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INTELLECTUAL PROPERTY & ANTITRUST

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Intellectual Property & Antitrust

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INTELLECTUAL PROPERTY

Intellectual property law

Under what statutes, regulations or case law are intellectual property rights granted? Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

As an introduction, Indonesian laws and regulations recognise and protect two big groups of intellectual property (IP), namely (i) industrial IP and (ii) communal IP. Industrial and communal IP are then further distinguished into the following types of IP, which are governed under several laws and regulations, as further discussed below in turn.

Industrial IP

Trademark

Trademark right gives protection to signs that are displayed graphically in the form of device marks, logos, names, words, letters, numbers, or colour arrangements, in two or three dimensions, sound, hologram, or a combination of two or more of those elements, to distinguish the source of goods or services in the course of the trade of goods and services. In Indonesia, trademark protection arises from registration, as opposed to use. Therefore, the trademark owner must file an application for registration of trademark protection to the Directorate General of Intellectual Property (***DGIP***), a body at the Ministry of Law and Human Rights that is authorised to administer IP registration and recordation in Indonesia. Trademark protection commences once the trademark is registered, and the protection is applied retroactively from the filing date for a 10-year period. Trademark protection can be renewed perpetually and each protection period is for 10 years. Law No. 20 of 2016 regarding Trademarks and Geographical Indications (Trademarks and Geographical Indications Law), as amended by Law No. 6 of 2023 regarding the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 regarding Job Creation (***Job Creation Regulation***) to become Law (***Job Creation Law***), and annotated by Constitutional Court Decision No. 144/PUU-XXI/2023 dated 30 July 2024, governs trademark protection in Indonesia.

Patent

Patents are regulated under Law No. 13 of 2016 (***Patent Law***), as amended by the Job Creation Law. Further amendments to the Patent Law were passed on 30 September 2024 (***Amended Patent Law***). However, the official text of the Amended Patent Law has not yet been made publicly available. The Patent Law recognises protection over general patents and simple patents. General patent rights are granted to inventions that are novel, have inventive steps, and can be applied in industry. In comparison, simple patent rights are granted to inventions that are novel, improve existing products or processes, have practical use, and are industrially applicable. Protection for a general patent is valid for 20 years from the filing date, and a simple patent is valid for 10 years. Neither can be renewed.

Copyright and neighbouring rights

Copyrights are regulated under Law No. 28 of 2014, as annotated by Constitutional Court Decision No. 84/PUU-XX/2023 dated 29 February 2024 (***Copyright Law***). Works protected by copyright include scientific, artistic and literary works resulting from inspiration, ability, thoughts, imagination, dexterity, skill or expertise expressed in a tangible form. Copyright is an exclusive right vested automatically based on the declarative principle once a work is embodied in a tangible form. Copyright protection that is held or owned by a natural person (the copyright holder is a natural person) is valid for 70 years post mortem auctoris, which exceeds the minimum 50 years of post mortem auctoris copyright protection under the Berne Convention and the WTO Agreement on the TRIPs Agreement. The Copyright Law also includes provisions on neighbouring rights (also known as related rights), such as the exclusive rights of performers, phonogram producers and broadcasting organisations.

Industrial design

Industrial designs give protection to a novel two- or three-dimensional shape, configuration, the composition of lines or colours or a combination thereof that gives an aesthetic impression, can be realised in a two- or three-dimensional pattern, and can be used to produce products, goods, industrial commodities, or handicrafts. Law No. 31 of 2000 (-***Industrial Design Law***) governs such rights. The protection is given for 10 years from the filing date and cannot be renewed.

Trade secrets

Trade secrets are regulated under Law No. 30 of 2000 (***Trade Secret Law***). Trade secret protection is given to information in the technology or business fields that is not known to the public and has economic value due to its usefulness in business activities, and the confidentiality of which is maintained by its owner. The protection is given perpetually provided that the economic value persists and confidentiality is maintained.

Layout design of integrated circuits

Layout designs of integrated circuits are regulated under Law No. 32 of 2000 (***Layout Designs of Integrated Circuit Law***). An integrated circuit is a finished or semi-finished product containing various elements, at least one of which is active, which are partly or entirely interconnected and integrated into a semiconductor to produce electronic functions. A layout design is a three-dimensional design formed by various elements, including at least one active element, of which parts of or all of the interconnections in a circuit and the three-dimensional layout are intended for the preparation of making an integrated circuit. Protection for layout designs of integrated circuits is valid for 10 years from the filing date.

Plant variety protection

Plant variety protection is regulated under Law No. 29 of 2000 (***Plant Variety Protection Law***), as amended by the Job Creation Law. Plant variety protection is a specific protection granted by the state to plant breeders for a new, unique, uniform, stable and named plant species that they produced through plant breeding activities. The protection is valid for 20 years from the granting of the plant variety protection for seasonal plants and 25 years for annual plants.

The aforementioned laws are collectively referred to as the IP Laws.

Aside from the IP Laws, the legal basis against unfair competition in Indonesia is provided in the general provisions on unlawful acts stipulated in articles 1365 and 1366 of the Indonesian Civil Code, article 382-bis of the prevailing Indonesian Criminal Code, and article 500 of the New Indonesian Criminal Court, which prohibit unfair business conduct.

For completeness, please note that the Indonesian government promulgated a new Indonesian Criminal Code under Law No. 1 of 2023 regarding the Indonesian Criminal Code (the ***New Indonesian Criminal Code***) on 2 January 2023. Article 624 of the New Indonesian Criminal Code stipulates that the New Indonesian Criminal Court will come into force three years after its promulgation, which means that it is set to come into force on 2 January 2026.

Notwithstanding the foregoing, in practice, we are unaware of any standalone unfair competition case that has been heard in the courts. Parties that wish to bring unfair competition cases usually have a nexus of conventional IP rights and, most often, trademark rights, which are consequently rendered as a trademark (or other IP) case rather than an unfair competition case.

Concerning the limitation on the licensing of IP rights, as a general rule, article 6 of Government Regulation No. 36 of 2018 regarding the Recordation of IP Licence Agreements (***GR 36/2018***) stipulates that an IP licence agreement should not contain any provision that may:

- harm Indonesia's economy or national interest;
- contain any restriction that impedes Indonesian people from transferring, controlling or developing technology;
- cause unfair business competition; or
- contradict the provisions of laws and regulations, religious values, decencies and public order.

Additionally, the Copyright Law prohibits the outright sale or indefinite transfer of books, literary works, songs, and music, with or without lyrics. If an outright sale or indefinite transfer of the foregoing works occurs, the copyright of the work in question will automatically revert to the author 25 years after the transfer/assignment agreement is entered into or the outright sale takes place. Similarly, the rights of performers to their songs and/or music that are transferred or sold will revert to the performers in question 25 years after the transfer or sale.

