

The Omnibus Law Removes Cap on Fines for Competition Law Violations



The third edition of "Omnibus Law 2020: Overview Series" will highlight changes in the competition sector.

With the spotlight on weighty items such as employment, the government, through the Omnibus Law, has also revised several provisions of the Competition Law (Law No. 5 of 1999). As we will discuss below, while these revisions appeared to be minor, they may have severe consequences.

Changes for the Better?

The most notable revision in the Omnibus Law is the removal of the cap on administrative fine and criminal sanctions.

Initially, the Indonesia Competition Commission or KPPU can impose an administrative fine between IDR 1 billion to IDR 25 billion. Now, although the minimum of IDR 1 billion still applies, the IDR 25 billion cap has been taken out.

In addition, it used to be the case that violation of substantive laws and/or obstruction of a KPPU examination or investigation are subject to criminal sanctions. Under the Omnibus Law, criminal sanctions only apply for obstruction of KPPU examination or investigation. The sanctions are now more severe with imprisonment of up to one year (from previously imprisonment of up to three months) for substituting criminal fines of up to IDR 5 billion. On the other hand, additional criminal sanctions such as revocation of license and prohibition to act as a director or commissioner have been taken out.

Lastly, the Omnibus Law also changes the appeal procedure against a KPPU decision from the district court to the commercial court.

Consequences

Removal of cap and criminal sanctions

The removal of the IDR 25 billion cap means that potentially, the sky is the limit for KPPU in imposing fines against violating parties. However, the Omnibus Law made it imperative that the implementation of the administrative fine will be further regulated in the implementing regulations, thus it is likely that the right balance is struck. The implementing regulations should also stipulate the criteria, types, amount, and procedures for the administrative fines. This will be crucial in the government's overall goal for enacting the Omnibus Law in the first place, which is to improve the ease of doing business in Indonesia.

Meanwhile, although the removal of the criminal sanctions may seem drastic, it is essential to note that the criminal aspect of the Competition Law has never been exercised before. Moreover, under the Competition Law, KPPU only has administrative authority. The authority to enforce criminal sanctions lies with the district courts. However, this authority has never been exercised before because the procedure itself is unclear.

New appeal procedure

The current law's ecosystem only allows an appeal in a competition case to be lodged to the district courts. Despite moving the appeal process to the commercial court, the Omnibus Law and other prevailing regulations do not provide any further details. The current procedural laws and regulations applicable in the commercial court only apply to cases on intellectual property, bankruptcy, or liquidation, each of which is subject to different procedures and is regulated in different laws.

Consequently, this new appeal procedure for competition cases will most likely trigger other potential concerns in practice. It remains unclear whether the civil procedural law will apply or whether the Supreme Court will temporarily fill the gap by issuing a circular letter to allow the appeal of a competition case to be heard in the commercial court.

Key takeaways

Like other sectors that have experienced significant revamping under the Omnibus Law, this will be a period of "wait and see". Although far from ideal, businesses should use this time to revisit and ensure that their business arrangements fully comply with the Competition Law.

It has come to our attention that there are multiple drafts of the bill in public circulation. Analysis may differ depending on which version of the draft is used as the basis. We continue to monitor this evolving situation, with various teams currently examining the bill to produce updates that are relevant to you. As always, we are committed to supporting you with advice and guidance. You can find our alerts on the Omnibus Law [here](#).

If you have any questions or concerns, please contact our attorneys or the BD team at BD@ahp.id.

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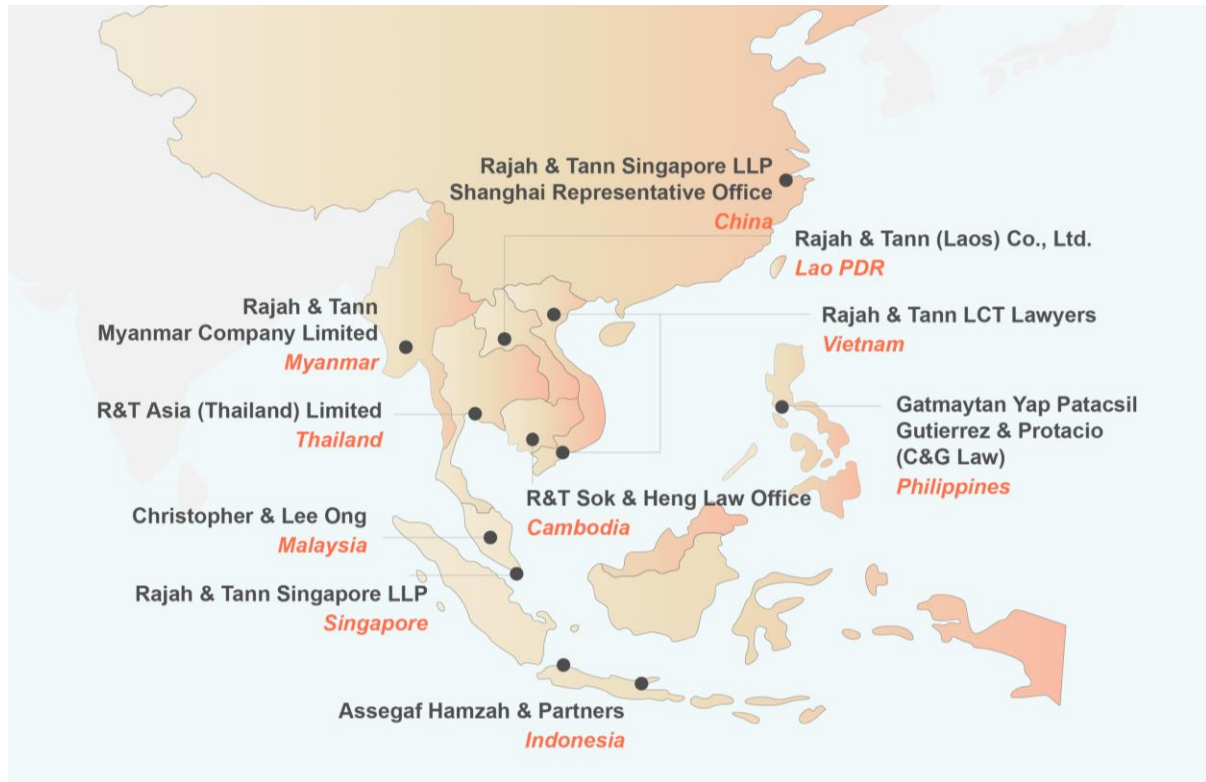
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