



## Limited Liability Companies: New Regulations

by Keshia Eastera



In late April, the Ministry for Law and Human Rights issued new regulations relating to limited liability companies (the **Regulations**).<sup>\*</sup> The Regulations revoke the previous regulations on the topic.<sup>\*\*</sup>

The Regulations require all applications for the creation, change and dissolution of a limited liability company to be submitted, with all accompanying documents, through the Legal Entity Administration System, administered by the Ministry for Law and Human Rights.

The Regulations introduce a number of administrative changes to increase the ease and efficiency of creating, changing and dissolving a limited liability company with many procedures to be carried out online. The Regula-

tions have simplified the creation of a limited liability company by allowing its creation via a notary. Furthermore, the Regulations have abolished the 60 day time limit for establishing a limited liability company from the date of the deed of establishment.

The Regulations came into force on 30 April 2021.

<sup>\*</sup> Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Terms and Procedures for Registration of Establishment, Amendment, and Dissolution of a Limited Company Legal Entity.

<sup>\*\*</sup> Regulation 14 of 2020 concerning the Second Amendment to the Regulation of the Minister of Law and Human Rights Number 4 of 2014 concerning Procedures for Submitting Applications for Legal Entities and Approval of Budget Changes Basis and Submission of Notification of Amendment to Articles of Association and Change of Limited Company Data.

# Competition Law: The New Benchmark of Administrative Fines

by Willy Putra

On 31 May 2021, the Indonesia Competition Commission (ICC) enacted new competition law regulations relating to the calculation and payment of fines and bank guarantees for the breach of competition law (the Regulations).\*

## Fines

The Regulations set the minimum fine at IDR 1 billion (approximately US\$70,000). Fines for breach of competition law can then be up to a maximum of 50% of net profit or 10% total sales in the relevant market, calculated during the breach period. Various factors will be taken into account when determining fines including the impact of the breach, any special mitigating factors, and the ability of the business entity to pay.

## Bank Guarantee

A business that plans to appeal against an ICC decision must provide to the ICC chairman, within 14 business days of the ICC's decision, a bank guarantee from an Indonesian bank up to the value of 20% of the fine issued by the ICC decision.

## Fine Payment Methods

ICC fines must be paid no later than 30 business days after the business entity receives notification of the ICC Decision. The ICC may impose a late payment penalty. Businesses may request leniency or a payment plan. Such requests must be submitted within 14 business days after receipt of the notification of the ICC decision.

\* The ICC Regulations No. 2/2021 on the Guidelines for the Imposition of Fines for Monopolistic Practices and Unfair Business Competition were implemented in accordance with Regulation No. 44/2021 on the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition and Law No. 11/2021 on Job Creation.

# Risk-Based Licencing Through the Online Submission System

by Hans Thioso

A new risk-based licencing system for businesses in certain sectors was introduced through regulation GR 5/2021\*, which also revokes the previous regulation on the topic.\*\* This system has introduced different types of licencing requirements depending on the risk of the business applying. Risks are divided into four categories, low, medium-low, medium-high, and high. Licencing requirements for high-risk businesses are more onerous than for low-risk businesses.



Image source: <https://www.pexels.com/photo/red-dice-risk-based-on-table-on-table-4200746/>

The Minister for Investment has recently issued Circular Letter 17\*\*\* which states that all administrative procedures relating to risk-based licencing, including applications, must be carried out online, through a special section of the Online Single Submission System called the Risk Based Approach (OSS RBA). Circular Letter 17 also adds a number of new business sectors to which risk-based licencing now applies.

Businesses that have been provisionally granted licences under the previous regulation\*\* which have not yet come into effect will need to resubmit all their data through the new OSS RBA. Business will not be able to apply for certain loans, exemptions, tax relief or other Government funds/exemptions or relief unless their information is in the OSS RBA.

\* Government Regulation Number 5 of 2021 concerning The Implementation of Risk-Based Business Licencing.

\*\* Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licencing Services.

\*\*\* Circular Letter Number 17 of 2021 concerning Transition of Business Licence to the Risk-Based Business Licence Through OSS System.

# Forex/Rupiah: The New Sismontavar Monitoring System

by Louise Ayu Cecilia



In June 2021, Bank Indonesia issued new regulations\* introducing a new system to monitor foreign exchange transactions against the rupiah (the **Sismontavar System**).

This Sismontavar System monitors, in real time, transactions between banks as well as between banks and their customers. Bank Indonesia will have direct access to the Sismontavar System to monitor all foreign exchange transactions made by banks and can, if necessary, directly examine particular transactions.

The new regulations require all banks to connect to the Sismontavar System for all their foreign exchange transactions. The new regulations set out obligations for banks in relation to their customers, which include using the Sismontavar System for all foreign exchange transactions and limiting:

- cash transactions to the equivalent of US\$250,000; and
- derivative transactions to the equivalent of US\$ 1 million.

The new regulations set out the date for when these obligations come into effect, which vary depending on the obligation. Failure to comply with the new regulations may lead to administrative sanctions, including written warnings.

\* Regulation of Bank Indonesia No. 23/5/PBI/2021 of 2021 on The Monitoring System for Transactions in Foreign Exchange Against The Rupiah

# Destroyed Land: Abolition of Land Title

by Rahmi Intan Jeyhan

The Minister for Agrarian Affairs and Spatial Planning has issued Regulation 17,\* which sets out the procedures by which the Government may declare a plot of land “destroyed” and consequently, abolish all title rights to the land. Regulation 17 sets out the following criteria to classify land as “destroyed”, that the land:

- has changed from its original form due to natural events;
- can no longer be identified; and
- is dysfunctional and cannot be used properly.

Such land might be previously possessed under the Right to Manage title (*Hak Pengelolaan*), the Right to Cultivate title (*Hak Guna Usaha*), the Right to Build On title (*Hak Guna Bangunan*); and the Right to Use title (*Hak Pakai*). The right titles to any land declared “destroyed” in accordance with Regulation 17 will be void. The Land Office has responsibility for determining whether land is “destroyed”, and Regulation 17 sets out the processes and procedures for the Land Office’s investigation and subsequent decision.

The title holders will be given the opportunity to conduct the land reconstruction or reclamation so that they can utilize it. Provided that, such opportunity will not be given in circumstances where the Government intends to use the land for development in the public interest. In this case, the title holders will be entitled to receive compensation funds.

\* Minister of Agrarian Affairs and Spatial Planning/Head of the Indonesian Land Agency Regulation No. 17 of 2021 concerning the Procedures for the Determination of Destroyed Lands.