

COMPETITION AND ANTITRUST; PROCUREMENT

KPPU Scrutinises Direct Appointment Criteria in SOE Procurement



The Indonesia Competition Commission (*Komisi Pengawas Persaingan Usaha* or "**KPPU**") recently issued a press release ([press release No. 94/KPPU-PR/XI/2024](#)) highlighting its findings of potential anti-competitive practices in how state-owned enterprises ("**SOEs**") procure goods and services. This practice, referred to as "SOE Synergy" or *Sinergi BUMN*, allows SOEs to directly appoint other SOEs or their affiliates for procurement contracts. The KPPU is concerned that this practice could lead to discriminatory practice or other types of abuse of dominant position by unfairly excluding private businesses from competing for SOE contracts, potentially reinforcing the already strong position of SOEs in certain markets. Although this practice is currently allowed under Article 155(2)(j) of the State-Owned Enterprises Ministry Regulation No. PER-2/MBU/3/2023 on the Guidelines for Governance and Significant Corporate Activities in SOEs ("**SOE Regulation 2/2023**"), the KPPU warns that it could lead to unfair competition and potential harm to consumers.

The KPPU is taking steps to address this concern. In the KPPU's letter to the Ministry of SOE dated 25 October 2024, the KPPU strongly recommended removing the rule allowing direct appointments under "SOE Synergy" from the provider selection method in SOE procurement process. Specifically, the KPPU recommended that:

- The procurement of goods and services by SOEs through the direct appointment must adhere to competition principles.
- Article 155(2)(j) of SOE Regulation 2/2023 is to be removed.
- SOEs and their affiliates should consult with the KPPU before implementing "SOE Synergy".

However, the Ministry of SOE has not yet responded to these recommendations, leaving the future of this procurement practice uncertain.

Key Takeaways

While the press release or the KPPU's recommendation letter is not legally binding on the Ministry of SOE and will not automatically annul Article 155(2)(j) of SOE Regulation 2/2023, it provides an insight into the KPPU's official stance on the implementation of "SOE Synergy", particularly in the procurement process.

Noting that further clarity is required from the Ministry of SOE and/or the KPPU on how to proceed with "SOE Synergy" going forward, we recommend that SOEs review their current procurement practices, particularly those involving direct appointments through "SOE Synergy", to ensure alignment with competition principles. The review should include a consideration of alternative direct appointment criteria outlined in Article 155(2) of SOE Regulation 2/2023 when engaging other SOEs or their affiliates. If none of the other criteria is feasible, we advise SOEs to consult with the KPPU before proceeding with direct appointment through "SOE Synergy" to ensure compliance and mitigate potential risks.

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