
Indonesia's Legal Landscape in 2020: Prioritised Legislations and Omnibus Law

On 16 January 2020, the Legislation Body of the House of Representatives, the Law Drafting Committee of the Senate and the Minister of Law and Human Rights reached an agreement on Indonesia's National Legislation Program (often referred to as Prolegnas or *Program Legislasi Nasional*) ("**Program**").

Background

As in the previous years, this year's Program contains a list of priority bills. At the start of its term of office, the Parliament will establish the Program based on the legislative priority of each of the above institutions. The Program may be evaluated yearly, along with the preparation and determination of the annual priority bills prior to the stipulation of the law on annual state budget (*Anggaran Pendapatan dan Belanja Negara* or APBN).

Besides the priority derived from the three institutions, the Program is also derived from Indonesia's legislative agenda (formally referred to as the Cumulative Open List), which in turn is a legislative follow-up to the ratification by Indonesia of certain international agreements; outcome of decisions by the Constitutional Court; enactment or amendment of the annual state budget; establishment, expansion and merger of any province, region and/or city; and enactment or revocation of any government regulation in lieu of law.

The House of Representatives or the President may also, in certain circumstances, submit a bill outside the Program to overcome extraordinary circumstances, conflict situations, or natural disasters; and any other circumstances warranting a national urgency.

2020 Program

Out of 248 bills included in the Program, at least 50 bills have been established as annual priority bills. Among the listed bills, there are four omnibus bills that deal with job creation, state capital, tax and pharmacy. Omnibus bill/law is a method used to amend and/or revoke some provisions in various laws. The amended law(s) may continue to apply unless part of the provisions has been replaced or declared invalid. The revised law(s) may also be revoked if the provisions that are amended or declared invalid are the core substance of the law. Despite the current lack of knowledge and popularity of the concept of omnibus law, the government claims that several laws have already applied the concept.

In addition to the 50 bills above, there are also 4 bills that were carried over from the previous House of Representatives (2014-2019 term) regarding penal code, penitentiary, stamp duty and mineral and coal. Below we highlight the discussion on some of the bills based on the opinions and statements of government officials, members of parliament and observers, captured and exposed by the media, which may have wide ranging effects:

1. Business Competition

The 50 annual priority bills include an amendment of the Competition Law, which is said to contain changes to the merger notification, from a post-notification regime into a mandatory pre-notification regime.

Currently, Indonesia still applies the post-notification regime, where businesses are required to notify their transaction to the Indonesia Competition Commission (KPPU) no later than 30 days from the completion of the merger. Failure to do so may subject the business to a fine of IDR 1 billion per day of delay, with a maximum fine of IDR 25 billion.

The shift to the mandatory pre-notification regime will put Indonesia on the same footing as many other countries who have adopted the pre-notification system and requires a merger to be notified to the relevant competition supervisory authority before it can actually be conducted. This regime is claimed as more business-friendly in that it allows the authority to determine at the outset whether a merger can be continued or not, instead of having to unwind the merger after the closing of the transaction.

2. State-Owned Enterprise

Another bill in the priority list is the amendment of the State-Owned Enterprise (“**SOE**”) Law, and one of the key amendment proposals is the obligation of SOE to allocate corporate social responsibility (“**CSR**”) funds for the development of micro, small and medium enterprises. In the discussion about the bill, SOEs are required to enter into a partnership with micro, small and medium enterprises to foster the growth of these enterprises. The amount of CSR funds proposed in the bill is 5% of the SOE’s total net profits before tax.

3. Traffic and Transportation

Online-based taxis and motorcycles have rapidly gained popularity in Indonesia as the main mode of transportation in the last five years, and it is not surprising that based on media reports, one of the most highly anticipated bills in the Program is the amendment of the Traffic and Transportation Law. There are expectations that the law can systematically integrate online transportation with other existing public transportation, possibly by classifying online motorbikes and taxis as public transportation. Besides being overdue, the amendment is also claimed to be necessary in order to give a legal basis for the state’s role in creating fair competition, which will affect the welfare of online transportation drivers and the users’ safety.

4. Land/Property

No less appealing is the Land Bill, which contain a proposed revision on the validity of a Right to Exploit (*Hak Guna Usaha*) for legal entities, which may effectively be valid for 90 years (an initial term of 35 years, which can be extended for a further 35 years, and in certain cases can

be extended again for 20 years by the Minister of Agrarian Affairs). In addition, there is a proposed regulation on privileges of SOEs in applying and extending land rights.

The government is planning to enact the Land Bill to complement the current Agrarian Law.

5. Job Creation

With regards to employment, the government hopes to tackle issues through the Omnibus Bill on Job Creation, which will amend 1,244 articles in 79 different laws. Besides creating new jobs, it is hoped that this new law would increase the ease of doing business and facilitate investment growth.

Based on the information provided by the Coordinating Ministry for Economic Affairs, the content of the omnibus bill will be divided into several sections, which include: simplifying licensing; investment requirements; labour; empowerment and protection of micro, small and medium enterprises; ease of doing business; research and innovation support; government administration; sanctions; land acquisition; government investment and projects; and economic zones.

