

KPPU Regulation No. 4 of 2019

The Indonesian competition authority, the Indonesian Commission for the Supervision of Business Competition (the “KPPU”) issued Regulation No.4 of 2019 on the Procedures for the Supervision and Handling of Partnership Cases (“Reg 4/2019”). This regulation replaces No.1 of 2015 on the Procedure for the Supervision of Partnerships, as amended, and Regulation No.1 of 2017 on the Procedures for Handling Partnership Cases, as amended (“Old Regulation”).

Reg 4/2019 is aimed at staying up to date with business needs. It mainly discusses the **supervision** of partnerships, **handling cases** and the **enforcement** of the KPPU’s decisions.

Supervision

The KPPU’s scope includes the supervision of partnership arrangements between: (i) micro, small and medium scale enterprises **and** large scale enterprises, and between (ii) micro and small scale enterprises **and** medium scale enterprises.

Types of partnership include the following:

- a. Plasma-core;
- b. Subcontract;
- c. Franchise;
- d. General trading;
- e. Distribution and agency;
- f. Profit sharing business;
- g. Operational cooperation;
- h. Joint venture;
- i. Outsourcing; and
- j. Other types of partnership.

In principle, under Reg 4/2019: (i) large enterprises may not own (*memiliki*) or control (*menguasai*) the micro, small or medium scale enterprises which become their partners; and (ii) medium scale enterprises may not own or control the micro or small scale enterprises which become their partners. The Old Regulation provided further details of the definition of “own or control” above. However, these provisions are no longer included in Reg 4/2019.

Handling Cases

Reg 4/2019 provides details of the procedure for the KPPU to handle cases which may arise at the KPPU’s own initiative, or based on a report which can be filed by anyone who becomes aware of a violation of the partnership rules.

Makarim & Taira S.

Summitmas I, 16th & 17th 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

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

In principle, if the investigation is based on a report, within 14 working days of receipt of the report, the KPPU will conduct a “**Clarification**” to check the completeness of the report. If the KPPU finds that the report is complete, the team assigned to the case will conduct a “**Preliminary Investigation**” (ie Preliminary Investigation Phase I and Phase II).

A Preliminary Investigation is conducted to gather evidence (and includes summoning the reported party, witnesses and experts) of the alleged violation, and should be concluded within 60 working days. However, this is extendable.

Reg 4/2019 requires the KPPU to serve warning letters (up to three warning letters) on the reported party if in the Preliminary Investigation, it finds indications of a violation. The warning letters should state the issue which the reported party must remedy and the time limit for it to do so. This shows that Reg 4/2019 provides the reported party an opportunity to remedy the alleged violation.

If the reported party fails to comply with the warnings, the case will proceed to the “**Further Investigation**” phase, in which the Commission Panel (*Majelis Komisi*) formed by the KPPU will hold hearings on the case. The hearings in the Further Investigation Phase will continue for up to 30 working days, extendable for a further 30 working days. The **ruling** of the Commission Panel (“**KPPU’s Ruling**”) will be issued within 30 working days of the conclusion of the Further Investigation. A KPPU Ruling is considered final.

Enforcement

If the reported party refuse to comply with the KPPU Ruling, the KPPU will forward it to the district court for its enforcement. Under Reg 4/2019, the KPPU may take other measures to guarantee the effectiveness of its ruling, including:

- i. persuasive measures;
- ii. written warnings;
- iii. announcements in the newspapers or electronic media; and
- iv. placing the reported party on the KPPU’s blacklist.

Reg 4/2019 came into force on 17 October 2019.

* * * * *

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.

Contacts:

Harris Syahni Toengkagie - harris.toengkagie@makarim.com
Lia Alizia - lia.alizia@makarim.com