on the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition.

** Law No. 11/2021 on Job Creation Law

*** Law No. 5/1999 on The Prohibition of Monopolistic Practices and Unfair Business Competition

Covid 19 Tax Relief

by Rainy Regina Prianto

The Indonesian government has announced its plans to adjust income tax rates to stimulate economic recovery. In 2022 there will be two adjustments. The first will be a 2% reduction in income tax for domestic tax payers and businesses that are permanently situated in Indonesia.* Second, income tax for qualifying public companies will be reduced by 3%.



The Government then plans to increase the VAT rate in 2022 in order to cover the national expenses of COVID-19. There are two VAT increase schemes the Government is currently debating. The first is a potential increase in the current VAT of between 10% - 15%.* The second VAT scheme under discussion is a multi-rate VAT scheme – with different goods attracting different levels of VAT.

The hope is that the tax relief provided by income tax reduction will stimulate spending and increase government revenues through increased VAT.

* Government Regulation Number 30 of 2020 Concerning Income Tax Rate Reduction For Domestic Taxpayers That Are Public Companies.

* Law Number 42 of 2009 The Third Amendment To Law Number 8 Year 1983 Concerning Value Added Tax For Goods And Services And Sales Tax On Luxury Goods.

Micro and Small Enterprises Funding Program by State-owned Enterprises

by Hans Thioso



The Minister for State-Owned Enterprises has recently issued new Regulations* which expand the ways in which state-owned enterprises may fulfill their social and environmental responsibility obligations. The new Regulations allow state-owned enterprises to fulfil their social and environmental responsibility obligations by funding certain qualifying micro and small enterprises.

Through this programme, micro and small enterprises that fulfill the criteria, may be given working capital loans of up to IDR 250 million, as well as additional loans of up to IDR 100 million.

The qualifying criteria include that the enterprise:

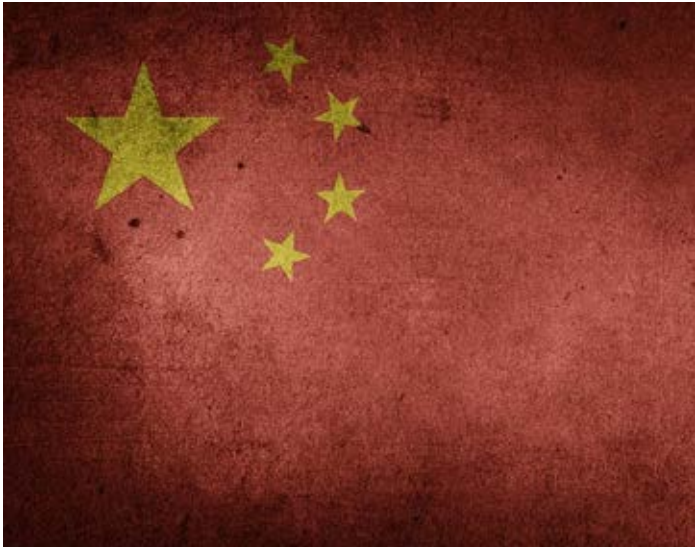
- must be owned by an Indonesian citizen;
- must operate the same type of business as the state-owned enterprises; and
- should be located in the same place as the state-owned enterprises.

The Regulations came into effect on 8 April and will be retroactively applied from 1 January 2021.

* Regulation No. Per-05/MBU/04/2021 concerning SOE Social and Environmental Responsibility Programme.

Closer Trade Ties with China

by Rainy Regina Prianto



In 2011, the governments of Indonesia and China signed the Bilateral Economic and Trade Cooperation treaty (the Treaty). As a result, both countries have become major exporters/importers of each other's commodities. In 2020 Indonesia was the 14th largest exporter to China. Conversely, in 2020 China exported approximately US\$78.37 billion worth of commodities to Indonesia.

On 2 April, both countries executed a Trade and Investment Framework Agreement, which will replace the Treaty (the Agreement). On the same day, both countries committed to investments worth US 1.38 billion, which include China's establishment of a major business presence in West Borneo. Under the Agreement, Indonesia plans to increase annual trading to China from US\$31 billion in 2020 to become US\$100 billion by 2024.

In addition to the Treaty, on 8 April, Indonesia's and China's Ministers for Trade announced their intention to execute a Terms of Reference to establish a Working Group On the Promotion of Smooth Trading between both parties.

Optimists hope that this new trade cooperation with China will gradually heal Indonesia's economy, which has been damaged by the pandemic.

New Regulations Create Land Bank Agency

by Rahmi Intan Jeyhan

The Indonesian government recently introduced new regulations to establish a Land Bank (the Regulations). The Regulations also provide the legal framework within which the Land Bank must operate. The Land Bank is a special entity established by the central government with the authority to manage lands. The main purpose of the Land Bank agency is to ensure that land is available for specific purposes including public interest projects, economic redistribution, and agrarian reform.

The Regulations give the Land Bank agency the authority to, among other things:

- plan its operations and priorities;
- acquire and manage land;
- enter into relationships to jointly share/use land; and
- distribute and provide land for specific purposes.

The Land Bank can earn income from the land through sales, leasing, fees for land use, or business ventures (on its own or with business partners) using the land. Third parties may use the land on the basis of Right to Cultivate (*Hak Guna Usaha*), the Right to Build (*Hak Guna Bangunan*) or the Right to Use (*Hak Pakai*).

The Land Bank introduces a centralised system that simplify the acquisition and use of land for business purposes.

* Government Regulation No. 64 of 2021 on Land Bank Agency. These Regulations have been implemented in accordance with the provisions of Law No. 11 of 2020 on Job Creation.