

INDONESIA: CHANGES TO SUPERVISION OF PARTNERSHIP DISPUTES

Indonesia's Business Competition Supervisory Commission recently enacted a new regulation changing the way it manages disputes between large businesses and micro, small and medium enterprises. The regulation also changes how alleged violations relating to unfair contract terms are dealt with.

Background

Indonesia's Business Competition Supervisory Commission, Komisi Pengawas Persaingan Usaha (**KPPU**) is an independent regulator that was established to:

- oversee and enforce Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition;
- supervise partnerships between micro, small and medium enterprises (**MSMEs**) and large businesses (defined as having a capital of more than 10 billion Rupiah or an annual revenue of 50 billion Rupiah) under Law No.20 of 2008; and
- administer investigations of unfair contract terms (**UCTs**) between MSMEs and large businesses.

The new Regulation 2/2024 seeks to align Indonesia with the focus of other governments in the region (such as Australia and Thailand).

Key takeaways

The KPPU recently enacted Regulation 2/2024 (replacing Regulation 4/2019) that changes the way it manages disputes between large businesses and MSMEs and, more specifically, alleged violations of Law 20 of 2008 as a consequence of UCTs.

Key changes include:

- (a) prescribing a 60-business day period during which alleged violations are to be investigated (this period may be extended by a further 30 business days);
- (b) simplifying and consolidating into one stage, the processes for (i) the examination and collation of evidence, (ii) the provision of KPPU's report on alleged violations to reported parties, and (iii) requiring reported parties to set out their defences against the alleged violations before the further investigation stage; and
- (c) allowing reported parties more time to comply with recommendations from the KPPU.

Impact on businesses

The practical effect and issues from the implementation of the new Regulation 2/2024 have yet to be assessed.

In one respect, it appears that reported parties will benefit from these changes because they now have more time to rectify any alleged violations and if they take steps to implement these remedies during the investigations, they will be less likely to be found to have contravened Law 20 of 2008.

Conversely, the consolidation of the processes also means that reported parties will only have *one* opportunity to defend themselves at a time that is relatively early in the investigation process.

Since promulgation of Regulation 2/2024, the KPPU has continued in proactively scrutinising potentially unfair business practices and has initiated three investigations and handled two further investigations reported to it.

Please contact the authors if you would like advice about how your business can prepare for these changes.

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