

Modified Draft Government Regulation on Merger and Acquisition


In a remarkable change of position, pre-notification to the Commission for Supervision of Business Competition ('KPPU') of sizeable mergers and acquisitions is no longer required by the latest Draft Government Regulation - available in June on the KPPU website - to implement Articles 28 (3) and 29 (2) of Law No. 5 of 1999 on Prohibition of Monopolistic and Unfair Business Practices, which govern mergers and acquisitions.

In the previous Draft, any merger or acquisition exceeding a specified size would have to (a) pre-notify the KPPU of the intention within 30 days of initial agreements being made, and (b) secure KPPU approval to move forward with the deal. That provision, supporters argued, would allow the KPPU to lend legal certainty to prospective mergers and acquisitions in their formation, and develop a standardized approach to market supervision - as opposed to sanctioning finalized deals in court proceedings.

Without that provision, the main effect of the regulation will be to announce the sizes at which post-notification of a merger or acquisition to the KPPU will be required; within 30 days of being finalized and legally effective.

Apart from the banking sector, companies must notify the KPPU upon finalization of a merger or acquisition that meets or exceeds the following characteristics: (a) IDR 2.5 trillion total value of assets, and (b) IDR 5 trillion value of sale. Banks need only report to the KPPU when the size of transaction, be it sales or assets, exceeds IDR 20 trillion in value.

If the merger or acquisition report (the form for which will be provided by the KPPU) is not submitted within 30 days, the Draft makes available an administrative fine of IDR 1 billion per day, up to a maximum of IDR 25 billion.

Although the exact date of issuance is unknown, a KPPU official wishing to remain anonymous reported to *hukumonline* on Tuesday (6/7) that the Draft Government Regulation is final, has been forwarded to the President, and merely awaits his signature for issuance. 

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- ✦ Forthcoming Government Regulation on Environmental Licenses to Include Dispute Mechanism (Issue 1451 - 07/07/2010)
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