

Client Update: Indonesia

5 October 2021

New Rules for Appealing Competition Cases



When the Omnibus Law (Law No. 11 of 2020) was enacted, one of the changes in the competition law regime was moving the appeal against decisions of the Indonesia Competition Commission (“KPPU”) from the district court to the commercial court. As predicted, there were concerns in applying this new appeal procedure (click [here](#) to read).

Finally, on 16 September 2021, the Supreme Court issued a regulation regarding appeal to the commercial court (Supreme Court Regulation No. 3 of 2021 on the Submission and Examination of Appeal against KPPU Decision in the Commercial Court). This new regulation revoked Supreme Court Regulation No. 3 of 2019, which regulated appeals of KPPU decisions in the district court.

As we will discuss below, while the new regulation details the technical arrangement for appeal in the commercial court, it appears that some limitations in the 2019 regulation, specifically in the presentation of appeal against the KPPU decision, have been retained.

Barring of Civil Review

It is now clear that the only avenue of appeal against KPPU decisions is to the commercial court, with the next stage of an appeal being the cassation stage at the Supreme Court. The decisions of the Supreme Court are final and binding, except in limited circumstances where it can be reviewed under a civil review procedure, which is considered an extraordinary legal action under Indonesian law.

The Competition Law (Law No. 5 of 1999) itself is silent on whether a civil review is possible for competition cases. In practice, the Supreme Court has rendered several civil review decisions for competition cases, which is in line with the Judicial Power Law (Law No. 48 of 2009) and the Supreme Court Law (Law No. 14 of 1985 in conjunction with Law No. 3 of 2009).

The preceding, however, will no longer be the case as the new regulation expressly declares that a Supreme Court decision will be final and binding. Thus, a civil review against such a decision is no longer allowed.

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The Consequence of Not Appealing

The new regulation regulates that only the reported party (*terlapor*) can file an appeal against KPPU decisions to the commercial court. In this case, the KPPU will be the respondent (*termohon*). Moreover, in a case involving several reported parties where only some of those parties file an appeal, the KPPU decision will be final and binding on the reported parties that do not file an appeal.

Possibility of Speedy Trial, Limited Evidence Presentation, and Bank Guarantee Requirement

This year, the government also issued Government Regulation No. 44 of 2021, which regulates that the timeline for the commercial court to examine an appeal is between 3 to 12 months. In our view, the setting of the minimum 3-month examination seems to ensure that the appeal courts will have adequate time to examine the district court's decisions, especially considering the complexities of competition cases. Nevertheless, the new regulation allows the commercial court to decide a case before the minimum three-month period.

Under the new regulation, if approved by the commercial court, appellants can propose witnesses and experts to be reexamined if the KPPU denied such witnesses and experts or their statements were not properly taken into account in the KPPU decision. In this case, the KPPU will also receive the opportunity to strengthen its arguments. New or previously submitted letters and documents could not be presented in the appeal despite the foregoing allowance.

Lastly, this regulation reiterates the requirement for the appellant to submit a bank guarantee along with their appeal request, power of attorney, and copy of the KPPU decision. The bank guarantee must be issued by a commercial bank in Indonesia and deposited to the KPPU Chairman within 14 business days from receipt of the KPPU decision. If the commercial court upheld the KPPU decision, the KPPU would liquidate the bank guarantee. Otherwise, the bank guarantee will be returned to the appellant.

Key Takeaways

As seen above, while the regulation fills in the gap in the new appeal procedure, it also narrows the avenue to challenge by barring civil review against the Supreme Court decision, precluding submission of new or prior letters and documents, and at the outset, limiting the parties that can file an appeal.

While it remains to be seen how the new regulation will apply in practice, the bottom line for businesses is that they should take precautions as early as possible to avoid violating any competition law prohibitions.

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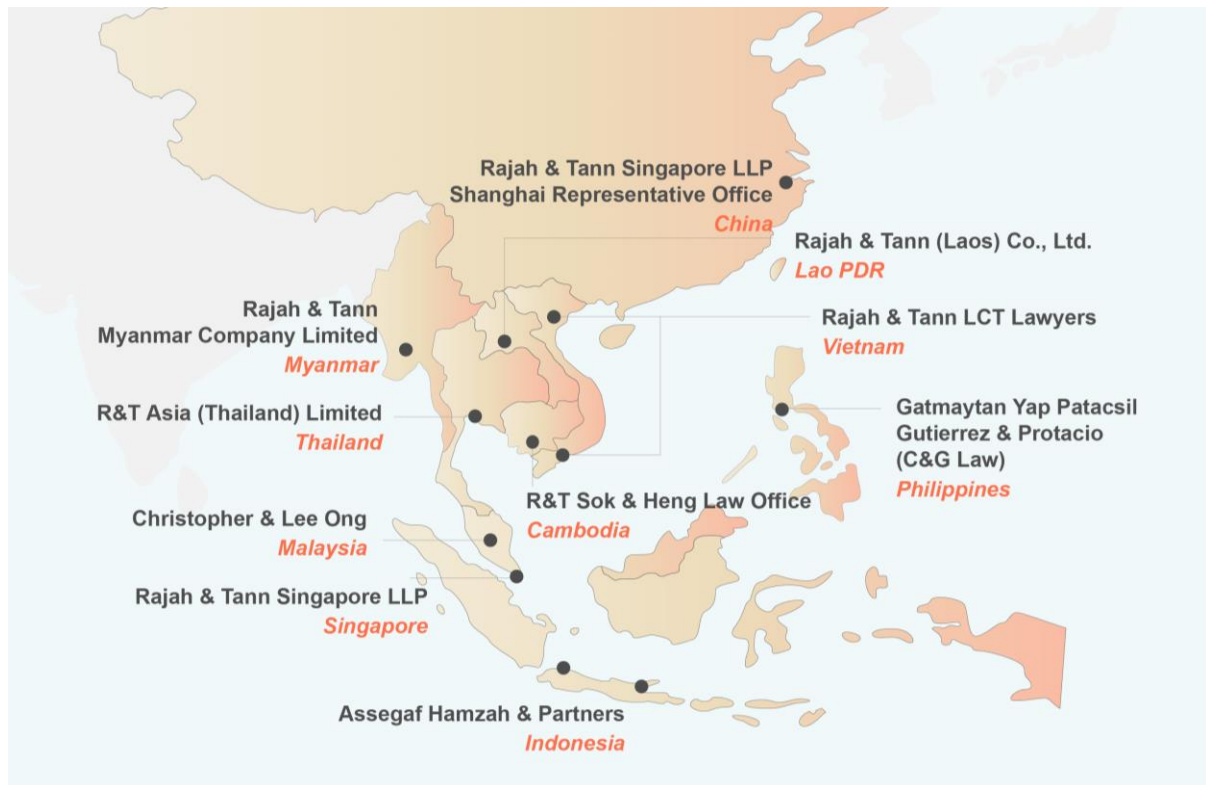
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