6. Tax

The decrease in tax revenue received by the government is the key factor for the issuance of the Tax Omnibus Law. According to the Minister of Finance, Sri Mulyani Indrawati, the Tax Omnibus Law will contain about 28 articles that would amend various provisions in 7 existing laws. The amendments are said to be divided into six subjects:

- a. reduction of corporate income tax (*pajak penghasilan* or “**PPh**”) and interest income tax;
- b. introduction of a territorial system, whereby a foreign citizen subject to domestic taxation will have special tax obligations for his/her domestic income;
- c. differentiation of foreigners and Indonesian citizens as taxpayers based on time tests;
- d. an increase of tax compliance by reformulating sanctions (fines and interests);
- e. integration of the taxation of electronic and ordinary transactions; and
- f. tax incentives such as tax holidays, super deduction, tax allowance, special economic zones (KEK), PPh for securities and local tax incentives from the regional governments.

7. Mineral and Coal

The Mineral and Coal Bill contains the draft provisions on changes of the Work Contracts and Coal Mining Concession Work Agreements (*Perjanjian Karya Pertambangan Batu*

Bara/PKP2B) into Mining Business Licenses (*Izin Usaha Pertambangan/IUP*) regime, as well as the divestment obligation of companies holding an IUP. A draft provision regarding the integrated production operation with the development of a smelter is also included in the bill.

Conclusion

There is no doubt that Indonesia's plan for 2020 is ambitious. However, learning from past experience, the public would need to manage their expectations. During the 2014-2019 term, the House of Representatives only managed to enact 77 out of 189 bills listed in its 5-year Program, 44 of which were coming from the Cumulative Open List.

The public, especially business actors, also need to pay attention to the list of priority bills in the Program and various debates surrounding the bills. There is always a possibility that some of the substance from the debates will be accommodated in the draft bills. Accordingly, when the bills are formally rolled out, business actors should be ready to convey their concerns and inputs in a more structured way to the appropriate law-making channels.

Contacts



Ahmad Fikri Assegaf
Partner

D +62 21 2555 7880
F +62 21 2555 7899
ahmad.asegaf@ahp.id



Binziad Kadafi
Senior Associate

D +62 21 2555 9927
F +62 21 2555 7899
binziad.kadafi@ahp.id

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
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 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
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.co.id

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

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

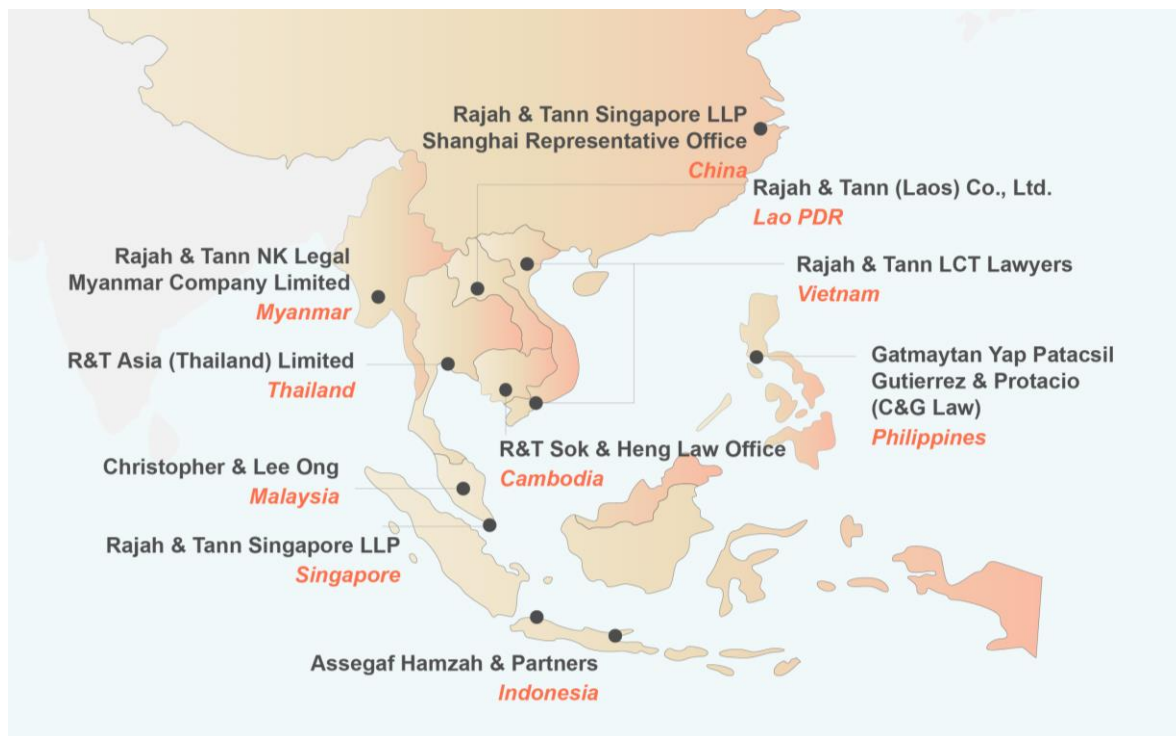
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

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

Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

Our Regional Presence



Based in Indonesia, and consistently gaining recognition from independent observers, Assegaf Hamzah & Partners has established itself as a major force locally and regionally and is ranked as a top-tier firm in many practice areas. Founded in 2001, it has a reputation for providing advice of the highest quality to a wide variety of blue-chip corporate clients, high net worth individuals, and government institutions.

Assegaf Hamzah & Partners is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Assegaf Hamzah & Partners and subject to copyright protection under the laws of Indonesia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Assegaf Hamzah & Partners.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Assegaf Hamzah & Partners.