

## Drastic Changes regarding Appeal against KPPU Decision

Last Friday, the Supreme Court issued the Supreme Court Regulation No. 3 of 2019 on Procedure for Appeal against Decisions of the Indonesian Competition Commission (“KPPU”) (“**Regulation**”) dated 9 August 2019. This new Regulation provides several drastic changes that can limit business actors in presenting their appeal against KPPU decisions.

Below are the key changes under the Regulation:

### 1. **Electronic filing**

Under the Regulation, appeal against a KPPU decision can now be submitted online. This mechanism is in line with the new Supreme Court regulation on electronic litigation.

### 2. **Change to deadline to file an appeal**

Under the previous regulation, an appeal against a KPPU decision can be filed to a district court within 14 business days as of receipt of notification of KPPU decision or as of the date of announcement of the KPPU decision through KPPU’s website. Such deadline is applicable regardless of whether the appellant attended the hearing decision or not.

Now, an appellant has 14 business days to file an appeal to a district court, and the 14-day period will be calculated as of:

- (i) the date of the hearing decision, if attended by the appellant; or
- (ii) the date of the notification of the KPPU decision if the appellant did not attend the hearing.

### 3. **Additional administrative requirements**

The Regulation explicitly requires an appellant to submit the following documents to the district court in filing an appeal:

- (i) a power of attorney;
- (ii) a request for appeal; and
- (iii) a copy of the KPPU decision.

If these documents are not provided, the district court will return the filing to the appellant. For comparison, the submission of a power of attorney and a request for appeal was not explicitly stipulated under the previous regulation but were required by the district court.

### 4. **Shorter period for consolidation of appeals**

According to the Indonesian Competition Law, an appeal to the district court must be filed to the district court whose jurisdiction covers the domicile of the appellant. This procedure may result in multiple appeal filings against one KPPU decision in different district courts if there were more than one appellant.

In the previous regulation, KPPU would submit a written request to the Supreme Court to consolidate the appeals and appoint one district court to examine the appeal. The Supreme Court must conclude such consolidation and appoint the district court within 14 business days after receiving the KPPU's written request. This deadline has now been shortened under the new Regulation, which provides that the Supreme Court must appoint the district court within 7 working days after receiving the KPPU's written request.

**5. No possibility of additional examination**

Under the previous regulation, the panel of judges, which are the adjudicating judges in the district court, can instruct the KPPU to hold an additional examination if deemed necessary. In practice, the appellant can also propose such additional examination to the panel of judges.

The new Regulation, however, is silent on this. This can mean that additional examinations will no longer be allowed under the new Regulation. It remains to be seen how this provision will be applied in district courts.

**6. No possibility of civil review against the Supreme Court decisions**

Article 15 of the new Regulation stipulates that both the appellant and the KPPU can only file an appeal to the Supreme Court as the last legal measure against a district court's decision. This is in contrast to the previous regulation, which was silent on this issue, but in practice, the Supreme Court accepts civil reviews against the Supreme Court decision. This can also mean that civil review against the Supreme Court decisions will no longer be allowed under the new Regulation.

In conclusion, it remains to be seen how the Regulation would apply in practice, especially bearing in mind the drastic changes implemented by some of the provisions. However, please note that in order to provide legal assurance, the previous regulation remains applicable for any ongoing appeal to the district court until such appeal has obtained a final and binding decision.

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## Contacts



**Chandra M. Hamzah**  
Partner

D +62 21 2555 9999  
F +62 21 2555 7899  
[chandra.hamzah@ahp.id](mailto:chandra.hamzah@ahp.id)



**Eri Hertiawan**  
Partner

D +62 21 2555 7883  
F +62 21 2555 7899  
[eri.hertiawan@ahp.id](mailto:eri.hertiawan@ahp.id)



**Farid Fauzi Nasution**  
Partner

D +62 21 2555 9998  
F +62 21 2555 7899  
[farid.nasution@ahp.id](mailto:farid.nasution@ahp.id)



**Asep Ridwan**  
Partner

D +62 21 2555 7819  
F +62 21 2555 7899  
[asep.ridwan@ahp.id](mailto:asep.ridwan@ahp.id)

## Our Regional Contacts

### RAJAH & TANN | *Singapore*

#### Rajah & Tann Singapore LLP

T +65 6535 3600  
F +65 6225 9630  
sg.rajahtannasia.com

### CHRISTOPHER & LEE ONG | *Malaysia*

#### Christopher & Lee Ong

T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

### R&T SOK & HENG | *Cambodia*

#### R&T Sok & Heng Law Office

T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

### RAJAH & TANN NK LEGAL | *Myanmar*

#### Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

### RAJAH & TANN 立杰上海 SHANGHAI REPRESENTATIVE OFFICE | *China*

#### Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

### GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

#### Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977  
F +632 552 1978  
www.cagatlaw.com

### ASSEGAF HAMZAH & PARTNERS | *Indonesia*

#### Assegaf Hamzah & Partners

##### Jakarta Office

T +62 21 2555 7800  
F +62 21 2555 7899

##### Surabaya Office

T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.id

### RAJAH & TANN | *Lao PDR*

#### Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

### RAJAH & TANN | *Thailand*

#### R&T Asia (Thailand) Limited

T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

### RAJAH & TANN LCT LAWYERS | *Vietnam*

#### Rajah & Tann LCT Lawyers

##### Ho Chi Minh City Office

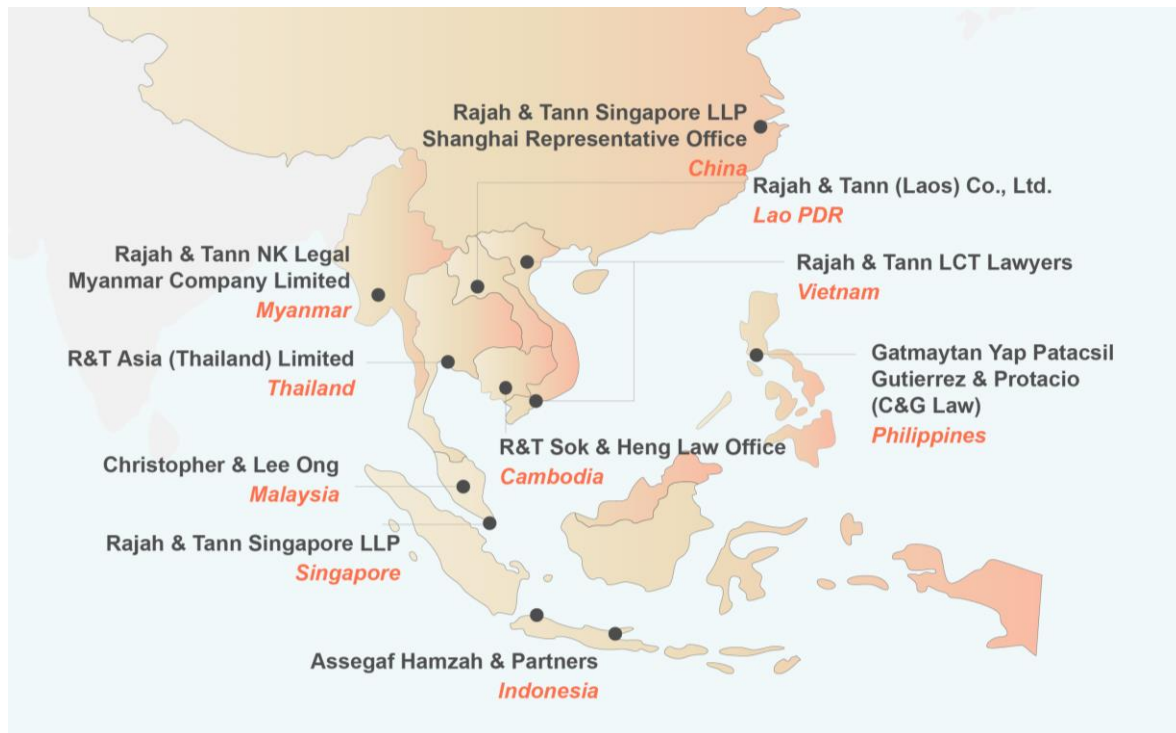
T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

##### Hanoi Office

T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

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