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Competition Law Key Amendments under the Omnibus Law on Job Creation as Supplemented by Government Regulation No. 44 of 2021

While Law No. 11 of 2020 (the “**Omnibus Law**”) amends various laws in various sectors, this advisory specifically highlights the key changes to Law No. 5 of 1999 on the Prohibition against Monopolistic Practices and Unfair Business Competition (the “**Competition Law**”). These changes have also been supplemented by Government Regulation No. 44 of 2021 on the Implementation of the Prohibition against Monopolistic Practices and Unfair Business Competition (“**GR 44/2021**”).

1. Objections to KPPU Rulings are now submitted to Commercial Courts

Under Article 44 of the Competition Law, if the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha* “**KPPU**”) rules that a business actor has violated the

Competition Law, the business actor can file an objection (*upaya hukum keberatan*) against the KPPU ruling in the District Court where the business actor is located. Under the Omnibus Law, these objections should now be submitted to Commercial Courts instead of District Courts. Many see this as an on-track variation, as business competition related issues are closely related to commercial matters.

There was some discussion of how this will be implemented in practice, especially before the issuance of GR 44/2021. The background to this was that the procedure for submitting an objection was provided in Supreme Court Regulation No. 3 of 2019. However, this procedure was for objections submitted to District Courts, not Commercial Courts. Many questioned whether this Supreme Court Regulation should still be referred to in the submission and examination of objections to KPPU rulings.

Now under Article 19 (4) of GR 44/2021, the procedure for the submission and examination of objections to KPPU rulings should comply with the civil procedural law (*hukum acara perdata*). This provision seems to be consistent with similar provisions in regulations governing other sectors which are also within the jurisdiction of commercial courts, such as those on bankruptcy and delays of payment.

2. The Timeline for Objections to KPPU Rulings in Commercial Courts

Under Article 45 (2) and (4) of the Competition Law, the District Court must issue its ruling within 30 days of the commencement of its examination of an objection, while the Supreme Court must issue its ruling within 30 days of receipt of the appeal to the Supreme Court.

No deadline or timeline for such legal remedies is provided in the Omnibus Law. However, under Article 19 of GR 44/2021, a business actor can submit an objection to a KPPU ruling in its domicile within **14 days** of being notified of the KPPU ruling. According to this article, an objection should be examined within **3 – 12 months** by the Commercial Court.

If an appeal is to be filed against the Commercial Court's ruling, it has to be submitted to the Supreme Court within **14 days** of receipt of the notification of the Commercial Court's ruling.

3. Amendments to Sanctions

The Omnibus Law removes the upper limit to the administrative fines that the KPPU can impose. Previously, under Article 47 of the Competition Law, the KPPU could impose fines of from IDR 1 billion to IDR 25 billion. While the Omnibus Law keeps the minimum amount at IDR 1, it does not set an upper limit. However, under Article 12 of GR 44/2021, the maximum amount of the administrative fine that KPPU can impose is either:

- a. 50% of the net profit the business actor made during the time of the breach of the Competition Law;
or
- b. 10% of total sales in the relevant market during the time of the breach of the Competition Law.

As a guarantee that the business actor will pay the fine, the KPPU will ask for certain collateral when the KPPU reads out the KPPU ruling.

Meanwhile, most of the criminal sanctions under Article 48 of the Competition Law which included criminal fines and detention as well as the revocation of the business license, a prohibition against being a director or commissioner and the cessation of activities, have been removed. Under the Omnibus Law, the criminal sanction of a fine (or detention) will be imposed on a business actor who interferes with a KPPU investigation or examination under Article 41 of the Competition Law.



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