



## The Change to the Procedure for Case Management of Partnership Cases under KPPU Regulation No. 4 of 2019

On 17 October 2019, the Indonesian Commission for the Supervision of Business Competition (“**KPPU**”) issued KPPU Regulation No. 4 of 2019 on The Procedure for Supervising and the Management of Partnership Cases (“**KPPU Reg. 4/2019**”) which revoked several previous KPPU regulations, ie KPPU Regulation No. 1 of 2017 on The Procedure for the Management of Partnership Cases (as amended) (“**KPPU Reg. 1/2017**”), and KPPU Regulation No. 1 of 2015 on Procedure for Supervising Partnership Cases (as amended) (“**KPPU Reg. 1/2015**”).

Subsequently, on 6 April 2020, KPPU issued Regulation No. 1 of 2020 on Electronic Case Management (“**KPPU Reg. 1/2020**”) which aims to maximize the use of electronic media in case management, including for partnership cases. As a consequence, unless there is a technical problem, all of the stages explained below will now be conducted using electronic media. We understand that KPPU Reg. 1/2020 is issued to support the implementation of the case management regulated under KPPU Reg.4/2019 by way of electronic media.

In brief, partnership cases are cases related to a violation in the implementation of a partnership between **(i)** a micro, small, or medium-scale enterprise and a large-scale enterprise; or **(ii)** between a micro or small-scale enterprise and a medium-scale enterprise, among other things, regarding the following:

1. whether a partnership agreement includes a provision regarding transfer of skills in the field of production and management, marketing, capital, human resources, and technology;
2. whether **(i)** a large-scale enterprise owns and/or controls micro, small, or medium-scale enterprise which is its partner, or **(ii)** a medium-scale enterprise owns and/or controls micro or small-scale enterprise which are its partner; or
3. whether a partnership agreement upholds the principles of a partnership and fair business etiquette, ie **(i)** needing each other, **(ii)** trusting each other, **(iii)** developing each other; and **(iv)** benefitting each other.

The following is a summary of the changes to the Procedure for the Case Management of Partnership Cases under KPPU Reg. 4/2019.

### Makarim & Taira S.

Summitmas I, 16<sup>th</sup> & 17<sup>th</sup> Fls.  
Jl. Jend. Sudirman Kav. 61-62  
Jakarta 12190  
Indonesia

P: (62-21) 5080 8300, 252 1272  
F: (62-21) 252 2750, 252 2751  
[www.makarim.com](http://www.makarim.com)

M&T Advisory is an email publication prepared by the Indonesian law firm, Makarim & Taira S. It is only intended to inform generally on the topics covered and should not be treated as legal advice or relied upon when making investment or business decisions. Should you have any questions on any matter contained in M&T Advisory, or other comments generally, please contact [advisories@makarim.com](mailto:advisories@makarim.com)

## **The Procedure and Timeline for Case Management**

There have been major changes to the procedure and timeline for case management under KPPU Reg. 4/2019, including among others, a significantly longer timeline, acknowledgement of copied documents as evidence, and the "investigation" stage no longer exists.

Below is the procedure and timeline for case management under KPPU Reg. 4/2019.

### *The First Stage – Case Assessment*

Under KPPU Reg. 4/2019, KPPU can initiate an investigation based on (i) report(s), or (ii) their initiative. Upon receiving a report, KPPU will conduct a clarification to determine its authority, the completeness of the report(s)' administration, the identities of the reporter, the reported party and the witnesses and the relevancy of the alleged violation to the preliminary evidence. Under KPPU Reg. 1/2020, reports of violations of partnership agreements can be submitted through the KPPU website or by email to [pengaduan@kppu.go.id](mailto:pengaduan@kppu.go.id).

KPPU should complete this clarification stage within 14 working days, (previously it was 7 working days), while there is no strict timeline for KPPU to complete the initiative assessment stage if the case is based on the KPPU's initiative (previously 14 working days). The above stages may or may not result in the KPPU recommending proceeding to the Preliminary Examination stage.

Lastly, the case enters the administration assessment stage for which there is no strict timeline. If the case is deemed complete and clear, it proceeds to the Preliminary Examination stage. Otherwise, the case will be closed and recorded in KPPU's record.

The investigation stage and filing stage which respectively took 30 working days and 7 working days under KPPU Reg. 1/2017, no longer exist.

### *The Second Stage – The Preliminary Examination*

The timeline of the Preliminary Examination under KPPU Reg. 4/2019 is significantly longer than under the previous regulation as it can now be up to roughly 102 working days, from previously only roughly 28 working days.

KPPU Reg. 4/2019 expressly divides the Preliminary Examination stage into two steps:

**1<sup>st</sup> step** – KPPU has 60 working days (extendable) to collect evidence of and obtain clarity about an alleged partnership violation. In this step, KPPU may:

- summons the reported party, witnesses, and experts to provide their statements;
- collect the partnership agreement and other relevant documents; and
- conduct a site inspection.

If it is believed that the alleged violation has occurred, the report on the 1<sup>st</sup> step should comprise an analysis of the elements proving the violation and the recommended remedies for the reported party. This report is then submitted to the KPPU Meeting for it to assess and determine whether a partnership violation has occurred or not. There is no strict timeline for this assessment and determination.

If the KPPU Meeting decides that a violation has occurred, the case proceeds to the 2<sup>nd</sup> step, the Preliminary Examination (explained below). Otherwise, the KPPU Meeting will halt the Preliminary Examination.

**2<sup>nd</sup> step** – KPPU starts preparing a formal report on the alleged partnership violation, and the reported party is given a chance to respond to the report within 14 working days of receiving the report. If after studying the formal report and the response of the reported party (if any), KPPU believes that no partnership violation has occurred, KPPU will halt the Preliminary Examination.

However, if KPPU believes otherwise, it serves up to three (3) warning letters, stating the remedies that the reported party must comply with. The reported party must complete the remedies within 14 working days (previously 7 working days) and report their completion to KPPU before the warning letters expire.

If KPPU finds that the reported party has not complied partly or at all with the instructions in the third warning letter, the case proceeds to the Further Examination stage (explained below).

### The Third Stage – Further Examination

In this stage, KPPU holds a trial, chaired by a KPPU Panel for 30 working days (at most), extendable for another 30 working days (previously only 14 working days, and not extendable). In the trial, the KPPU Investigator presents the reports from the Preliminary Examination and implementation of the warning letters, and the reported party is given a chance to respond and provide supporting evidence.

Before the Panel of KPPU hands down its ruling, the KPPU investigator and the reported party are given a chance to submit their written conclusions to the KPPU Panel. The KPPU Panel should hand down its ruling within 30 working days of the completion of the Further Examination stage, which ruling can be one of the following:

- the reported party has not committed a violation of the partnership agreement;
- the reported party must pay a fine; or
- an order to the relevant authorities to revoke the reported party's business license.

The reported party must comply with the ruling within 30 working days of receiving the official quotation and a copy of the ruling or after the KPPU publishes it on the KPPU's website. Otherwise, the KPPU will request an executorial order from a district court.

The interesting development with the issuance of KPPU Reg. 1/2020 is the use of electronic media to for the above process in KPPU. Indonesian Courts have also recently adopted the e-litigation process. Apparently, the KPPU also wishes to ensure that the same process can be used for the KPPU proceedings.

\* \* \* \* \*

M&T Advisory is an email publication prepared by the Indonesian law firm, Makarim & Taira S. It is only intended to inform generally on the topics covered and should not be treated as a legal advice or relied upon when making investment or business decisions. Should you have any questions on any matter contained in M&T Advisory, or other comments generally, please contact your usual M&T contact or [advisories@makarim.com](mailto:advisories@makarim.com).

### **Contacts:**

|                          |  |
|--------------------------|--|
| Lia Alizia               | - <a href="mailto:lia.alizia@makarim.com">lia.alizia@makarim.com</a>                 |
| Harris Syahni Toengkagie | - <a href="mailto:harris.toengkagie@makarim.com">harris.toengkagie@makarim.com</a>   |
| Jonathan Toni Tjenggoro  | - <a href="mailto:jonathan.tjenggoro@makarim.com">jonathan.tjenggoro@makarim.com</a> |
| Golden Mandala           | - <a href="mailto:golden.mandala@makarim.com">golden.mandala@makarim.com</a>         |