

Indonesia's Anti-Monopoly Law: Changes Ahead?

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Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (March 5, 1999) (the "Anti-Monopoly Law") was first enacted in 1999 and has never been amended. However, an amended law has been expected for more than a year. A draft of the new Anti-Monopoly Law (the "New Anti-Monopoly Law") was introduced in 2014 but has not been enacted to date. In 2015, the New Anti-Monopoly Law was included in the 2015 National Legislation Program 2015 (*Program Legislasi Nasional* or "Prolegnas") of the Indonesian Parliament, which means it is one of the laws prioritized for enactment by the Government of Indonesia (the "GOI").

The Government views that the current Anti-Monopoly Law no longer fulfills the GOI's needs to create a more established competitive regime in Indonesia.

Based on the current draft New Anti-Monopoly Law, there are several major changes that will be introduced. These are:

- 1. Leniency Procedure:** The current Anti-Monopoly Law and existing regulations of the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha* or "KPPU") do not recognize a leniency procedure. The draft New Anti-Monopoly Law provides that the KPPU can give leniency to a business actor that admits and/or reports its action that involves illegal price fixing, the division of territory, boycotts, cartels, trusts, oligopoly, oligopsony, closed agreements, and loss selling.
- 2. Mandatory Pre-closing Merger Review Filings:** The current Anti-Monopoly Law requires that a post-notification be made to the KPPU for mergers or consolidations of business entities and for acquisitions of shares, if the resulting asset value and/or sales value exceeds certain threshold amounts. The GOI expects an increase of merger and acquisition transactions and believes it is necessary to replace the current post-notification system with a pre-closing merger filing system.

3. Increase in Penalties: The GOI wishes to increase the maximum fine for violations of the Anti-Monopoly Law by 20 times, from Rp 25 billion to Rp 500 billion, for parties committing prohibited practices.

4. New Administrative Sanctions: The new Anti-Monopoly Law will introduce new sanctions such as the cancellation of prohibited agreements, the winding up of mergers and the criminalization of acts of non-compliance with KPPU decisions.

5. Expansion of the Definition of Business Actors: The current Anti-Monopoly Law covers only those business actors established and domiciled or conducting activities in the Republic of Indonesia. The draft New Anti-Monopoly Law covers business actors established and domiciled abroad whose activities have an impact on the Indonesian market. Thus, the KPPU will have extraterritorial power to prosecute antitrust violations committed abroad, including illegal acts committed by international cartels, that the KPPU finds affect the Indonesian economy. This expansion of the KPPU's jurisdiction anticipates the impact of illegal anti-trust activities of foreign business actors in the ASEAN Economic Community.

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