

New Merger Filing Rule in Indonesia

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1. Introduction

In connection with the Business Competition Supervisory Commission/Komisi Pengawas Persaingan Usaha ("KPPU"), the following several regulations have been promulgated and enforced in recent months, resulting in significant changes to the rules regarding business combinations.

- (1) KPPU Regulation No. 3 of 2023 on Assessments of Mergers, Consolidations, and Acquisitions of Shares and/or Assets Which May Result in Monopolistic and/or Unfair Business Competition Practices ("**KPPU Reg. 3/2023**", promulgated and enforced on 30 March 2023)
- (2) KPPU Regulation No. 5 of 2023 on Revocation of the regulation of the business competition supervisory commission number 4 of 2012 concerning guidelines for imposing penalties for late notification of merger or consolidation of business entities and acquisition of company shares ("**KPPU Reg. 5/2023**", promulgated and effective on 31 March 2023)
- (3) Government Regulation No. 20 of 2023 on Non-Tax Revenue Applicable to KPPU ("**GR 20/2023**", promulgated on April 5 and effective on 5 May 2023)



In response to the enforcement of the abovementioned regulations, the following regulations have been revoked.

- (1) KPPU Regulation No. 3 of 2019 on Assessments of Mergers or consolidations of business entities, or acquisitions of company shares which may result in monopolistic practices and/or unfair business competition ("**KPPU Reg. 3/2019**")
- (2) KPPU Regulation No. 4 of 2012 on Guidelines for Imposition of Fines for Delay in Notification of Merger or Consolidation of Business Entities and Acquisition of Company Shares. ("**KPPU Reg. 4/2012**").

2. Highlights of the matter

As a result of the introduction of new rules, the current rules regarding notification of merger are as follows:

- (1) Notification Obligation Requirements (Article 3 of KPPU Reg. 3/2023)

If the transaction meets the following criteria, the notification shall be made to KPPU:

- The transaction meets the sales or asset value threshold;
- Such sales or asset generated from Indonesia;
- The transaction results in a change of control; and
- The transaction is not conducted between affiliated entities.

- (2) Threshold on Sales and Asset Value and its scope (Article 6 of KPPU Reg. 3/2023)

The abovementioned threshold on Sales and Asset Value is stipulated as below:

- combined sales value of the Parties involved in the transaction exceeds IDR5 trillion; or
- combined asset value of the Parties involved in the transaction exceeds IDR2.5 trillion.

Although the value of the abovementioned threshold remains unchanged, the calculation is now exclusively restricted to assets located within Indonesia, while the calculation for the value

of the asset used to be world-wide. Thus, it was previously mandatory to notify the transaction if either party involved in the transaction had assets or sales in Indonesia exceeding the specified threshold. However, with the introduction of KPPU Reg. 3/2023, the transaction will only be notifiable if both parties generate revenue from Indonesia or possess assets in Indonesia.

(3) New Online Notification System

The KPPU introduced an online notification system through the KPPU's official website at <https://notifikasi.kppu.go.id>. The submission of notifications is limited to the operational hours of 9 am to 2 pm (Indonesian Western Standard Time/WIB) on every business day, as stipulated in Article 13 paragraph (3) and (4) (c) of KPPU Reg 3/2023.

(4) Notification Deadline

The deadline for submission remained unchanged: within 30 business days from the transaction's effective date (Article 2 (2) of KPPU Reg. 3/2023). For submissions made after this period, KPPU is authorized to conduct an investigation. (Article 46 of KPPU Reg. 3/2023)

(5) Filing Fee

Previously, Indonesian merger filings did not involve any official fees. However, according to GR 20/2023, which pertains to Non-Tax State Revenues Applicable to the Indonesian Competition Commission, there is now a new requirement for notifying parties to pay a fee when submitting a merger notification to the KPPU.

The filing fee is calculated with the following formula and became applicable from 5 May 2023:

0.004% multiplied x (asset value or sales value based on a certain amount)

(6) Shorter Period for Document Completeness Review

The new merger regulation sets a shorter timeline for examination of completeness of the document; It allows for a period of 3 business days (Article 16 (3) of KPPU Reg. 3/2023). In comparison, the previous 2019 merger control regulation allowed the KPPU to complete document checks for 60 business days for the examination. After the examination assessment takes place and such period remained unchanged: 90 business days. (Article 18(2))

(7) Transitional Provision

The KPPU Reg 3/2023 applies from 31 March 2023 and old rules still applies to consultations, notifications or assessment made prior to such date.

3. Conclusion

As a result of the introduction of new regulations regarding this notification of merger, the scope of notification was narrowed (the calculation of asset value is now limited to the one within Indonesia) and the period for the examination of the completeness of the document is now shortened which will benefit business activities. On the other hand, it should be noted that there are changes in notification procedures; the introduction of an online system and an introduction of notification fee.



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Koji Umai spent more than 7 years working at a law firm in Japan where he was involved in various corporate affairs. He also had previous experiences handling international matters in civil affairs, real-estate, insolvency, and criminal cases.

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Yusuke has extensive and long-time experience in overseas matters, especially in Southeast Asia, Indonesia, and Malaysia. He handles a wide range of international construction agreements, sales and purchase agreements, dispute resolution, and pullout of business. Working in a major Japanese plant and engineering company, he has experience in numerous overseas plant construction matters, mainly involving negotiating a plant construction agreement (EPC Agreement) in South-East Asia and in concluding various types of contracts for major general trading companies. He graduated from University of Pennsylvania Law School, LL.M, USA and joined OAL in January 2023.

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