Communal IP

Communal IP is generally governed under Government Regulation No. 56 of 2022 regarding Communal Intellectual Property (***GR 56/2022***). GR 56/2022 further classifies communal IP into the following types.

Traditional cultural expressions

This type of communal IP protects all forms of expression of creative works, whether in the form of objects or intangibles, or a combination of both, which shows the existence of a traditional culture that is held communally and across generations.

Traditional knowledge

This type of communal IP protects ideas or concepts in society that contain local values as a result of real experience in interacting with the environment, are developed continuously, and are passed on to the next generation.

Genetic resources

Genetic resources are genetic material originating from plants, animals or microorganisms containing units that function as carriers of hereditary traits that have real or potential value.

Appellation of origin

Appellation of origin is a characteristic of the origin of goods and (or) services that is not directly related to natural factors and is protected as a sign that shows the true origin of goods and (or) services and is used in trade.

Potential geographical indication

The potential geographical indication refers to goods and (or) products that, due to geographical environmental factors, including natural factors, human factors, or a combination of both factors, give a certain reputation to the goods and (or) products produced, which have the potential to be protected by geographical indications and are not yet registered as a geographical indication.

Geographical indication

Aside from the foregoing, relevant to potential geographical indications, the Trademarks and Geographical Indications Law also governs geographical indications, which are defined as a sign that indicates the area of origin of goods and (or) products that, due to geographical environmental factors, including natural factors, human factors, or a combination of both, gives a certain reputation, quality and characteristics to the goods and (or) products produced.

Law stated - 16 October 2024

Responsible authorities
Which authorities are responsible for granting, administering or enforcing IP rights?

The DGIP at the Ministry of Law and Human Rights (MOLHR) is responsible for granting and administering IP, namely accepting, examining, granting or rejecting trademarks, patents, industrial designs, geographical indications, and layout design of integrated circuit applications. For copyrights and trade secrets for which rights do not stem from registration, the DGIP administers the recordation of the same, which can be beneficial for prima facie evidence of ownership and a prerequisite for recording the licence agreement. The DGIP also administers the recordation of IP licenses, assignments, and the change of proprietor's address and name.

With respect to plant variety protection, the Plant Variety Protection Office at the Ministry of Agriculture has the authority to grant and administer such rights.

Regarding enforcement of IP, the commercial courts hear civil claims, including cancellation claims, deletion (non-use cancellation) claims, claims for damages and claims to cease the infringement for all IP rights besides trade secrets and plant variety protections. District courts hear civil proceedings for trade secrets and plant variety protections.

District courts also hear criminal proceedings related to IP infringement. Investigating officers from the Indonesian police and civil servant investigators from the MOLHR have the authority to investigate criminal offences involving IP rights.

Law stated - 16 October 2024

Proceedings to enforce IP rights

What types of legal or administrative proceedings are available for enforcing IP rights? To the extent your jurisdiction has both legal and administrative enforcement options for IP rights, briefly describe their interrelationship, if any?

Indonesia does not provide different enforcement options based on the amount in controversy.

Commercial courts, which are specific chambers of district courts, have the authority to deal with civil proceedings for IP matters, including IP infringement matters, except for trade secrets and plant variety protections, with which the district courts deal. Currently, there are five commercial courts in Indonesia, namely those located in the District Courts of Central Jakarta, Semarang (Central Java province), Surabaya (East Java province), Medan (North Sumatra province), and Makassar (South Sulawesi province).

Aside from plant variety protection-related disputes, IP disputes can also be handled through alternative dispute resolution methods, such as arbitration, negotiation, mediation and conciliation.

At the administrative stage, rights holders and interested third parties may file oppositions with the DGIP against applications for trademarks, patents and industrial designs on the grounds that the trademarks, patents or industrial designs being applied for should not be registered.

An objection (appeal) to the granting of a patent may also be filed with the Patent Appeal Commission within nine months of the date the patent was granted.

Law stated - 16 October 2024

Remedies
What remedies are available to a party whose IP rights have been infringed? Do these remedies vary depending on whether one utilises judicial or administrative review or enforcement?

Generally, remedies for parties that suffer from IP rights infringement are claims for damages and cessation of the unlawful act by the infringer. These claims are to be filed with the commercial courts, except for claims related to the infringement of trade secrets and plant variety protection, which are to be filed with the district courts.

Aside from the above-mentioned avenues, criminal sanctions are also provided for infringements of IP rights. All criminal offences involving IP rights are complaint-based offences. Therefore, the party that suffers such infringement must file a claim to the police or civil servant investigators from the MOLHR before the case can proceed.

Trademarks

Article 100 of the Trademarks and Geographical Indications Law sets out criminal sanctions for the infringement of registered trademarks, namely:

- a maximum of five years imprisonment or a maximum fine of 2 billion rupiahs, or both, for unlawful use of a mark that is similar in its entirety to another party's registered trademark for similar goods or services that are produced or traded;
- a maximum of four years imprisonment or a maximum fine of 2 billion rupiahs, or both, for unlawful use of a mark that is similar in principle to another party's registered trademark for similar goods or services that are produced or traded; and
- a maximum of 10 years imprisonment or a maximum fine of 5 billion rupiahs, or both, for unlawful use of a mark for types of goods that can cause health and environmental problems or death.

Patents

Article 161 of the Patent Law sets out the criminal sanctions for general patent infringement. These sanctions are a maximum of four years imprisonment, a maximum fine of 1 billion rupiahs, or both. Article 162 sets forth criminal sanctions for simple patent infringement, namely a maximum of two years imprisonment, a maximum fine of 500 million rupiahs, or both.

If such patent infringement causes health or environmental problems, it is punishable by a maximum of seven years imprisonment, a maximum fine of 2 billion rupiahs, or both (article 163(1) of the Patent Law). If the violation results in a person's death, it is punishable by a maximum of 10 years imprisonment, a maximum fine of 3.5 billion rupiahs, or both (article 163(2) of the Patent Law).

Copyright and neighbouring rights

Articles 112 to 120 of the Copyright Law regulate criminal sanctions for unlawful acts relating to copyright and neighbouring rights, with a minimum imprisonment of one year, a minimum fine of 100 million rupiahs, a maximum imprisonment of 10 years and a maximum fine of 4 billion rupiahs.

Industrial designs

Article 54 of the Industrial Design Law stipulates that infringement of the rights of an industrial design holder is punishable by a maximum of four years imprisonment or a maximum fine of 300 million rupiahs, or both.

Trade secrets

Article 17 of the Trade Secret Law stipulates that infringement of the rights of a trade secret holder is punishable by a maximum of two years imprisonment or a maximum fine of 300 million rupiahs, or both.

Layout designs of integrated circuits

Article 42(1) of the Layout Designs of Integrated Circuit Law regulates that infringement against the right holder's layout design of integrated circuits is punishable by a maximum of three years imprisonment or a maximum fine of 300 million rupiahs, or both.

Plant variety protections

Article 71 of the Plant Variety Protection Law stipulates that infringement of the rights of a plant variety protection holder is punishable by a maximum of seven years imprisonment or a maximum fine of 2.5 billion rupiahs, or both.

Geographical indications

Criminal sanctions for infringement of geographical indications are outlined in article 101 of the Trademarks and Geographical Indications Law. These sanctions are a maximum of four years imprisonment or a maximum fine of 2 billion rupiahs, or both, for the unlawful use of a sign that is similar in its entirety or in principle with the registered geographical indication for similar goods or products.

No remedy is provided in the administrative stage.

Law stated - 16 October 2024

Nexus between competition and IP rights

Do any statutes, regulations or case law in your jurisdiction address the interplay between competition law and IP law?

To date, Law No. 5 of 1999 regarding the Prohibition of Monopolistic Practices and Unfair Business Competition (the Anti-Monopoly Law) exempts agreements related to IP rights, namely licences and franchises, from the scope of its regulation. This provision is regulated in article 50 of the Anti-Monopoly Law.

For completeness, the Business Competition Supervisory Commission (KPPU) issued Regulation No. 2 of 2009 regarding Guidelines on Exceptions to the Implementation of the Anti-Monopoly Law in Relation to Agreements Related to IP (KPPU Reg 2/2009). KPPU Reg 2/2009 stipulates that licence agreements related to IP are exempted from the Anti-Monopoly Law if they do not contravene the principles and purposes as set out in articles 2 and 3 of the Anti-Monopoly Law, as follows:

- the activities of business actors in Indonesia must be based on economic democracy, with due observance of the equilibrium between the interests of business actors and the interests of the public;
- the purposes of the Anti-Monopoly Law are to:
    - safeguard the interests of the public and improve national economic efficiency for the sake of people's welfare;
    - create a conducive business climate through the regulation of fair business competition to ensure the certainty of equal business opportunities for large, medium-sized and small business actors in Indonesia;
    - prevent monopolistic practices and unfair business competition by business actors; and
    - create effectiveness and efficiency in business activities.

KPPU Reg 2/2009 further stipulates that the exempted IP-related licences are those that have met the requirements set out in the IP laws and have been recorded at the DGIP.

Notwithstanding the foregoing, please note that the Indonesian House of Representatives is currently deliberating the draft of a new anti-monopoly law (Draft Anti-Monopoly Law), which would replace the current Anti-Monopoly Law. The Draft Anti-Monopoly Law currently in circulation does not contain a provision exempting intellectual property agreements, including licenses, patents, trademarks, copyrights, industrial designs, layout designs of integrated circuits and trade secrets. Thus, if the Draft Anti-Monopoly Law is passed in its current form, IP-related agreements will no longer be exempted from the scope of the Anti-Monopoly Law.

Law stated - 16 October 2024

Patent cooperation treaties and other agreements

Does your jurisdiction participate in any patent cooperation treaties or other similar agreements?

Yes. Indonesia has been a contracting party to the World Intellectual Property Organisation (WIPO) Patent Cooperation Treaty since 5 September 1997. Indonesia is also a member of the Paris Convention, which allows applicants to claim priority for patent applications from other Paris Convention member states. Moreover, Indonesia has entered into a bilateral Patent Prosecution Highway ***(PPH)*** Agreement with the Japan Patent Office ***(JPO)***, which enables applicants to request an accelerated examination process for patent applications filed to the DGIP by using the examination of the corresponding patent examined by the JPO.

In addition to its bilateral PPH agreement with the JPO, Indonesia recently entered into a bilateral PPH agreement with the Korean Intellectual Property Office (***KIPO)***the . The PPH pilot programme between DGIP and KIPO is effective for three years, commencing 8 December 2023 and ending 8 November 2026, unless both parties agree to extend the programme.

Law stated - 16 October 2024

Remedies for deceptive practices

With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices?

Article 9(a) and (d) of Law No. 8 of 1999 regarding Consumer Protection (Consumer Protection Law) sets out provisions that prohibit business actors from offering, promoting, or advertising goods or services incorrectly or as if such goods or services have met quality standards, or have a particular style, mode, characteristic, or as if a corporation produced such goods or services with a sponsor, approval or affiliation. In theory, it should be possible to apply these provisions to deceptive practices concerning trademarks. However, the general (preamble) section of the Consumer Protection Law's elucidation stipulates that IP rights violations by business actors do not fall within the scope of the Consumer Protection Law. Consequently, the Consumer Protection Law cannot be used as grounds for seeking remedies against deceptive practices concerning trademarks.

Further, there is no specific provision in the Anti-Monopoly Law regulating remedies for deceptive practices.

Law stated - 16 October 2024

Technological protection measures and digital rights management

With respect to copyright protection, is WIPO protection of technological protection measures (TPMs) and digital rights management (DRM) enforced in your jurisdiction? Do statutes, regulation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Has TPM or DRM protection been challenged under the competition laws?

Article 6 of the Copyright Law contains a provision on copyright management information (CMI), which states that authors may use CMI and copyright electronic information to protect their moral rights. CMI includes information on methods or systems that can identify the originality of the author's works and the information code and access code. Article 7(3) of the Copyright Law stipulates that CMI and copyright electronic information owned by the authors are prohibited from being removed, changed or damaged.

Article 52 of the Copyright Law provides a provision prohibiting anyone from damaging, destroying, eliminating or disabling the function of TPMs used as safeguards for copyrighted works or related rights products, except for state defence and security purposes and other grounds according to the provisions of laws and regulations, or as otherwise agreed.

There is no provision restricting the ability of manufacturers to incorporate TPM or DRM protections to limit the platforms on which content can be played.

We are unaware of any challenge under competition laws against TPM or DRM protection.

Law stated - 16 October 2024

Industry standards
What consideration has been given in statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards?

Article 82 of the Patent Law allows for an interested party to file an application to the MOLHR to obtain a compulsory licence. The MOLHR may issue a decree approving the issuance of a compulsory licence on the following grounds:

- the patent holder has not carried out its obligation to make products or use processes in Indonesia within 36 months of when the patent was granted, as obliged by article 20 of the Patent Law;
- the patent has been carried out by the patent holder or licensee in a manner that is detrimental to the public interest; or
- the patent resulted from the development of a previously granted patent and cannot be implemented without using another party's patent that is still protected.

The Amended Patent Law introduces new and enhanced provisions with respect to the compulsory license, including:

- Compulsory licenses are granted based on the principle of utility and are non-exclusive.
- The granting of compulsory licenses is subject to the following provisions:
  - the scope of the compulsory license is limited according to the purpose of granting the compulsory license; and
  - the duration of the compulsory license is limited according to the purpose of granting the compulsory license.
- The granting of compulsory licenses is prioritised to meet domestic market needs.

[The official text of the Amended Patent Law has not been made publicly available as of the date of this writing. Thus, the discussion of these new provisions may be subject to change.]

Law stated - 16 October 2024

COMPETITION

Competition legislation
What statutes set out competition law?

Competition law is governed under the Anti-Monopoly Law and its implementing regulation, Government Regulation No. 57 of 2010 regarding the Merger or Consolidation of Business Entities and the Acquisition of Company Shares that Results in Monopolistic Practices and Unfair Business Competition (GR 57/2010).

Indonesia's Business Competition Supervisory Commission (KPPU) has also issued several implementing regulations containing guidance on several provisions of the Anti-Monopoly Law.

Law stated - 16 October 2024

IP rights in competition legislation
Do the competition laws make specific mention of any IP rights?

The Anti-Monopoly Law makes specific mention of IP rights in article 50(b), namely to expressly exempt agreements related to IP rights, including licenses, patents, trademarks, copyrights, industrial designs, integrated electronic circuits, trade secrets and agreements related to a franchise from its scope.

However, the Draft Anti-Monopoly Law in its current form does not contain such exemption for IP rights and franchises. Such exclusion of the exemption for any agreements related to IP rights and franchises from the Draft Anti-Monopoly Law is stipulated in the general preamble of the elucidation of the Draft Anti-Monopoly Law. Aside from the mention in the general preamble of the elucidation, we have not sighted any other mention of IP rights and franchise in the Draft Anti-Monopoly Law.

Law stated - 16 October 2024

Review and investigation of competitive effects from exercise of IP rights
Which authorities may review or investigate the competitive effect of conduct related to exercise of IP rights?

First, we note that article 6(c) of GR 36/2018 prohibits IP licence agreements from containing any provision that could cause unfair business competition. Article 11(2) of GR 36/2018 stipulates that the examination of an application for the recordation of an IP licence is only conducted to check the completeness and conformity of the required documents as specified in article 10(4) of GR 36/2018, namely:

- a copy of the licence agreement;
- a copy of the official citation of the certificate of registration for the patent, trademark, industrial design or layout design of the integrated circuit, or evidence of ownership of copyright and related rights, or evidence of the trade secret that is licensed and its validity;
- power of attorney if the application is filed through an IP consultant (a prerequisite for foreign parties); and
- evidence of payment.

In theory, as part of the examination process for recording the licence agreement at the Directorate General of Intellectual Property (DGIP), the licence agreement should be examined to determine that it does not contain any provision that may cause unfair business competition. However, in practice, we are unaware whether the DGIP conducts any such examination.

Should the licence agreement be deemed to contain provisions that could cause unfair business competition or contravene the principles and purposes set out in articles 2 and 3 of the Anti-Monopoly Law, the KPPU has the authority to investigate the competitive effect of conduct related to the licence agreement.

Moreover, the Amended Patent Law stipulates that the KPPU can revoke granted compulsory licenses if it deems that the patent implementation under the compulsory license is proven to cause monopolistic practices and unfair business competition.

[The official text of the Amended Patent Law has not been made publicly available as of the date of this writing. Thus, the discussion of this provision may be subject to change].

Law stated - 16 October 2024

Competition-related remedies for private parties

Can a private party recover for competition-related damages caused by the exercise, licensing or transfer of IP rights?

Since agreements related to IP rights, including IP licence agreements and franchise agreements, are exempted from the Anti-Monopoly Law, a private party cannot recover competition-related damages resulting from the exercise, licensing or transfer of IP rights.

Law stated - 16 October 2024

Competition guidelines

Have the competition authorities, or any other authority, issued guidelines or other statements regarding the overlap of competition law and IP?

KPPU Reg 2/2009 sets out guidelines for implementing the exceptions of the Anti-Monopoly Law on IP-related agreements. The guidelines stipulate that IP-related licence agreements can be exempted from the Anti-Monopoly Law if such agreements do not contravene the principles and purposes set out in articles 2 and 3 of the Anti-Monopoly Law, as follows:

- the activities of business actors in Indonesia must be based on economic democracy, with due observance of the equilibrium between the interests of business actors and the interests of the public;
- the purposes of the Anti-Monopoly Law are to:
    - safeguard the interests of the public and improve national economic efficiency for the sake of people's welfare;
    -

create a conducive business climate through the regulation of fair business competition to ensure the certainty of equal business opportunities for large, medium-sized and small business actors in Indonesia;

- prevent monopolistic practices and unfair business competition that business actors may commit; and
- create effectiveness and efficiency in business activities.

KPPU Reg 2/2009 further stipulates that to be exempted from the scope of the Anti-Monopoly Law, IP-related licenses must have met the requirements set out in the IP Laws and have been recorded at the DGIP.

GR 36/2018 sets out the minimum information required for IP licenses, namely:

- date, month, year and place where the licence agreement was signed;
- name and address of the licensor and the licensee;
- object of the licence agreement;
- provisions on the exclusivity or non-exclusivity of the licence, including sublicensing;
- term (duration) of the licence agreement;
- territorial scope of the licence agreement; and
- party that will attend to the patent annuity fees (for patent licence).

Licence agreements executed in other languages must be translated into the Indonesian language.

Law stated - 16 October 2024

Exemptions from competition law

Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

Article 50(b) of the prevailing Anti-Monopoly Law explicitly exempts from its scope any agreements related to IP rights, including licences, patents, trademarks, copyright, industrial designs, integrated electronic circuits, trade secrets and agreements related to franchises, provided that such agreements do not contravene the principles and purposes of the Anti-Monopoly Law, have met the requirements set out in the IP Laws, and have been recorded at the DGIP. Additionally, KPPU Reg 2/2009 sets out guidelines under which IP licenses can be exempted from the provisions of the Anti-Monopoly Law.

Law stated - 16 October 2024

Copyright exhaustion

Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws?

Article 11(1) of the Copyright Law stipulates that the economic right to distribute works or copies of works does not apply to works or copies of works that have been sold or assigned. However, the Copyright Law is silent on the parallel importing of copyrighted works. Without a specific provision on parallel importing, there is no mechanism to prevent grey marketing in the IP sphere.

Law stated - 16 October 2024

Import control
To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

With the absence of a specific provision on parallel importing in IP laws and regulations, there is no mechanism to prevent grey marketing in the IP sphere.

Further, the Patent Law exempts the parallel importing of pharmaceutical products from its criminal provisions and civil claims.

Law stated - 16 October 2024

Jurisdictional interaction between competition laws and IP rights
Are there authorities with exclusive jurisdiction over IP-related or competition-related matters? For example, are there circumstances in which a competition claim might be transferred to an IP court to satisfy subject matter jurisdiction? Are there circumstances where the resolution of an IP dispute will be handled by a court of general jurisdiction?

The commercial courts have exclusive jurisdiction to handle civil proceedings related to IP (except for trade secrets and plant variety protection). Meanwhile, competition matters are handled by the KPPU.

Nonetheless, pursuant to the amendment of the Anti-Monopoly Law by the Job Creation Law, appeals of KPPU decisions are now filed and handled by the commercial courts. Prior to the amendment, appeals were filed and heard at the district courts.

Law stated - 16 October 2024

MERGER REVIEW

Powers of competition authority
Does the competition authority have the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

The Anti-Monopoly Law does not specifically distinguish mergers involving IP rights from other mergers. Therefore, the general rules on mergers apply. The Business Competition Supervisory Commission (KPPU) has the authority to review mergers.

Law stated - 16 October 2024

Analysis of the competitive impact of a merger involving IP rights

Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

According to article 1(18) of KPPU Regulation No. 3 of 2019 regarding the Assessment of Mergers or Consolidations of Business Entities or Acquisitions of Company Shares That May Result in Monopolistic and (or) Unfair Business Competition Practices (KPPU Reg 3/2019), 'assets' means all assets, tangible and intangible, that are owned by the business actor and are valuable or have an economic value. In that case, IP rights owned by a business actor should also be deemed as assets.

To the best of our knowledge, the KPPU does not analyse the competitive impact of a merger involving IP rights any differently from any other merger.

Law stated - 16 October 2024

Challenge of a merger

In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights? Does this differ from the circumstances in which the competition authority might challenge a merger in which IP rights were not a focus?

There is no explicit stipulation in the Anti-Monopoly Law on the challenge of a merger involving the transfer or concentration of IP rights. However, the Anti-Monopoly Law requires the KPPU to be notified of any merger, consolidation, or acquisition involving an asset value or sales value, or both, exceeding a certain threshold no later than 30 days from the date of such merger, consolidation or acquisition.

The thresholds above are regulated in article 5(2) of GR 57/2010, as follows:

- an asset value of 2.5 trillion rupiahs; and
- sales values of 5 trillion rupiahs.

Although the Anti-Monopoly Law and GR 57/2010 only use the term 'shares' in relation to acquisitions, in its Guidance on the Evaluation of Mergers, Consolidations, and Acquisitions, the KPPU says that acquisitions also include, among others, asset transfers and acquisitions of participating interest.

Further, the recently issued KPPU Regulation No. 3 of 2023 regarding the Assessment of Mergers, Consolidations, or Acquisitions of Shares and (or) Assets that may Result in Monopolistic Practices and (or) Unfair Business Competition (KPPU Reg 3/2023) clearly mentions assets as the object of a merger, consolidation or acquisition. Under KPPU Reg 3/2023, assets are defined as movable and immovable objects, both tangible and intangible, that have economic value.

In line with the foregoing, article 1(18) of KPPU Reg 3/2019 also defines assets as all tangible and intangible assets owned by the business actor that are valuable or have an economic value. In such case, IP rights owned by a business actor are also deemed as assets.

Article 5 of KPPU Reg 3/2019 further stipulates that asset transfers are deemed equivalent to the acquisition of company shares when such transfers:

- result in the transfer of control or control of the asset, or both; and
- increase the ability to control a certain market by the acquiring business entity.

If an asset transfer meets the above criteria, such transfer falls within the scope of KPPU supervision and must be notified to the KPPU.

Aside from the above inclusion of IP as an asset, there is no specific provision to challenge a merger involving the transfer or concentration of IP rights. Therefore, the general rules for challenging a merger apply.

The KPPU evaluation of a merger, consolidation, or acquisition that meets the above-mentioned thresholds is a two-step process, those being a preliminary and (or) thorough evaluation.

The preliminary evaluation is conducted using market concentration analysis. Market concentration is a preliminary indicator to evaluate whether a merger, consolidation, or acquisition results in a monopoly and (or) unfair business competition. Analysis of changes in market concentration before and after a merger, consolidation or acquisition that is horizontal in nature may be conducted using the Herfindahl-Hirschman Index or concentration ratio, or both. In comparison, analysis of a vertical merger, consolidation or acquisition takes into account whether there is any market power or dominance in the upstream or downstream market.

A thorough evaluation will be conducted using the following analysis.

Entry barriers

Barriers to market entry are costs that are higher than reasonable or other barriers that prevent new business actors from entering the relevant market. This entry barrier provides benefits to existing business actors because it protects the income and profits of these business actors.

The evaluation of whether there are entry barriers is based on:

- the historical data of the number of business actors in the relevant market from time to time;
- the number of business actors that may potentially enter the relevant market; and
- the ratio between the costs incurred to enter the relevant market and the estimated revenue and the estimated time to gain such revenue.

The analysis will consider:

- the ease of entry by new business actors into the relevant market;
- if new business actors are able to put competitive pressure on existing business actors; and

- the time needed to enter the relevant market.

If these factors seem satisfactory, competition in the relevant market is likely to be maintained, and the KPPU will not object to the transaction.

Potential anti-competitive behaviour

The KPPU will analyse the potential anti-competitive behaviour that would result from the merger based on the following factors.

- Unilateral effect: the KPPU will identify whether there will be a dominant business entity resulting from the merger that would have the ability to abuse its dominant power. One of the elements the KPPU would observe is buyers' bargaining power in the relevant market and whether this would be impacted due to the potential existence of such dominant power.
- Coordinated effect: the KPPU will identify whether there will be coordination between the surviving entity and its main competitors. In other words, even if no dominant business entity results from the merger, the KPPU will still try to anticipate whether the merger would create potential coordination between the resulting entity and its main competitors.
- Market foreclosure: the KPPU will analyse any vertical mergers that would increase a rival's costs to enter the same market. As vertical mergers may give rise to the closure of access by new competitors, the KPPU will also try to identify whether the merger would create a possible cost-raising strategy, which would be borne by new competitors entering the same market.

Efficiency

If the business actor justifies the acquisition on the grounds of efficiency, the KPPU will examine such claim and the effect on competition.

The business actor may be called upon to support its argument with calculations of efficiency and the advantages enjoyed by customers after the transaction. The efficiency argument may include cost savings, increases in capacity and increases in marketing or quality of the product post-transaction. The KPPU will evaluate this argument in detail. The most important factor in the KPPU's evaluation is whether customers will enjoy lower prices.

Bankruptcy

If the merger is conducted to avoid bankruptcy, the KPPU will determine whether consumers would suffer if the business entity went bankrupt. If consumers are likely to suffer a greater loss if the business entity goes bankrupt than the loss caused by the merger, the transaction will likely be found not to have an anti-competitive effect on the relevant market. The KPPU will evaluate whether:

- the company's financial problems are such that without the acquisition, the company would likely go bankrupt;
- it is possible to conduct a reorganisation to save the company; or

- there is no other alternative that could save the company that would not have an anti-competitive effect.

Aside from the above analysis, the KPPU may also conduct the evaluation using the following analysis:

- policies to increase competitiveness and strengthen national industries: the merger, consolidation or acquisition is conducted in relation to government policy to increase competitiveness, strengthen national industries, or both;
- technology and innovation development: the merger, consolidation or acquisition is conducted to develop technology or to innovate the parties' product;
- protection of micro, small and medium enterprises: the evaluation will consider whether the merger, consolidation or acquisition will have a positive impact on micro, small and medium enterprises;
- impact on workforce: the evaluation will consider whether the merger, consolidation or acquisition will have a positive impact on the workforce or employment, or both, in Indonesia; and
- implementation of laws and regulations: the KPPU will consider whether the merger, consolidation or acquisition is conducted pursuant to laws and regulations.

Law stated - 16 October 2024

Remedies to address the competitive effects of mergers involving IP

What remedies are available to address competitive effects generated by a merger when those effects revolve around the transfer of IP rights?

If the KPPU assessment indicates that an acquisition will substantially lessen competition in the relevant market, the parties may be asked to propose remedies.

The types of remedies that can be proposed are as follows:

- structural remedies:
  - the divestment of assets;
  - shares; or
  - other actions that can create business competition; and
- behavioural remedies:
  - the acquiring business actor may provide its IP licences;
  - competition can be promoted by eliminating such barriers as exclusive contracts, consumer switching costs, bundling or tie-in of certain products or other barriers to supply or purchase;
  - disclosure of the price and amount of production or output; or
  - other actions that support competition.

The KPPU will review the proposed remedies and assess whether they are effective. If the KPPU accepts the proposal, it will issue an opinion that there is no monopolistic practice or unfair business competition resulting from the acquisition, with notes to conduct certain actions that the business actor must fulfil. If the KPPU rejects the proposed remedies, it will issue an opinion that monopolistic practice or unfair business competition will result from the acquisition.

Law stated - 16 October 2024

SPECIFIC COMPETITION LAW VIOLATIONS

Conspiracy
Can the exercise, licensing or transfer of IP rights create price-fixing or conspiracy liability?

The exercise, licensing or transfer of IP rights are not specifically regulated under the conspiracy provisions of articles 22 to 24 of the Anti-Monopoly Law. However, according to the IP Laws, Government Regulation No. 36 of 2018 and Business Competition Supervisory Commission (KPPU) Reg 2/2009, licence agreements should not contain provisions that may cause unfair business competition.

Law stated - 16 October 2024

Scrutiny of settlement agreements
How would a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective? What are the key factors informing such an analysis?

Taking enforcement measures to prevent infringement of one's IP rights should not be deemed contravening the Anti-Monopoly Law. However, suppose the settlement agreement contains a provision that a party will not compete with a patented product, this agreement may be deemed an act of monopolistic practice and unfair business competition as regulated by article 17(2)(b) of the Anti-Monopoly Law. This article stipulates that business actors may be reasonably suspected or deemed to control the production and marketing of goods or services if they cause other business actors to be unable to enter the business competition for the same goods or services.

Law stated - 16 October 2024

Reverse payment patent settlements
How have the competition laws been applied to reverse payment patent settlements in your jurisdiction?

We are not aware of any case where competition laws have been applied to reverse payment of a patent settlement in Indonesia.

Law stated - 16 October 2024

(Resale) price maintenance

Can the exercise, licensing, or transfer of IP rights create liability under (resale) price maintenance statutes or case law?

Article 8 of the Anti-Monopoly Law stipulates that business actors are prohibited from entering into agreements with other business actors that contain the condition that parties receiving goods or services shall not sell or resupply the goods or services received by them at a price lower than the contracted price, potentially causing unfair business competition. Pursuant to the foregoing, the KPPU has issued KPPU Regulation No. 8 of 2011 regarding Guidance on Article 8 of the Anti-Monopoly Law on Resale Price Arrangements.

With regard to the foregoing and for completeness, the Anti-Monopoly Law prohibits the following types of minimum resale price maintenance agreements:

- manufacturers or suppliers determine the minimum selling price for the resale of their products;
- manufacturers or suppliers require retailers not to sell their products for less than a determined minimum selling price;
- producers or suppliers enter into an agreement with distributors or retailers for the procurement of goods where there are requirements regarding a certain minimum selling price;
- manufacturers or suppliers will stop or withhold the supply of goods to distributors or retailers unless the distributors or retailers agree not to sell the goods for less than a specified minimum selling price; and
- manufacturers or suppliers withhold the supply of goods to distributors or retailers that have sold the product for less than a determined minimum selling price.

If an IP licence agreement contains clauses on minimum resale price, especially if such clauses are drafted in any of the above forms, the agreement can be viewed as anti-competitive, which falls under the scope of the Anti-Monopoly Law.

Law stated - 16 October 2024

Exclusive dealing, tying and leveraging

Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to exclusive dealing, tying and leveraging?

Although, in general, IP-related agreements are exempted from the scope of the Anti-Monopoly Law, if such agreements incorporate clauses that may be deemed anti-competitive, according to KPPU Regulation 2/2009, such agreements are not exempted from the Anti-Monopoly Law and, therefore, may create liability under the Anti-Monopoly Law.

KPPU Regulation 2/2009 shares some guidance in assessing whether an IP-related agreement contains exclusive dealings provisions, tying, and leveraging that may create unfair business competition, namely in relation to the following provisions.

Pooling licensing and cross-licensing

in principle, the licensor may use pool and cross-licences to streamline its business activities. However, if this results in the production or marketing of a product being dominated by a particular business actor, which subsequently hampers other business actors from competing effectively, the clause may be viewed as anti-competitive.

Tying arrangement

In principle, the licensor may combine two or more of its products that have been protected by IP rights to sell to consumers. However, consumers should be given the option to buy only one product. If there is an obligation for the licensee to sell the combined products to consumers as an integral product, such that consumers cannot buy one product only, the clause may be deemed anti-competitive.

Limitation on raw materials

If there is a clause in the licence agreement that obliges the licensee to use raw materials that are exclusively determined by the licensor, while similar raw materials are available domestically in an adequate amount, price and quality, the clause can be deemed anti-competitive.

Limitation on production and sale

In principle, the licensor can set limitations on the area or number of products produced using the licensee's technology that may be marketed. However, if the limitations prevent the licensee from innovating technology, this can make product development inefficient. Therefore, a clause in the licence agreement that contains limitations on the area and number of products that can be marketed, which is proven to hinder the licensee from making technological innovations, so that product development becomes inefficient, can be viewed as anti-competitive.

Limitation on selling price and reselling price

Clauses in the licence agreement that contain restrictions on selling prices and resale prices by setting a lower price can be viewed as anti-competitive.

Grant-back licensing

Grant-back provisions require the licensee always to disclose and transfer information regarding improvements made to the licensed product and know-how related to the development of the licensed technology or product to the licensor. If this impedes the licensee in advancing and controlling the technology by legitimising the licensor in owning IP rights that it does not create, the clause may be deemed anti-competitive.

Law stated - 16 October 2024

Abuse of dominance

Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to monopolisation or abuse of dominance?

Since agreements related to IP rights, including IP licence agreements and franchise agreements, are exempted from the Anti-Monopoly Law, the exercise, licensing or transfer of IP rights are not deemed as monopolisation or an abuse of dominance, provided that such licensing of IP does not contain provisions that might cause unfair business competition, complies with the IP Laws and regulations, and have been registered at the Directorate General of Intellectual Property.

Law stated - 16 October 2024

Refusal to deal and essential facilities

Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to refusal to deal and refusal to grant access to essential facilities?

According to KPPU Regulation 2/2009, if particular IP rights can be deemed essential facilities, the refusal to license such rights may be assessed on the possibility of unfair business competition. However, if the IP rights cannot be deemed essential facilities, the refusal to grant a licence for the same is lawful.

Further, article 82 of the Patent Law allows an interested party to file an application to the MOLHR to obtain a compulsory licence. The Ministry of Law and Human Rights (MOLHR) may issue a decree approving the issuance of a compulsory licence on the following grounds:

- the patent holder has not carried out its obligation to make products or use processes in Indonesia within 36 months of the date the patent was granted, as obliged by article 20 of the Patent Law;
- the patent holder or licensee has used the patent in a form and manner that is detrimental to the public interest; and
- patents resulting from the development of previously granted patents cannot be implemented without using another party's patent that is still protected.

Law stated - 16 October 2024

REMEDIES

Remedies for violations of competition law involving IP

What sanctions or remedies can the competition authorities or courts impose for violations of competition law involving IP?

There are no specific remedies under the Anti-Monopoly Law involving IP matters. However, the issuance of a compulsory licence is one of the options to remedy violations of the Anti-Monopoly Law.

Law stated - 16 October 2024

Competition law remedies specific to IP

Do special remedies exist under your competition laws that are specific to IP matters?

There are no special remedies under the Anti-Monopoly Law that are specific to IP matters.

Law stated - 16 October 2024

ECONOMICS AND APPLICATION OF COMPETITION LAW

Economics

What role has competition economics played in the application of competition law in cases involving IP rights?

The Anti-Monopoly Law was drawn up based on the principles of the Indonesian state philosophy, Pancasila, the 1945 Constitution and economic democracy. It seeks to balance business interests and the interests of the public to:

- safeguard the public interest and protect consumers;
- develop a conducive business climate through the creation of fair business competition;
- ensure equal business opportunities for every person;
- prevent monopolistic practices and unfair business competition created by business actors; and
- ensure effective and efficient business activities to improve the national economy's efficiency and the people's welfare.

IP rights, in general, do not contradict the principles and purposes of the Anti-Monopoly Law. On the contrary, the robust protection of IP rights supports the purposes of the Anti-Monopoly Law to ensure effective and efficient business activities to improve the national economy's efficiency and the people's welfare.

Such argument is also supported by the fact that agreements related to IP rights, including licences, patents, trademarks, copyrights, industrial designs, integrated electronic circuits and trade secrets, as well as agreements related to franchises, are exempted from the scope of the prevailing Anti-Monopoly Law, as stipulated in article 50(b) of the Anti-Monopoly Law.

For IP protection and competition law, the IP Laws contain provisions requiring that IP licence agreements should not include any provision that could cause unfair business competition.

The Business Competition Supervisory Commission, in its Regulation No. 2 of 2009, also issued guidelines on IP licence agreements that cannot be exempted from the scope of competition laws due to their anti-competitive nature.

Law stated - 16 October 2024

RECENT CASES AND SANCTIONS

Recent cases

Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

A high-profile case involving a leading marketplace company and its affiliated courier service provider was a highlight ofthe Indonesian antitrust landscape in 2024. The case came to light after the KPPU identified possible discriminatory behaviour that prioritised the affiliated courier service provider for delivering packages purchased from the marketplace to customers. This behaviour was exacerbated by the marketplace's practice of automatically activating the affiliated courier service option on most sellers' dashboards while disabling other courier services.

In addition, one of the directors of the marketplace company was appointed as a director of the affiliated courier service provider. This dual role and its influence on the behaviour of the affiliated business raised concerns about monopolistic practices and unfair business competition. Evidently, the marketplace and its affiliated courier service provider caused direct harm to customers by reducing the courier/delivery service options available to them. As a result, the marketplace company and its affiliated courier service provider were found to have violated the Anti-Monopoly Law, in particular the prohibitions on discriminating against certain business actors (the unaffiliated courier service providers) and establishing trading conditions with the aim of preventing and/or obstructing customers from obtaining competing goods and/or services, whether in terms of price or quality. To address the monopolistic behaviour and unfair business competition, the marketplace company and its affiliated courier service provider have signed an integrity pact to change their behaviour.

Despite the rather extensive IP portfolio of the marketplace company, a prominent technology company in Indonesia, the monopolistic behaviour and unfair competition that it carried out with its affiliated courier service provider did not specifically concern their IP.

A similar case involves a leading search engine and its affiliated payment system, where the search engine company allegedly requires companies distributing their apps through its app store to use the affiliated payment system and sanctions those that do not comply by removing their apps from the search engine's app store. Moreover, the search engine does not allow other payment systems to be offered in its app store. KKPU investigators allege that the search engine's policies place barriers to other payment services, leading to a loss of payment options for customers, a decline in revenue for Indonesian developers, and an increase in revenue for the search engine. This case is ongoing as of the time of this writing the and KPPU has not issued a verdict.

Similar to the previous case, while the search engine company, being a well-known technology company, has a comprehensive IP portfolio, this case does not directly concern its IP.

Law stated - 16 October 2024

Remedies and sanctions

What competition remedies or sanctions have been imposed in the IP context?

Although a violation of the Anti-Monopoly Law was found in the case involving the marketplace company and its affiliated courier service provider, the case did not directly concern their IP rights. Notwithstanding the foregoing, the parties have been ordered to cease activities that have been proven to result in monopolistic and unfair business practices.

Law stated - 16 October 2024

UPDATE AND TRENDS

Key developments

Are there any emerging trends or hot topics in the law of IP and antitrust policy? Have changes occurred recently or are changes expected in the near future that will have an impact on the application of competition law to IP rights?

The Indonesian House of Representatives is currently deliberating the Draft Anti-Monopoly Law, which would replace the current Anti-Monopoly Law. The Draft Anti-Monopoly Law currently in circulation no longer contains a provision exempting intellectual property agreements, including licenses, patents, trademarks, copyrights, industrial designs, layout designs of integrated circuits and trade secrets. Thus, if the Draft Anti-Monopoly Law is passed in its current form, IP-related agreements will fall within the scope of the Anti-Monopoly Law.

The Draft Anti-Monopoly Law also contains new provisions on the following:

- the scope of business entity subject to the Draft Anti-Monopoly Law;
- reclassification of prohibited agreements and business activities;
- a leniency programme by which the Business Competition Supervisory Commission (KPPU) may grant amnesty or reduce any punishment, or both, for business entities that confess to or report any conduct that contravenes the relevant provisions on prohibited agreements, except in the case of any closed agreements;
- pre-notification, which would be a change from the current post-notification system. The House of Representatives is deliberating the pre-notification system, which would require companies to seek official approval from the KPPU before conducting any merger, consolidation or acquisition of shares or assets, as well as establishing any joint venture company;
- abuse of dominant business and bargaining positions;
- the authority of the KPPU. The Draft Anti-Monopoly Law contemplates enhanced KPPU authorities not only to investigate and adjudicate cases involving alleged monopolistic and unfair business practices, but also to conduct searches and (or) seizures, assess mergers and (or) the consolidation of companies, acquisitions of shares and assets, as well as the establishment of any joint venture, and to draft guidelines for the anti-trust law;
- procedural anti-trust law; and
- criminal sanctions.

Aside from the above, an update from the antitrust sector comes from the KPPU, which promulgated KPPU Reg 3/2023 on 31 March 2023. KPPU Reg 3/2023 introduces a new system that would allow the notification of mergers, consolidations, and acquisitions to be made electronically, limit the calculation of the value of assets or the sales of assets to Indonesia, provide an accelerated period for the examination of the requisite documents, and require Commission Council meetings to produce assessment results in a holistic manner.

In summary, some of the changes contained in KPPU Reg 3/2023 are as follows:

- the value of assets or sales calculated as a reference for notification obligations only takes into account assets or sales owned by business actors, either directly or indirectly, in Indonesia;
- notifications are carried out by business actors through the notification system that can be accessed electronically. Previously, notification was done manually (at the counter or by post);
- the review of the completeness of the notification will be carried out no later than three days from the submission date of the notification; and
- the Commission Secretariat carries out the entire initial assessment process and comprehensive assessment. The involvement of Commission members is necessary if the results of a comprehensive assessment carried out by the Commission Secretariat conclude that the transaction has the potential to result in monopolistic practices and (or) unfair business competition. In this case, a Comprehensive Assessment Commission Assembly hearing will be held.

In the realm of IP regulation, 2024 saw significant changes to IP laws and regulations.

The most recent being the Amended Patent Law. The House of Representatives accepted the Draft Amended Patent Law on 30 September 2024. However, as of the date of this writing, the text of the Amended Patent Law has not been made publicly available. The Draft Amended Patent Law, which was circulated before its approval, proposed significant amendments to the current Patent Law aimed at filling legal gaps not covered by the Patent Law.

A prominent change that may largely benefit the pharmaceutical industry is the broader scope of inventions to now allow for systems, methods, and use as patentable inventions. This broadening of the scope of inventions is also reflected in an amendment to Article 4 of the Patent Law, which would remove a provision that excluded as forms of invention discoveries in the form of (i) new use of an existing and/or known product and (ii) a new form of an existing compound that does not result in a significant increase in efficacy and has known related chemical structural differences from the compound. These amendments are intended to allow second medical use to be protected as a patent.

The Amended Patent Law also introduces a longer grace period of six to twelve months for certain exemptions related to the novelty requirements of inventions exhibited at official exhibitions, in research and development, or during academic assessment.

And finally, the Amended Patent Law introduces more comprehensive provisions on compulsory licenses.

In addition to the Amended Patent Law, on 29 February 2024, the Constitutional Court issued its Decision No. 84/PUU-XXI/2023, extending landlord liability to User Generated Content (UGC) Digital Service Platforms, in addition to marketplace providers. Both types of entities are now prohibited from allowing the sale, display, and/or reproduction of goods resulting from copyright and/or related rights in the marketplaces and/or digital services under their management.

In the realm of Trademark Law, Constitutional Court Decision No. 144/PUU-XXI/2023, dated 30 July 2024, amends Article 74(1) and (2) of the Trademark Law. The amendment extends the period for third parties to submit a deletion (non-use cancellation) against a trademark that has not been used in the course of trade from three years to five years, calculated from the registration date or the last use of the trademark in question. This change allows interested parties to file deletion claims if a trademark has not been used in commerce for five consecutive years from the registration date or date of last use.

Grounds for deletion on the basis of non-use are exempted in the case of import prohibition, prohibition related to permits for the circulation of goods using the relevant trademark or decisions from the competent authority that are temporary, or other similar prohibitions stipulated by government regulation.

In addition, the House of Representatives is deliberating drafts of a new industrial design law that contains provisions on, among other things, the new novelty criteria to avoid unfair competition and the protection of unregistered short life cycle industrial designs for a maximum of three years.

Law stated - 16 October 2024