

TABLE OF CONTENTS :

Table of Contents	
Overview	1
I. The Implementation of a Risk-Based Approach to Business Licensing	2
II. Simplification of Investment Requirements	5
III. Provisions on the Ease of Doing Business	10
Revisions to Law 6/2011	11
Revisions to Law 13/2016	14
Revisions to Law No. 20/2016	17
Revisions to Law 40/2007	19
Revocation of the Nuisance Law	22
Revocation of Law 3/1982	22
Revisions to Law 5/1999	23
Conclusion	26

Bill on Job Creation: General Corporate Aspects

The revisions to the various laws discussed herein demonstrate how the Bill seeks to offer greater convenience for businesses in general, be they foreign or domestic, particularly those who fall into the UMKM category. The ultimate hope, of course, is that more people will be encouraged to establish businesses in Indonesia, which should, in turn, result in more job opportunities.

Overview

In the wake of the first part of our analysis of the new [Bill on Job Creation](#) (“**Bill**”), which covered various manpower-related topics,¹ the second installment of our ongoing Indonesian Law Digest (ILD) series on the Bill will attempt to analyze provisions which apply to all businesses, regardless of sector. These provisions are commonly referred to as general corporate matters.

Our analysis will address the following areas:

- I. The implementation of a risk-based approach to business licensing;
- II. Simplification of investment requirements; and
- III. Provisions on the ease of doing business.

It should be noted that this edition’s analysis will continue to refer to provisions outlined in the 812-page version of the Bill since the official version of the Bill is still waiting to be designated an official number and signed by President Widodo.

¹ See [ILD No. 685](#).

I. The Implementation of a Risk-Based Approach to Business Licensing

In essence, the Bill is aiming to establish various strategic measures and policies that will help to create more job opportunities across Indonesia. It is believed that this objective can be achieved through the revision of existing regulatory frameworks that address various areas of the national economy, including the improvement of the country's various investment and business ecosystems.²

The Bill further states that this improvement is to be implemented through various measures, including the introduction of a new business-licensing regime which will employ a risk-based approach.³ Through this approach, the various types of legal documents that a party is required to secure in order to found and operate a business are to be determined based on the levels of risk inherent in the relevant business activities.⁴

These risk levels are to be decided based on assessments of the following elements:⁵

1. Danger level, which is to be assessed:⁶
 - a. Based on the following aspects: i) Health; ii) Safety; iii) Environment; iv) Utilization and management of resources; and/or v) Other aspects (e.g. security or defense),⁷ dependent on the nature of the business activities concerned; and
 - b. Through a consideration of the following factors: i) Types, criteria and/or locations of business activities; ii) Scarcity of resources; and/or iii) Volatility risk;
2. Danger potential, which comprises the following levels: a) Unlikely to occur; b) Less likely to occur; c) Potentially likely to occur; or d) Highly likely to occur.⁸

² General elucidation, Bill.

³ Art. 6, Bill.

⁴ Arts. 1 (4) and 7 (1), Bill.

⁵ Art. 7 (1 - 2), Bill.

⁶ Art. 7 (3 - 5), Bill.

⁷ Elucidation, Art. 7 (4), Bill.

⁸ Art. 7 (6), Bill

Based on assessments of the elements outlined above, the risk level of a business can be narrowed down to three categories: low, moderate and high.⁹ Each of these levels corresponds to different business-licensing requirements, as described in the following table:¹⁰

Risk Level	Remarks
Low	Businesses engaging in low-risk business activities are only required to secure official Business Identification Numbers (<i>Nomor Induk Berusaha</i> – “NIB”).
Moderate	<p>Businesses engaging in moderate levels of risk during their business activities are further classified into the following two categories:</p> <ol style="list-style-type: none"> 1. Low-moderate risk business activities, in relation to which the relevant businesses are required to secure the following: <ol style="list-style-type: none"> a. NIB; and b. Standard certification, which simply comprises a statement from a business stating that they will fulfill the applicable business standards during the operation of their business activities; and 2. High-moderate risk business activities, in relation to which the relevant businesses are required to secure the following: <ol style="list-style-type: none"> a. NIB; and b. Standard certification issued by the central government or relevant regional government, dependent on their authorities, after said governments have first verified the fulfillment of certain business standards by the businesses in question. <p>Both of these two categories of businesses should also secure standard certification for their products if this is required. Said certificates may only be issued by the central government based on a verification of the fulfillment of the required product standards by the businesses in question prior to the commercialization of the relevant products.</p>
High	<p>Businesses engaging in high-risk business activities are required to secure:</p> <ol style="list-style-type: none"> 1. NIB; 2. Licenses from the central government or relevant regional government prior to engaging in any business activities. <p>Businesses that fall into this category of should also obtain standard certificates for their business activities and products if this is required. Said certificates may be issued by either central government or regional governments based on verifications of the fulfillment of the applicable standards by the businesses in question.</p>

⁹ Art. 7 (7), Bill.

¹⁰ Arts. 8 - 10 and their elucidations, Bill.

The elaboration above reveals that not all business activities require a license. This approach is therefore expected to eventually mean that parties looking to found and operate businesses within Indonesia will be able to enjoy more efficient and effective processes.

Indeed, a recent World Bank Group Report titled “Introducing a Risk-Based Approach to Regulate Business”,¹¹ stated that this approach simplifies the key regulatory processes that govern business activities so that resources can be utilized in a more effective and efficient manner. The hoped-for result of this approach should encompass a reduction in administrative burdens and a maximization of positive outcomes.¹²

¹¹ The report can be accessed [here](#).

¹² Pp. 1 and 5, World Bank Group Report.

II. Simplification of Investment Requirements

In addition to the implementation of a risk-based approach to business licensing, the Bill is also aiming to improve investment and business ecosystems through the following measures:¹³

1. Simplification of basic business licensing requirements, which generally relate to the conformity of planned business locations with detailed spatial planning, as well as environmental and building-construction requirements;¹⁴
2. Simplification of sectoral business licensing requirements; and
3. Simplification of investment requirements.

This section will specifically discuss the measure outlined in point (3) above. Meanwhile, analyses of the measures outlined in points (1) and (2) above are to be addressed in upcoming editions of ILD through the application of a sectoral approach. The simplification of investment requirements affects a number of laws, specifically:¹⁵

1. Law [No. 25 of 2007](#) on Investment (“**Law 25/2007**”);
2. Law [No. 7 of 1992](#) on Banks, as amended through the issuance of Law [No. 10 of 1998](#); and
3. Law [No. 21 of 2008](#) on Sharia Banks.

However, in order to provide an analysis that is tailored to the various business sectors covered under the Bill, this edition will further limit its discussion to the simplification of the investment requirements originally mandated under Law 25/2007, which apply generally across all business sectors. It should also be noted that a discussion of the simplification of investment requirements under banking-related laws will also feature in another forthcoming edition of ILD.

¹³ Art. 6, Bill.

¹⁴ Art. 13, Bill.

¹⁵ Art. 76, Bill.

Generally speaking, the simplification of investment requirements under the Bill involves a revision of provisions originally set out under Law 25/2007. A comparison between these two frameworks is outlined in the following table:

Law 25/2007	Bill
<ul style="list-style-type: none"> ○ States that Law 25/2007 applies to any direct investments which are undertaken in any business sector within Indonesia.¹⁶ 	<ul style="list-style-type: none"> ○ States that Law 25/2007 applies and shall become the main reference for any direct investments which are undertaken in any business sectors within Indonesia.¹⁷
<ul style="list-style-type: none"> ○ States that all business fields and types are generally open to investment unless otherwise classified as closed or conditionally open.¹⁸ ○ The following business types are closed to foreign investors:¹⁹ <ol style="list-style-type: none"> 1. Production of weapons, ammunition, explosive devices and combat-related equipment; and 2. Business sectors which are explicitly classified as being closed to foreign investment based on laws. 	<ul style="list-style-type: none"> ○ States that all business fields and types are open to investment unless otherwise classified as closed or only to be conducted by the central government.²⁰ ○ Business sectors that are closed to investment are set to the following six types of businesses:²¹ <ol style="list-style-type: none"> 1. Cultivation and industries involving group I narcotics; 2. All forms of gambling games and/or casinos; 3. The capture of the types of fish listed under Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; 4. Utilization or collection of corals for use as infrastructure materials, in aquariums, as souvenirs; 5. Chemical weapons industries; and

¹⁶ Art. 2 and its elucidation, Law 25/2007.

¹⁷ Art. 2, Law 25/2007, as amended by Art. 77 (1), Bill.

¹⁸ Art. 12 (1), Law 25/2007.

¹⁹ Art. 12 (2), Law 25/2007.

²⁰ Art. 12 (1), Law 25/2007, as amended by Art. 77 (2), Bill.

²¹ Art. 12 (2), Law 25/2007, as amended by Art. 77 (2), Bill.

Law 25/2007	Bill
	6. