

# ADVISORY

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## Brief Introduction to Indonesia's Job Creation / Omnibus Law on Broadening of the Investment Ecosystem and Business Activities, the Ease of Doing Business and Acceleration of National Strategic Projects Oriented Towards National Interests

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*"Law No. 11 of 2020 on Job Creation (the "Job Creation Law" or widely known as the Omnibus Law) was issued and came into effect on 2 November 2020. The changes made by this Job Creation Law affect 78 Laws and provides several strategic policies among others on (i) broadening of the investment ecosystem and business activities; (ii) the ease of doing business; and (iii) acceleration of national strategic projects oriented towards national interests."*

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Law No. 11 of 2020 on Job Creation (the "**Job Creation Law**" or known as the Omnibus Law) was issued and came into effect on 2 November 2020. It is mainly based on the principles of the equalization of rights, legal certainty, greater ease of doing business, togetherness, and independence. The aim of greater ease of doing business is job creation supported by simple, easy and fast business procedures which will encourage increased investment, empower micro, small and medium-scale enterprises ("**MSME**") to strengthen the economy and make job opportunities available to a broader spectrum of the Indonesian people. The changes made by this Job Creation Law affect 78 Laws and provides several strategic policies among others on (i) broadening of the investment ecosystem and business activities; (ii) the ease of doing business; and (iii) acceleration of national strategic projects oriented towards national interests.

When the Job Creation Law come into effect:

- a. all laws and regulations under the applicable laws which contradict the Job Creation Law or contradict higher laws or regulations or court rulings must be harmonized and synchronized coordinated by the ministry or institution that administers government affairs in the area of determining laws and regulations. This harmonization and synchronization will be regulated further under a Government Regulation;
- b. business licenses (*perizinan berusaha*) or sectoral licenses which have been issued will remain valid until their term expires;

- c. business licenses and/or sectoral licenses issued before the Job Creation Law comes into effect may remain valid in accordance with the Job Creation Law; and
- d. business licenses already applied for must be adjusted to the provisions of the Job Creation Law.

In addition, the implementing regulations of the Job Creation Law must be issued within 3 (three) months of the effectiveness of the Job Creation Law, and all implementing regulations of the laws which have been amended by the Job Creation Law will remain valid as long as they do not contradict the Job Creation Law but they must be adjusted to the Job Creation Law within 3 (three) months.

This Advisory is meant to briefly introduce and provide a quick insight to the changes made by the Job Creation Law specifically on environment & spatial use, marine & fisheries, agriculture, energy & mineral resources, food, trade & industry, public works & construction, transportation and traffic, education, culture, tourism and religion, telecommunications, defence & security, housing and apartments, investment and banking, health, hospital and drugs, patents, trademarks and geographical indications, business competition, taxes, and others. Further independent analysis on the effect to each business sectors will be required for more comprehensive understanding.

### **Risk-based Business Licensing New Approach**

The newly introduced implementation of a risk-based business licensing approach involves determining (i) the risk level; and (ii) the business scale rating of the business activities. They are determined based on assessments on the actual and potential hazard levels.

The hazard level depends on the assessment of the following aspects:

- a. health;
- b. safety;
- c. the environment; and/or
- d. the use and management of resources.

However, other aspects may be assessed depending on the nature of the business activities.

The hazard level assessment takes into account:

- a. the type of business activities;
- b. the criteria for the business activities;
- c. the location(s) of the business activities;
- d. limited resources; and/or
- e. the volatility risk.

Meanwhile, the result of the assessment of the potential hazard level can be:

- a. almost impossible to happen;
- b. unlikely to happen;
- c. likely to happen; or
- d. almost certain to happen.

Based on these assessments, the risk level and the business scale rating of the business activities will be determined as:

- a. low risk business activities, for which a Business Identification Number (*Nomor Induk Berusaha* or “**NIB**”) will be the legality to carry out the business activities;
- b. medium risk business activities, for which both an NIB and a standard certificate are required to engage in the business activities (depending on whether the risk is low medium of which a statement from the business actor will suffice or medium high of which a certificate must be obtained from the Central or Regional Government). In addition, if the business is required to meet certain business and product standards, the Central or Regional Government will issue standards certificates based on the results of a verification that the standards are being met; or
- c. high risk business activities, for which an NIB and a license are required to engage in the business activities. The license is proof of approval from the Central or Regional Government which must be obtained prior engaging in its business activities. Likewise, standard certificates in item b. will also apply in the same condition.

The above concept of risk-based business licensing and the procedures for supervision will be implemented and regulated further under a Government Regulation.

### **Simplification of Basic Business Licensing Requirements**

The simplification of basic business licensing requirements includes:

- a. the suitability of the space utilization activities;
- b. environmental approval; and
- c. Building Approval (*Persetujuan Bangunan Gedung*) and a functional worthiness certificate.

The suitability of the space utilization activities means the conformity of the planned location of the business activities to the Detailed Spatial Plan (*Rencana Detail Tata Ruang* or “**RDTR**” or zoning). The RDTR is prepared and issued by the Regional Government and integrated by the Central Government in a digital form into the electronic business licensing system.

If the business actor obtains information that the planned location of its business activities complies with the RDTR, it can apply for a suitability of space utilization activities confirmation through the electronic business licensing system by inputting the location’s coordinates. After obtaining the confirmation, the business actor can then apply for a business license (*perizinan berusaha*).

If the Regional Government has not issued its RDTR, business actors must submit their application for confirmation of the suitability of their spatial utilization to the Central Government through the electronic business licensing system.

### **Central Government Investment and National Strategic Projects Acceleration**

The Job Creation Law introduces a number of provisions that address:

- 1) central government investment; and
- 2) the acceleration of national strategic projects.

## A. Central Government Investment

In an effort to support job creation across the country, the Central Government is expected to increase its investment and strengthen the economy through the management and placement of funds and/or assets in initiatives that will hopefully generate economic, social and other benefits.

These investments by the Central Government will be implemented by:

1. the Minister of Finance (“**MOF**”) as the State Treasurer; and/or
2. an agency which will be *sui generis* in nature, and which will be granted special authority to manage the investments, an Investment Management Agency (*Lembaga Pengelola Investasi* - “**Agency**”).

The Central Government will establish the Agency, which will be an Indonesian legal entity and fully owned by the Indonesian Government answering directly to the President. The Agency will be able to invest directly or indirectly by either entering into cooperation with third parties or by establishing special purpose Indonesian or foreign owned legal entities.

If a loss occurs as a result of an investment, under the Job Creation Law, the MOF, the officials of the MOF, and the organs and employees of the Agency cannot be held responsible if the following can be proven:

1. the loss is not the result of any mistake or negligence;
2. the relevant parties have managed the investment in good faith and prudently in accordance with the aims and objectives of investment and governance;
3. there has been no conflict of interest, either direct or indirect, over the management of the investment; and
4. they did not unlawfully obtain any personal gain.

The sources of the Agency’s assets will comprise: 1) state-capital participation; 2) proceeds from the development of the Agency’s businesses and assets; 3) transferred state-owned assets or BUMN-owned assets; 4) grants; and/or 5) other lawful sources.

These assets cannot be seized, unless they are being used as loan collateral. The Agency will be audited by auditors registered with the State Auditor and the Finance Services Authority (*Otoritas Jasa Keuangan*). Further details on the Agency will be provided under a Government Regulation.

## B. Easing National Strategic Projects

The Job Creation Law promotes the further responsibility of the Central Government and Regional Governments for providing land and Business License for national strategic projects of the Central/Regional Governments or State/Regional-Owned Business Entities (BUMN/BUMD). However, if the Central or Regional Government cannot yet procure the land, the Job Creation Law allows business entities to do so; in which case, the land acquisition must comply with the regulations on the acquisition of land for the public interest. The acquisition of land and Business Licenses for national strategic projects will be regulated further under a Government Regulation.

**Brief Overview of the Changes to Several Laws Made Under the Job Creation Law on Environment & Spatial Use, Marine & Fisheries, Agriculture, Energy & Mineral Resources, Food, Trade & Industry, Public Works & Construction, Transportation and Traffic, Education, Culture, Tourism and Religion, Telecommunications, Defence & Security, Housing and Apartments, Investment and Banking, Health, Hospital and Drugs, Patents, Trademarks and Geographical Indications, Business Competition, Taxes, and Others**

Below is the brief overview of the changes to several laws under the Job Creation Law. There will be a separate section for full table comparison of certain laws in various sectors. Please find the link at the end of this advisory.

**A. Environment & Spatial Use**

1. Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction (“Law 18/2013”). The Job Creation Law amends 15 (fifteen) articles, adds 4 (four) new articles and removes 4 (four) articles - the provisions on the appointment of ad hoc judges for forest destruction cases and the prevention and eradication of forest destruction agency are removed.

In the Job Creation Law, the term ‘Forest Product Utilization License’ is changed to a ‘Business License related to the utilization of forest products’, which will be issued by the Central Government. However, the changes to Law 18/2013 focus more on the related sanctions (administrative and criminal) for forest destruction, among others are:

- (i) new provisions on administrative sanctions for individuals residing in and/or around forest areas for at least 5 (five) years continuously who conduct illegal logging or illegal plantation, except such residing individuals or community groups are registered in the forest area management policy or whom social or customary sanctions have been imposed;
- (ii) the administrative sanctions to corporation or business entity are also amended, and now can be (i) written warnings; (ii) government enforcement; (iii) administrative fines; (iv) the freezing of the Business License; and/or (v) the revocation of the Business License – the criteria, types and procedures for which will be provided in a Government Regulation; and
- (iii) the addition of 1/3 to the fines for crimes committed by companies, while the management of a company can be sanctioned if, having committed a crime, the company fails to comply with the criminal sanction imposed on it.

The Job Creation Law also adds 2 (two) new transitional articles, Article 110A and Article 110B, under which:

- (i) anyone engaged in business activities who obtained a Business License and built in a forest area before the enactment of this law who has not completed the requirements under the laws and regulations on forestry, must complete the requirements within 3 (three) years of the date on which this law comes into effect; otherwise, they will be subject to administrative fines and/or the revocation of the Business License; and

- (ii) anyone who commits an offense under Article 17 (1) b., c., and/or e., and/or Article 17 (2) b., c., and/or e., or engages in other activities in a forest area without a business license before this law comes into effect will be subject to administrative sanctions, consisting of a temporary suspension of business activities, administrative fines and/or government enforcement. However, an individual who has resided in and/or around a forest area for at least 5 (five) years continuously in a maximum total area of 5 (five) hectares who has committed an offense is exempt from these administrative sanctions.

The procedures for the imposition of administrative sanctions and procedures for non-tax state revenue originating from administrative fines above will be provided in a Government Regulation.

2. Law No. 26 of 2007 on Spatial Planning. The Job Creation Law amends 26 (twenty-six) articles, removes 2 (two) articles and adds 9 (nine) articles, in brief among others:

- (i) the authority for spatial planning has been transferred from the Minister to the Central Government which will be further regulated under a Government Regulation. The authorities of the provincial and regional governments must adhere to the norms, standards, procedures and criteria determined by the Central Government;
- (ii) the National, Provincial and Regency Spatial Plan can be evaluated for more than once every five years due to among others if there are strategic changes to national policies. The utilization of space due to strategic changes to national policies can be carried out even if the said change has not been reflected in the Spatial Plans; and
- (iii) a Space Utilization Permit (*Izin Pemanfaatan Ruang*) is no longer required for the utilization of space and replaced by an approval of the Suitability of the Space Utilization Activities (*Kesesuaian Kegiatan Pemanfaatan Ruang*) issued by the Central Government.

3. Law No. 4 of 2011 on Geospatial Information. The Job Creation Law amends 7 (seven) articles, adds 1 (one) new article and removes 2 (two) articles, in brief among others:

- (i) the collection of Geospatial Data using foreign personnel and foreign-owned equipment (excluding satellite) will require approval from the Central Government. Further details will be provided under a Government Regulation; and
- (ii) the implementation of Geospatial Information by an individual, a group of individuals, or a business entity will be further provided under a Government Regulation.

## **B. Marine & Fisheries**

1. Law No. 32 of 2014 on Marine Affairs. The Job Creation Law amends 7 (seven) articles and adds 3 (three) new articles, in brief among others:

- (i) Business Licenses for utilizing the sea will be issued based on the spatial and/or zoning plan for various marine activities, including among others, bio

pharmacology and biotechnology, seawater use other than for energy, telecommunications, electric power installations, transportation, business activities in the oil and gas sector, coal and mineral mining and other sea utilization activities. Further details of these will be provided under a Government Regulation;

- (ii) instead of a Location Permit, a Business License for utilizing the sea will be issued for the permanent use of marine waters; and
  - (iii) it adds (i) certain administrative sanctions for the permanent use of marine waters without a Business License, the criteria, types, amount of fines for which, and the procedures for imposing which will be regulated in a Government Regulation; and (ii) criminal sanctions for the permanent use of marine waters without the Business License for utilizing the sea which results in a change in the function of the space of imprisonment for up to 6 (six) years and a fine of up to IDR20,000,000,000 (twenty billion Rupiah).
2. Law No. 31 of 2004 on Fisheries, as amended by Law No. 45 of 2009 (the “Fisheries Law”). The Job Creation Law amends 32 (thirty-two) articles, removes 3 (three) articles, and adds 2 (two) articles to the Fisheries Law, in brief among others:

- (i) to engage in fisheries related activities in Indonesia a business license is required from the Central Government, or Regional Government according to their respective authorities according to the norms, standards, procedures and criteria determined by the Central Government, including for catching, farming, transporting, processing and marketing fish. For doing so without the required business license requirements administrative sanctions will be imposed which will be regulated further under a Government Regulation.

Meanwhile, to engage in fishing and/or fish breeding activities in Indonesian for non-commercial purposes approval is required from the Central Government or Regional Government according to their respective authorities according to the norms, standards, procedures and criteria determined by the Central Government, including regarding for education, counseling, research and other scientific activities, as well as recreation and tourism activities;

- (ii) anyone who builds, imports, or modifies fishing vessels must obtain seaworthiness technical approval and considerations from the Central Government (previously, from the Ministry of Maritime Affairs and Fisheries). Otherwise, administrative sanctions will be imposed, to the types of and procedures for imposing which will be provided in a Government Regulation;
- (iii) the requirement for foreign-flagged fishing vessels catching fish in the Indonesian Exclusive Economic Zone to an at least 70% (seventy percent) Indonesian crew has been removed;
- (iv) to the criminal provisions of Article 89 has been added ‘causing human health victims’ for anyone handling and processing fish that does not meet and does not apply the fish processing feasibility requirements, quality assurance system or safety of fishery products under Article 20 (3);

- (v) to the criminal provisions of Article 93 has been added ‘which causes an accident and/or causes victims/harm to health, safety and/or the environment’ for anyone that owns and/or operates: (i) an Indonesian-flagged fishing vessel that catches fish in Indonesian fisheries management area and/or on the high seas without having a business license; and/or (ii) a foreign-flagged fishing vessel used to catch fishes on Indonesian Exclusive Economic Zone (EEZ) without having a business license. Further, a fine has been added in the amount of Rp30,000,000,000 (thirty billion Rupiah);
- (vi) the criminal sanctions for operating an Indonesian or foreign flagged fishing vessel in Indonesian waters without having a business license document on board have been removed and only the administrative sanctions will be imposed; and
- (vii) for building, importing or modifying a fishing boat without prior approval and/or operating a fishing boat in Indonesia without registering the fishing boat as an Indonesian fishing boat criminal sanctions no longer apply, only administrative sanctions do.

## C. Agriculture

1. Law No. 13 of 2010 on Horticulture (“Law 13/2010”). The Job Creation Law amends 16 (sixteen) articles of, removes 5 (five) articles and adds 1 (one) article.

The Job Creation Law amends (among others) the following requirements for the horticultural business:

- (i) previously, Law 13/2010 requires the Government to encourage investment by prioritizing domestic investment and foreign investment can only be implemented for large-scale agriculture business with 30% foreign investment limit. Further, foreign investors were required to place funds in domestic banks equal to their capital shareholding and prohibited to use credits from banks or Government-owned and/or Regional Government-owned finance agencies and is prohibited the against using credit from banks or financial institutions owned by the Government and/or Local Governments.

Now, the Job Creation Law amends the article to only state that the Central Government encourages investments in agriculture business and the implementation of the investment is performed in accordance with the laws and regulations in investment sector;

- (ii) the Job Creation Law still states that the business actors must prioritize domestic manpower, but the paragraph specifying that (a) foreign manpower can only be utilized if Indonesian manpower with the required expertise and abilities in horticulture are not available and (b) such foreign manpower requires a recommendation from a business association are now amended so that it only states that the utilization of human resources is implemented in accordance with the laws and regulations;

- (iii) the provisions on:
    - (a) licensing requirement for the entry and release of seeds to and from Indonesia; and
    - (b) particularly on the entry of seeds to Indonesia, the obligation to satisfy with the quality requirements to import seeds into Indonesia for commercial purposes and the requirement that the seeds can only be imported if they cannot be produced domestically or domestic production is not sufficient,
 

are now removed;
  - (iv) criminal sanctions for distributing horticultural facilities that do not meet the quality standards, minimum technical requirements, and/or are not registered is now removed. Instead, now the Job Creation Law states that for such violations, only administrative sanctions apply; and
  - (v) under the Job Creation Law, medium and large-scale horticultural cultivation businesses must have a business license from the Central Government (previously, they only needed to be registered).
2. Law No. 22 of 2019 on Sustainable Agricultural Cultivation Systems ("Law 22/2019"). The Job Creation Law amends 8 (eight) articles and removes one article, in brief among others:
- (i) any person can take plants, plant seeds, animal seeds, animal seeds and animals out of Indonesia, if domestic needs have been met and after obtaining a business license from the Central Government. Previously, this business license must be obtained from the Minister of Agriculture; and
  - (ii) the sanctions under Law 22/2019 for using land under customary rights without first consulting the customary communities who hold the customary rights to obtain their consent, ie the imprisonment for up to 7 (seven) years and a fine of up to IDR 5,000,000,000.00 (five billion Rupiah), have been removed under the Job Creation Law.
3. Law No. 19 of 2013 on The Protection and Empowerment of Farmers ("Law 19/2013"). The Job creation Law amends 2 (two) articles and removes one article, in brief among others:
- (i) now, the consumer needs and the food reserves of the government are met from domestic production and imports while protecting the interests of farmers. Previously, agricultural commodities could not be imported if the domestic agricultural commodities available could meet consumer needs and government food reserves;
  - (ii) now, the Central Government determines whether consumer needs and food reserves are being met. Previously, the sufficiency of consumption needs and food reserves is determined by the Minister of Agriculture; and
  - (iii) previously, under Law 19/2013, the sanction for importing agricultural commodities while the domestic agricultural commodities available were sufficient to meet consumer needs and government food reserves, was imprisonment for

up to 2 (two) years and a fine of up to IDR 2,000,000,000.00 (two billion Rupiah). This article has been deleted under the Job Creation Law.

#### D. Energy & Mineral Resources

1. Law No. 10 of 1997 on Nuclear Energy. The Job Creation Law amends 7 (seven) articles, adds 2 (two) new articles and removes 2 (two) articles, in brief among others:
  - (i) Nuclear Extraction Materials are controlled by the state. If an individual or business entity discovers radioactive accompanying minerals, it must transfer it to the State or a state-owned enterprise in accordance with the prevailing laws and regulations;
  - (ii) the Central Government is authorized to issue Business Licenses for nuclear energy from up-stream to down-stream activities which requirements and procedures for issuing these Business Licenses will be provided in a Government Regulation, without which can be subject to prison for up to 10 (ten) years and fine up to IDR10,000,000,000 (ten billion Rupiah);
  - (iii) a Supervisory Agency will be established that will answer directly to the President and be in charge of supervising all nuclear energy utilization activities, including implementing the regulatory, licensing and inspections matters; and
  - (iv) the Central Government will provide a sustainable storage place for high level radioactive waste, after obtaining approval from the House of Representatives.
2. Law No. 17 of 2019 on Water Resources. The Job Creation Law amends 16 (sixteen) articles, in brief among others:
  - (i) changes to the requirements to obtain business licenses according to the relevant authorities (ie the Central Government, Regional Governments or Water Resource Administrators). The construction of water resource facilities or non-construction use of water resources for own interests, require either an approval or a business license issued by the Central Government and/or the Regional Governments according to their respective authorities according to the norms, standards, procedures and criteria determined by the Central Government. The approvals or business licenses required will be regulated further under a Government Regulation. An approval will be required for the use of water resources for non-business purposes, while for the use of water resources for business purposes a business license will be required; and
  - (ii) for the use of Indonesian water resources by other countries, instead of a permit, an approval from the Central Government based on a recommendation from the relevant Regional Government will be required.

#### E. Food, Trade & Industry

1. Law No. 18 of 2012 on Food ("Law 18/2012"). The Job Creation Law amends 19 (nineteen) articles, removes one article and adds one article, in brief among others:
  - (i) prioritized food supply sources shall come from (a) domestic food production, (b) national food reserves, and (c) food imports. Previously, prioritized sources of

food supplies only came from (a) domestic food production and (b) national food reserves; and

- (ii) previously, under Law 18/2012, in case the food supply resources for domestic food production and national food reserves is not sufficient, food can be fulfilled by importing food as necessary. The sufficiency of domestic staple food production and government food reserves was to be determined by the Minister or government agency that has the task of carrying out government tasks in the food sector. Currently, food import can be carried out to meet (i) domestic needs and (ii) consumption needs and national food reserves. Food imports and staple food imports are determined by the Central Government by taking into account the interests of farmers, fishermen, fish cultivators, and micro and small food business actors.

2. Law No. 18 of 2009 on Stock Breeding and Animal Health, as amended by Law No. 41 of 2014 ("Law 18/2009"). The Job Creation Law amends 19 (nineteen) articles, in brief among others:

- (i) it removes the provisions on: (i) prioritizing domestic products; (ii) the requirements for importing feedlot animals (*bakalan*) and fattening them; and (iii) partnerships between breeders and industries. Livestock and animal products can be imported for satisfying the required numbers, while taking into account the interests of breeders holding a business license from the Central Government;
- (ii) it centralizes animal-related licensing including for animal product breeding activities, veterinary medicines, veterinary number control, slaughterhouse activities, animal health services, and animal health personnel the business licenses for which will be issued by the Central Government;
- (iii) any plots of land which has been determined as general grazing area must be sustainably maintained. The Central Government will have authority to determine general grazing areas, if the relevant district/municipal government does not do so; and
- (iv) additional conditions wording is included in the crimes under Article 88 of Law 18/2009 that 'anyone who produces and/or distributes equipment and machinery that has not been tested as required under Article 24 (3) which causes damage to environmental functions or endangers people's lives.'

3. Law No. 33 of 2014 on Halal Products ("Law 33/2014"). The Job Creation Law amends 22 (twenty 2) articles, in brief among others:

- (i) in the event that the Halal Inspection Agency (*Lembaga Pemeriksa Halal / "LPH"*) is established by the community, LPH can also be proposed by private universities under a legal entity Islamic foundation. Previously, it can only be proposed by a legal Islamic religious institution;
- (ii) the verification of the halal certificate application must take no longer than 1 (one) working day (no timeframe was provided under Law 33/2014);
- (iii) the procedures for submitting Halal Certificate applications will be provided in a Government Regulation. Previously, it was mentioned that it will be provided in a Minister Regulation; and

- (iv) previously, under Article 10 of Law 33/2014, the collaboration between the Halal Product Guarantee Agency (*Badan Penyelenggara Jaminan Produk Halal / “BPJPH”*) and the Indonesian Ulema Council (*Majelis Ulama Indonesia / “MUI”*) took the form of:
  - (a) Halal Auditor’s certification;
  - (b) determination of whether a product is halal; and
  - (c) accreditation by the Halal Inspection Agency (*Lembaga Pemeriksa Halal / LPH*).

Now, under the Job Creation Law, the collaboration between the BPJPH and the MUI is in determining of whether a product is halal.

## F. Public Works & Construction

1. Law No. 28 of 2002 on Buildings. The Job Creation Law amends 15 (fifteen) articles, removes 26 (twenty six) articles and adds 3 (three) articles, in brief among others:
  - (i) a Building Permit (*Izin Mendirikan Bangunan*) is no longer required and has been replaced with a Building Approval (*Persetujuan Bangunan Gedung*) as a new administrative requirement for the construction of buildings, which will be further regulated under a Government Regulation. A building can be demolished if, among other things, the building owner or user does not have a Building Approval;
  - (ii) the Job Creation Law introduces the term ‘Inspector’ which means an authorized individual who is assigned by the Central Government or Regional Government to inspect the management of Buildings according to the norms, standards, procedures and criteria determined by the Central Government;
  - (iii) the building layout requirements (which include the requirements on the building designation and intensity, and building architecture) and building reliability requirements (which include the requirements regarding safety, health, comfort and convenience) are removed under the Job Creation Law;
  - (iv) the implementation of environmental impact management only applies to buildings that may have a significant impact on the environment; and
  - (v) the building planning stage which uses the prototype as determined by the Central Government does not require consultation or inspection of compliance with the standards. The prototype determined by the Central Government will be focused for simple buildings commonly used by the public.
2. Law No. 2 of 2017 on Construction Services (“Construction Law”). The Job Creation Law amends 25 (twenty five) articles and removes 8 (eight) articles, in brief among others:
  - (i) previously, under the Construction Law, to obtain recognition of business experience, every medium and large-scale Construction Services business entity had to register the experience with the Ministry of Public Works and Housing. Registration of experience was evidenced by an experience registration

certificate (*tanda daftar pengalaman*). This has been removed under the Job Creation Law;

- (ii) previously, under the Construction Law, a Construction Services Provider using a source of financing from the state budget was selected through a tender or selection, electronic procurement, a direct appointment, or direct procurement according to the prevailing laws and regulations. A tender or selection could be conducted by pre-qualification, post-qualification or a rapid tender. These have been removed under the Job Creation Law; and
  - (iii) the Job Creation Law has removed the administrative sanctions for a representative office of a foreign business entity not complying with its obligations under the Construction Law:
    - a. written warnings;
    - b. administrative fines;
    - c. a temporary suspension of construction services activities;
    - d. blacklisting;
    - e. freezing the license; and/or
    - f. the revocation of the license.
3. Law No. 6 of 2017 on Architecture. The Job Creation Law amends 10 (ten) articles, deletes 5 (five) articles and adds 1 (one) article, in brief among others that an individual must hold an Architect Registration Letter to conduct an Architect Practice. The transfer of knowledge and expertise by foreign architects still remains and will be supervised by the Central Government. Further provisions on the procedures for the transfer of expertise and transfer of knowledge by foreign architects and the supervision of the same will be issued in a Government Regulation.

## **G. Transportation and Traffic**

1. Law No. 1 of 2009 on Aviation. The Job Creation Law amends several articles. Among other things, the Job Creation Law still states that holders of a commercial air transportation business license must own and possess a certain number of aircrafts but the paragraph specifying the certain number of aircraft that must be owned and possessed is now removed. Previously, (i) scheduled commercial air transportation providers were required to own at least 5 (five) aircraft and have in their possession at least 5 (five) aircraft of the types that support their business and are suitable for the routes they serve, (ii) unscheduled commercial air transportation providers were required to own at least 1 (one) aircraft and have in their possession at least 2 (two) aircraft of the types that support their business and are suitable for the areas of operation which they serve, and (iii) special cargo air transportation providers were required to own at least 1 (one) aircraft and have in their possession at least 2 (two) aircraft of the types that support their business and are suitable for the routes and areas of operation they serve.

The requirements and procedures for obtaining an aircraft operator's certificate and aircraft operating certificate will now be provided in a Government Regulation.

2. Law No. 17 of 2008 on Shipping. The Job Creation Law amends several articles, in brief among others:
  - (i) foreign-flagged vessels can engage in activities in Indonesian waters if no Indonesian-flagged vessels are available, but they do not include transporting passengers or goods. This will be regulated further under a Government Regulation; and
  - (ii) the procurement, construction and manufacturing and the operation of vessels must now meet the international vessel safety standards. All vessel certification must meet the international standards.
  
3. Law No. 23 of 2007 on Railways. The Job Creation Law amends 18 (eighteen) articles of and adds 7 (seven) new articles, in brief among others:
  - (i) the changes mainly relate to licenses and sanctions. Now, business entities operating either general railway infrastructure, general railway facilities, or a special railway must hold the relevant business license (*perizinan berusaha*), while previously, they were required to have a (a) business permit, construction permit, and an operating permit to operate general railway infrastructure, (b) a business license and an operating permit to operate railway facilities, or (c) a procurement permit and an operating permit to operate a special railway. The business license will be issued according to the norms, standards, procedures and criteria determined by the Central Government:
    - a. if the tracks cross provincial borders;
    - b. with the involvement of the provincial government if the tracks cross the borders of regencies/municipalities in one province; or
    - c. with the involvement of the regency/municipal government if the tracks remain within one regency/municipality.

Business licensing for general railways will be regulated further under a Government Regulation; and
  - (ii) the sanctions for business entities operating general railway infrastructure, business entities operating general railway facilities, or business entities operating special railways which do not comply with the business licensing requirements are now administrative sanctions, while previously, if the operation of railway facilities did not meet the operational feasibility standards, the operating license could be revoked. However, the maximum criminal fine for certain violations has been increased. For example, if a business entity operating general railway infrastructure or facilities without a business license causes human victims to occur or harm to health, safety or the environment a criminal sanction of imprisonment for up to 6 (six) years or a criminal fine of up to IDR3 billion (previously up to IDR2 billion) will be imposed.
  
4. Law No. 22 of 2009 on Traffic (“Law 22/2009”). The Job Creation Law amends 21 (twenty one) articles and removes 9 (nine) articles, in brief among others, public transportation companies that transport people or goods are required to have a business license from the Central Government or Regional Government according to the norms, standards, procedures and criteria determined by the Central Government. The business licenses required will be regulated further under a Government Regulation.

Previously, public transportation companies that transport people or goods needed (i) a license to transport people along certain routes; (ii) a license to provide non-route personal transportation; or (iii) a license to operate special goods or heavy equipment transportation.

## H. Education, Culture, Tourism and Religion

1. Education. The Job Creation Law states that licensing in the education sector can be done through the business licensing provided for under the Job Creation Law and it will be regulated further under a Government Regulation.
2. Law No. 33 of 2009 on Films. The Job Creation Law amends 3 (three) articles, in brief among others:
  - (i) the types of film business, which among others include film making, film technique services, film distribution, film showing, film selling and/or rental, film archiving, film exporting and film importing now require the relevant business license (*perizinan berusaha*) from the Central Government, but the business license for showing films through television broadcasts or information technology networks is excluded. The relevant business license will be regulated further under a Government Regulation; and
  - (ii) film making by foreign parties using a location in Indonesia now requires free of charge approval from the Central Government (previously it required approval from the Minister of Education and Culture).
3. Law No. 8 of 2019 on Organizing the Hajj Pilgrimage and Umrah Pilgrimage. The Job Creation Law amends 23 (twenty-three) articles and adds 2 (two) new articles, in brief among others:
  - (i) certain authorities of the Minister of Religion, including the authority to supervise and evaluate, to issue Business Licenses for organizing the Special Hajj or Umrah, and to accredit as well as to determine the accreditation standards, are transferred to the Central Government; and
  - (ii) the requirement for a Special Hajj Organizer (*Penyelenggara Ibadah Haji Khusus*) to be accredited once every 3 (three) years under Article 85 of the Hajj/Umrah Law has been removed. Meanwhile, an Umrah Trip Organizer (*Penyelenggara Perjalanan Ibadah Umrah*) must now be accredited once every 5 (five) years (previously, once every 3 (three) years).
4. Law No.10 of 2009 on Tourism (“Law 10/2009”). The Job Creation Law amends 6 (six) articles and removes 3 (three) articles, in brief among others:
  - (i) to engage in a tourism business, tourism entrepreneurs require a business license from the Central Government or Regional Government according to their respective authorities, according to the norms, standards, procedures and criteria determined by the Central Government. The business licenses required will be regulated further under a Government Regulation. Previously, they had to first register their business with the Government or Regional Government; and

- (ii) the Job Creation Law removes the provisions on professional foreign manpower. Previously, Law 10/2009 explicitly states that tourism entrepreneurs could employ skilled foreign manpower according to the prevailing laws and regulations. Expert foreign manpower must first receive a recommendation from the professional tourism manpower association.

## I. Telecommunications

1. Law No. 36 of 1999 on Telecommunications. The Job Creation Law amends 8 (eight) articles, removes 2 (two) articles and adds 2 (two) articles, in brief among others:
  - (i) the Central Government may determine upper limits and lower limits of pricing for telecommunications networks and services by taking into account the interests of the community and fair business competition;
  - (ii) telecommunications operators can cooperate on the use of a radio frequency spectrum for the application of new technology with and transfer the use of a radio frequency spectrum to other telecommunications operators, upon obtaining prior approval from the Central Government;
  - (iii) the sharing of passive infrastructure for telecommunication (or other infrastructure) between telecommunications operators is encouraged under the Job Creation Law. The Central Government and regional governments may participate in the development of passive infrastructure for common use by telecommunications operators. This will be further regulated in a Government Regulation; and
  - (iv) the Job Creation Law removes the certification requirement for telecommunications equipment/devices made in, imported into, or used in Indonesia and only requires the technical standards determined by the government to be complied with. Such technical standards will be further regulated in a Government Regulation.
2. Law No. 32 of 2002 on Broadcasting. The Job Creation Law amends 6 (six) articles removes 1 (one) article and adds 1 (one) article, in brief among others:
  - (i) foreigners can become a financial or technical manager in a private broadcasting companies;
  - (ii) the requirement for private broadcasting companies to engage in a specific radio or television broadcasting business activity is removed under the Job Creation Law; and
  - (iii) the Job Creation Law requires broadcasting operations to follow technological developments, including broadcasting migration from analog technology to digital technology, within 2 (two) years of the issuance of the Job Creation Law.
3. Law No. 38 of 2009 on Postal Services. The Job Creation Law amends 3 (three) articles and removes one article, in brief among others:
  - (i) to provide postal services, a business license (*perizinan berusaha*) from the Central Government is required. The business license and requirements foreign

postal service providers must comply with will be regulated under a Government Regulation; and

- (ii) the provisions of (a) cooperation between a domestic postal service provider and a foreign postal service provider was required in accordance with the relevant regulations, and (b) postal service providers may become public or publicly-listed companies after obtaining approval from the relevant minister, have been removed.

## J. Defence & Security

1. Law No. 16 of 2012 on the Defence Industry. The Job Creation Law amends 14 (fourteen) articles and adds one article, in brief among others:
  - (i) it allows the main equipment manufacturer to be a state-owned enterprise and/or a private owned enterprise, appointed by the Government as the lead integrator to produce main weapon system equipment and integrate all the main components, other components and raw materials into the main equipment; and
  - (ii) the capital of a main equipment manufacturer may be owned by a state-owned enterprise or a privately owned enterprise with approval from the Minister of Defence. Meanwhile, ownership of the capital of a main and/or supporting component manufacturer, a component and/or support supplies manufacturer, and a raw materials manufacturer must comply with the investment regulations.

## K. Housing and Apartments

1. Law No. 1 of 2011 on Housing and Residential Areas (“Law 1/2011”). The Job Creation Law amends 16 (sixteen) articles and adds 1 (one) article, in brief among others:
  - (i) **the requirements for the planning of public infrastructure, facilities and utilities.** Currently, under Law 1/2011 on Housing and Residential Areas, the planning of public infrastructure, facilities and utilities must comply with the technical, administrative, spatial and ecological requirements. However, the Job Creation Law does not determine the standards that must be met in the planning of public infrastructure, facilities and utilities. The standard or requirements will be regulated further under a Government Regulation.

The Job Creation Law also removes the requirement to obtain approval of public infrastructure, facilities and utilities plans by the regional government;

- (ii) **the requirements for a preliminary sale and purchase agreement.** According to Law 1/2011, single houses, row houses, and/or apartment buildings that are still in the construction stage can be marketed through a system of preliminary sale and purchase agreements according to the laws and regulations.

As for the requirement for a preliminary sale and purchase agreement, since a Building Permit is no longer required under the Job Creation Law, it has been replaced by a Building Approval (*Persetujuan Bangunan Gedung*);

- (iii) **the Housing Acceleration Agency.** The Job Creation Law introduces the Housing Acceleration Agency (*Badan Percepatan Penyelenggaraan Perumahan*) which is a government agency to be established by the Central Government under a Presidential Regulation, the objective of which is to realize the provision of adequate and affordable public housing for Low-income Communities (*Masyarakat Berpendapatan Rendah/MBR*); and
- (iv) **the obligation to construct public residences.** Under the Job Creation Law, legal entities which engage in constructing residential complexes are still required to manifest a balanced housing ratio which includes simple, medium and luxury houses in the same area or within the same regency/city. However, the Job Creation Law provides that if the simple housing cannot be constructed in the form of single or row houses, developers can either construct public apartment buildings in the same area as the residential complex or provide funds for the purpose of constructing public residences. For the latter, the funds will be managed by the Housing Acceleration Agency. Previously, Law 1/2011 did not provide such alternative.

For non-compliance with the above requirement administrative sanctions may be imposed, with one new sanction added whereby the Government can force developers to re-develop an area according to the requirements under **Law 1/2011** (as amended by the Job Creation Law).

2. Law No. 20 of 2011 on Apartment Buildings (“Law 20/2011”). The Job Creation Law amends 18 (eighteen) articles and removes 6 (six) articles, in brief among others:

- (i) **the obligation to construct public apartment buildings.** Under the Job Creation Law, commercial apartment developers are still required to provide public apartment buildings with a minimum of 20% of the total floor area of the commercial apartment buildings being constructed and they can be constructed outside the area of the commercial apartment buildings in the same regency or city. However, alternatively, commercial apartment developers can provide funds for construct public apartment buildings which funds will be managed by the Housing Acceleration Agency. Previously, Law 20/2011 did not provide such alternative;
- (ii) **Building Approval (*Persetujuan Bangunan Gedung*).** Since a Building Permit is no longer required under the Job Creation Law, it has also been removed from the requirements for the construction of apartment buildings and has been replaced by a Building Approval;
- (iii) **approval for building specifications (*pertelaan*) is no longer required.** Approval from the Regional Government for building specifications (*pertelaan*) (which is a document that clearly sets the boundaries of each apartment unit, common areas, common objects) is no longer required; and
- (iv) **the drawings for the separation of apartments.** Under the Job Creation Law, the drawings for the separation of the apartment building must be prepared

before the construction of the apartment building. The drawings for the separation of the apartment building are no longer required for the determination of the proportional index (*nilai perbandingan proporsional*), strata title certificate or strata building certificate or the conditional sale and purchase agreement for the marketing of apartment units.

## L. Investment and Banking

1. Law No. 25 of 2007 on Investment (the “Investment Law”). The Job Creation Law amends 5 (five) articles of the Investment Law and unlike the Investment Law, the Job Creation Law now expressly states that the Investment Law will be the main reference for investment in all sectors in the Republic of Indonesia.

An essential point is that according to the Job Creation Law, all business fields are now open for investment, except those stated to be closed for investment and which are reserved for the Central Government. Business fields that are closed for investment are:

- a. the cultivation and trading of class I narcotics;
- b. all forms of gambling and/or casino activities;
- c. fishing for species listed in Appendix I to the Convention on International Trading in Endangered Species of Wild Fauna and Flora (CITES);
- d. utilizing or taking coral (*koral*) and utilizing or taking of reefs (*karang*) from nature to be used as building materials/lime/calcium, in aquariums, or to make souvenirs/jewellery, as well as live corals or dead corals (recently dead coral) from nature;
- e. the chemical weapons manufacturing industry; and
- f. the industrial chemicals industry and any harmful to the ozone layer materials industry.

The investment requirements will be regulated further under a Presidential Regulation.

In addition, the Central Government or Regional Governments will provide convenience, empowerment and protection for investments made by cooperatives and MSMEs, according to norms, standards, procedures and criteria established by the Central Government. As before, the Government will grant facilities to investors who expand their businesses or make new investments. In addition to the original criteria under the Investment Law, a new one has been added: it qualifies as tourism business development. The forms of facilities granted must comply with the tax regulations. \_

2. Law No. 40 of 2007 on Limited Liability Companies. The Job Creation Law amends 4 (four) articles of this Law and adds 10 (ten) new articles, mostly regarding micro and small-scale businesses as under the Job Creation Law, the definition of a “Limited Liability Company (*Perseroan Terbatas*)” is now expanded to include individual legal entities that meet the criteria for a micro or small-scale business. Limited liability companies will obtain legal entity status upon being registered with the Ministry of Law and Human Rights (“MOLHR”) and obtaining proof of registration.

Among other things, under the Job Creation Law the authorized capital of a limited liability company is now determined by its founders. The provisions on authorized capital will be regulated further under a Government Regulation.

As under the previous legislation, a limited liability company must be established by 2 (two) or more persons, but certain exceptions apply. Now the requirement does not apply to regional government owned enterprises, village owned enterprises or limited liability companies that meet the criteria for a micro or small-scale business. One person can now establish one micro or small-scale business in any one year. The establishment of limited liability companies which are micro or small-scale businesses will be regulated further under a Government Regulation.

Once a micro or small-scale business limited liability company no longer meets the criteria for a micro small-scale business, it must change its status to a limited liability company under the applicable regulations. This also will be regulated further under a Government Regulation.

3. Law No. 7 of 1992 on Banking (as amended). The Job Creation Law amends Article 22 of this Law.

Under the new Article 22, like before, a commercial bank can be established by:

- a. Indonesian citizens;
- b. Indonesian legal entities; or
- c. Indonesian citizens and/or Indonesian legal entities in partnership with foreign citizens and/or foreign legal entities.

However, now the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) will decide on any further requirements, while previously they were determined by Bank Indonesia.

4. Law No. 21 of 2008 on Sharia Banking (as amended). The Job Creation Law amends Article 9 of this Law. Under the new Article 9, like before, a sharia commercial bank can only be established and/or owned by:

- a. Indonesian citizens;
- b. Indonesian legal entities;
- c. regional governments; or
- d. Indonesian citizens and/or Indonesian legal entities in partnership with foreign citizens and/or foreign entities.

Meanwhile, also like before, a sharia rural bank can only be established and/or owned by:

- a. Indonesian citizens and/or Indonesian legal entities which are wholly owned by Indonesian citizens;
- b. regional governments; or
- c. two or more of the parties in a. and b.

The maximum foreign shareholdings in a sharia commercial bank will be set under the applicable regulations on investment (previously, set under a Bank Indonesia regulation).

## M. Health, Hospital and Drugs

1. Law No. 36 of 2009 on Health. The Job Creation Law amends 10 (ten) articles, in brief among others:
  - (i) to produce or distribute pharmaceutical preparations and medical devices, a business license from the Central Government or Regional Government is required according to their respective authorities according to the norms, standards, procedures and criteria determined by the Central Government. Business licenses related to pharmaceutical preparations and medical devices will regulated further under a Government Regulation. Previously, a distribution permit was required to distribute pharmaceutical preparations and medical devices; and
  - (ii) previously, the Minister of Health was in charge of the supervision of communities' and organizers' activities related to resources in the health sector and health efforts. Now, the Central Government or Local Government according to their respective authorities are in charge of their supervision according to the norms, standards, procedures, and criteria determined by the Central Government.
  
2. Law No. 44 of 2009 on Hospitals (the "Hospital Law"). The Job Creation Law amends 10 (ten) articles of this Hospital Law, in brief among others:
  - (i) the government will determine a hospital's classification according to its service capacity, health facilities, support facilities and human resources, which will be regulated further under a Government Regulation. Previously, the Hospital Law explicitly divided Hospitals into several classes, ie (i) Class A, Class B, Class C, and Class D for general hospitals, and (ii) Class A, Class B, and Class C for special hospitals;
  - (ii) previously, hospital licenses are classified into 2 types: a license to build and an operating license. Now, under the Job Creation Law, all hospital administrators require a business license. Otherwise, they will be subject to administrative sanctions, the procedure for impose which will be provided in a Government Regulation;
  - (iii) now all business licenses for hospitals will be issued by the Central Government (previously, the Minister of Health for Class A hospitals and foreign and domestic investment hospitals and Regional Governments (and provincial Governments were only authorized to issue licenses for Class B hospitals and district/municipal governments were authorized to issue licenses for Class C and D hospitals)) according to their respective authorities depending on the hospital's classification. Business Licenses for hospitals will be regulated further under a Government Regulation;
  - (iv) the Job Creation Law now only authorizes the Central Government (previously, also Regional Governments) to impose administrative sanctions related to the development and supervision of hospitals; and
  - (v) the maximum fine for operating a hospital without a business license which causes victims/threatens health, safety and/or the environment, is increased from

Rp5,000,000,000.00 (five billion Rupiah) to Rp7,000,000,000.00 (seven billion Rupiah).

3. Law No. of on Psychotropics (the “**Psychotropics Law**”). The Job Creation Law amends 8 (eight) articles, in brief among others:
  - (i) the provisions on business license (to be issued by the Central Government) for pharmaceutical industry companies to produce psychotropics and export or import psychotropics, will be regulated further under a Government Regulation;
  - (ii) unlike under the previous Psychotropics Law, under the Job Creation Law, in order to export or import psychotropics, the importer or exporter must submit an application to the Central Government for an export or import approval. The exporting and importing of psychotropics, including the approval required will be regulated further under a Government Regulation; and
  - (iii) all exports of psychotropic must be accompanied by a psychotropics export approval issued by the Central Government (previously, issued by the Minister of Health).
  
4. Law No. 35 of 2009 on Narcotics (the “**Narcotics Law**”). The Job Creation Law amends 10 (ten) articles, in brief among others:
  - (i) the Job Creation Law transfers the authorities of the Minister of Health and the Food and Drug Authority (*Badan Pengawas Obat dan Makanan* – “**BPOM**”) to the Central Government for controlling the narcotics production and supervising the raw materials, production processes and the final narcotic products. The procedures for issuing business licenses, controlling and supervising the narcotics business will be provided in a Government Regulation;
  - (ii) narcotics can only be produced by certain pharmaceutical manufacturers after obtaining a business license from the Central Government. Previously, pharmaceutical companies needed a license from the Minister of Health after being audited by the BPOM;
  - (iii) to export or import narcotics, pharmaceutical manufacturers and state-owned large-scale pharmaceuticals trading company (or other companies under certain conditions) require a business license from the Central Government. Previously, instead of requiring a business license, the Narcotics Law stated that the Minister of Health may authorize 1 (one) state-owned large-scale pharmaceutical trading company with an export license or an import license in accordance with the laws and regulations to carry out the export or import of narcotics; in certain circumstances, the Minister of Health may authorize other companies (other than a state-owned company) with an export license or an import license in accordance with the laws and regulations to carry out the export or import of narcotics, as applicable;
  - (iv) the Central Government approval to import or export narcotics is required every time before they are imported or exported. Previously, the Narcotics Law only stated that approvals to import or export will be issued by the Minister of Health. The export approval and import approval will be regulated further under a Government Regulation; and

- (v) pharmaceutical manufacturers, pharmaceutical wholesalers and Government pharmaceutical storage facilities may only distribute narcotics and narcotics in the form of medicines after obtaining a business license from the Central Government. Previously, narcotics distribution requires a special permit for narcotics distribution (*izin khusus penyaluran narkotika*) from the Minister of Health, while narcotics in the form of medicines can only be distributed after obtaining a marketing authorization (*izin edar*) from the Minister of Health and the medicines must be registered with the BPOM.

## N. Patents, Trademarks and Geographical Indications

1. Law No.13 of 2016 on Patents. The Job Creation Law amends 6 (six) articles, in brief among others:
  - (i) a simple patent can be given for any new invention or development of an existing product or process, having practical uses (previously this was not included), and which can be applied in industry; and
  - (ii) the Minister of Law and Human Rights should now issue a decision approving or rejecting a simple patent application within 6 (six) months (previously 12 (twelve) months) from the date of receipt of a simple patent application.
2. Law No. 20 of 2016 on Trademarks and Geographical Indications (“20/2016”). The Job Creation Law amends 3 (three) articles, in brief among others:
  - (i) now the substantive examination of a trademark should be completed within 90 (ninety) days. Previously, the substantive examination was to be completed within 150 (one hundred and fifty) days; and
  - (ii) previously, under Law 20/2016, if an issued trademark certificate is not picked up by the trademark owner or their proxy within a maximum period of 18 (eighteen) months from the date of issuance of the certificate, the registered trademark is deemed withdrawn and written off. Now, the Job Creation Law is silent on this matter.

## O. Business Competition

1. Law No. 5 of 1999 on the Prohibition against Monopolistic Practices and Business Competition (“Law 5/1999”). The Job Creation Law amends 5 (five) articles of Law 5/1999, in brief among others:
  - (i) the legal action available to business actors who do not accept the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*”KPPU”)’s decision is to file an objection in the Commercial Court (previously, the District Court);
  - (ii) the Job Creation Law eliminates the 30 day period for the court to examine objections to the KPPU’s decision;
  - (iii) the Job Creation Law removes the following additional sanctions:

- (a) the revocation of the business license;
  - (b) prohibition against business actors who have been proven to have violated Law 5/1999 holding the position of Director or Commissioner for from 2 (two) to 5 (five) years; and
  - (c) the cessation of certain activities or actions that cause other parties to suffer losses; and
- (iv) the Job Creation Law removes the limit on the administrative sanction for violating the Law of IDR 25,000,000,000.00 (twenty five billion Rupiah), and replaces it with a fine of at least IDR 1,000,000,000.00 (one billion Rupiah).

## P. Taxes

Note that in relation to tax matters, we advise clients to specifically consult their tax advisors for specific advice regarding these new provisions of the Job Creation Law and how it may impact their businesses.

1. Law No. 7 of 1983 on Income Tax (as amended). The Job Creation Law amends 3 (three) articles and inserts several new paragraphs, in brief among others:
  - (i) Indonesian citizens staying abroad for more than 183 (one hundred eighty-three) days within any 12 months period who meet the requirements regarding the following will be considered non-resident taxpayers:
    - (a) their domicile;
    - (b) their main activity center;
    - (c) where they habitually practice;
    - (d) their taxpayer status; and/or
    - (e) other requirements,to be regulated further under a Minister of Finance Regulation.
  - (ii) foreign citizens who have become resident taxpayers are exempt and only have to pay income tax on their income made in Indonesia, provided that they have a certain expertise and it applies for 4 (four) fiscal years after they become a resident taxpayer. The criteria for a certain expertise as well as the procedures for imposing income tax on these foreign citizens will be regulated further under a Minister of Finance Regulation. However, it does not apply to foreign citizens who to which the Double Taxation Avoidance Agreement between the Indonesian government and the government of the contracting partner country applies regarding their income from outside Indonesia; and
  - (iii) the 20% (twenty percent) that must be withheld from the gross income of interest, including premium, discount and remuneration related to loan repayment guarantees that is paid, will be paid, or has become due to be paid by a government agency, resident taxpayer, event organizer, permanent establishment, or representative of a foreign company to a foreign taxpayer other than a permanent establishment in Indonesia may be reduced under a Government Regulation.

2. Law No. 8 of 1983 on Value Added Tax (“VAT”) on Goods and Services and Sales Tax on Luxury Goods (as amended). The Job Creation Law amends 4 (four) articles, in brief among others:
  - (i) the removal of the delivery of taxable goods by way of consignment from the types of delivery of taxable goods, and the exclusion of coal mining products from the types of goods on which VAT must be paid; and
  - (ii) entrepreneurs may claim input tax credit before they are registered as taxable entrepreneurs using the input tax crediting guideline of 80% (eighty percent) of the output tax that should be collected.
  
3. Law No. 6 of 1983 on General Tax Provisions and Procedures (as amended). The Job Creation Law amends, adds and removes several articles, in brief among others that the 2% monthly interest rate of underpaid tax is changed to the rate determined by the Minister of Finance calculated based on the benchmark interest rate plus 5% divided by 12 (twelve), and will be imposed for no longer than 24 (twenty-four) months with any part of a month being calculated as one full month.
  
4. Law No. 28 of 2009 on Regional Tax and Regional Levies. The Job Creation Law amends, adds and removes several articles, in brief among others:
  - (i) the Central Government can now make adjustments to the policy on tax and levies determined by a Regional Government to bring them in line with the national priority program in implementing the national fiscal policy and to support the ease of investment policy as well as to encourage the growth of industries and businesses. The national fiscal policy related to tax and levies may:
    - (a) change tax rates and levies by setting a nationally applied tax rate and levy; and
    - (b) control and evaluate regional regulations that impede the investment ecosystem and ease of doing business.

The procedure for determining the tax rates and levies that apply nationwide will be provided in a Government Regulation;
  - (ii) governors/regents/mayors may grant fiscal incentives to business actors in their areas, which may be in the form of a reduction, relief, or an exemption from or the eliminatin of the principal tax and/or sanctions to promote the ease of investment. The fiscal incentives must be reported to the Regional House of Representatives with the considerations of the head of the region for granting the fiscal incentive. Fiscal incentives are granted under a Regulation of the Head of a Region.

## Q. Others

1. Law No. 2 of 1981 on Legal Metrology. The Job Creation Law amends 4 (four) articles in brief among others:
  - (i) the Central Government (previously the relevant minister in the field of legal metrology) will now regulate the testing and inspection of measuring, weighing and balancing equipment and accessories, the implementation as well as the timing of examinations (*tera*) and re-examinations (*tera ulang*), and the places

and regions in which examinations and re-examinations of certain types of measuring, weighing, balancing equipment and accessories are conducted; and

- (ii) business actors who produce and/or repair measuring, weighing and balancing equipment and accessories, as well as business actors who import measuring, weighing and balancing equipment and accessories into the Republic of Indonesia must now hold the relevant business license (*perizinan berusaha*) from the Central Government (previously approval from the minister). The business license required will be regulated further under a Government Regulation.
2. Law No. 7 of 2016 on The Protection and Empowerment of Fishermen, Fishing Resources and Salt Farmers. The Job Creation Law amends 4 (four) articles and adds one new article, in brief among others:
- (i) the 10-gross tonne (GT) maximum vessel displacement has been removed from the definition of ‘Small Fishermen (*Nelayan Kecil*); and
  - (ii) the prohibition against import fish and salt commodities that do not comply with the place of entry, type, time of entry, or mandatory quality standard still remains in place, while the place of entry, type, time of entry, and mandatory quality standards will be regulated further under a Government Regulation. The following are the sanctions for any violation:
    - (a) a temporary suspension of activities;
    - (b) the freezing of the business license;
    - (c) an administrative fine;
    - (d) government enforcement; and/or
    - (e) the revocation of the business license (*perizinan berusaha*).

For a violation, the perpetrator may also have imposed a criminal sanction of imprisonment for up to 4 (four) years and/or a criminal fine of up to IDR6 billion, if it has harmed any victims/health, safety and/or the environment.

3. Law No. 29 of 2000 on The Protection of Plant Varieties (*Perlindungan Varietas Tanaman* or known as “PVT”). The Job Creation Law amends 5 (five) articles of this Law, in brief among others:
- (i) certain fees that were previously determined by the Minister of Agriculture must now refer to the regulations on non-tax state revenue. These fees include PVT application fees, substantive inspection fees, fees related to transferring PVT rights (which must be recorded by the PVT office in the Public Register), fees related to licensing agreements (which must also be recorded by the PVT office in the Public Register); and
  - (ii) the requirements and procedures for an application for PVT rights, transferring PVT rights, and licensing agreements will be regulated further under a Government Regulation.
4. Law No. 6 of 2014 on Villages. The Job Creation Law amends 2 (two) articles of this Law, according to which, now a village owned enterprise is defined as a legal entity (not just a “business entity” like in the previous regulation) established by a village and/or with villages to manage businesses, use assets, develop investment and

productivity, provide services, and/or provide other types of business services for the greater village's community welfare.

Village owned enterprises may establish business units in the form of a legal entity according to their needs and objectives. Village owned enterprises will be regulated further under a Government Regulation.

5. Law No. 27 of 2007 on The Management of Coastal Areas and Islands (as amended). The Job Creation Law amends 18 (eighteen) articles, adds 8 (eight) articles and removes 8 (eight) articles. In brief among others, previously, in order to use small islands and the surrounding waters for foreign investment, a permit from the Minister of Maritime and Fisheries was required and foreign investment must prioritize the national interest. In addition, to obtain a permit, several requirements had to be complied with, including among others, being a limited liability company, guaranteeing public access, cooperation with Indonesian participants, and paying attention to the ecological, social, and economic aspects of the land area.

Now, in order to use small islands and the surrounding waters for foreign investment, the above requirements are removed. However, a business license must be obtained from the Central Government and the laws and regulations on investment must be complied with.

6. Law No.6 of 2011 on Immigration ("Law 6/2011"). The Job Creation Law amends 8 (eight) articles, in brief among others:
  - (i) Visit Visas can now be issued to foreign citizens who will travel to Indonesia for pre-investment matters;
  - (ii) Second Home Limited Stay Visas can now be issued to foreigners. Previously, the granting of Second Home Limited Stay Visas is not regulated under Law 6/2011. Under the elucidation of Article 39 (1) (a) of the Job Creation Law, Second Home Limited Stay Visa is defined a visa that is issued for foreigners and their families to live permanently in Indonesia for 5 (five) years or 10 (ten) years after fulfilling certain requirements;
  - (iii) previously, Visit Visas and Limited Stay Visas were issued and signed by Immigration Officials in the Representatives (embassies/consulates) of the Republic of Indonesia overseas. Now, under the Job Creation Law, they can be issued and signed by Immigration Officials; and
  - (iv) the Job Creation Law adds a provision under which if a foreigner obtains a Limited Stay Permit at an immigration checkpoint, there is no need to submit an application to the head of the Immigration Office for a Limited Stay Permit.
7. Revocation of Several Outdated Regulations. The Job Creation Law now finally revokes the outdated (i) *Staatsblad* of 1926 No. 226 in conjunction with *Staatsblad* of 1940 No. 450 on *Hinderordonnantie*, known as the Nuisance Permit, and (ii) Law No. 3 of 1982 on Mandatory Company Registration.
8. Supervision and Guidance. The Central Government has the obligation to supervise and provide guidance to every implementation of business licensing carried out by business licensing holders. The implementation of supervision and guidance is carried

out by the State Civil Apparatus in accordance with their authority. The State Civil Apparatus can also cooperate with a certified profession according to their field of supervision and guidance.

If a violation against the provisions contained in a business licensing is found, the State Civil Apparatus can impose administrative sanctions on the business licensing holder in form of, among other things:

- (i) a warning;
- (ii) temporary suspension of business activities;
- (iii) imposition of administrative fines;
- (iv) imposition of police force;
- (v) revocation of a license / certification / approval; and/or
- (vi) revocation of business licensing.

Other than being subject to administrative sanctions as referred to above, any business licensing holder which causes environmental damage while carrying out their business/activities, must also recover the environmental damage.

Further provisions on (i) other administrative sanctions and procedures for imposing administrative sanctions and (ii) procedures for implementing supervision by the Central Government will be regulated in a Government Regulation.

### **Table Comparison of The Changes to Several Laws Under the Job Creation Law**

For more comprehensive review, we have prepared the table of comparison of the changes to several laws in various sectors (eg the Mining Law, the Oil& Gas Law, the Electric Power Law, the Construction Law, and others) under the Job Creation Law, please find it here: [\[Comparison Table\]](#)

## ABOUT M&T ADVISORY

*M&T Advisory is a digital publication prepared by the Indonesian law firm, Makarim & Taira S.*

*It informs 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 in general, please contact us via [this email](#).*

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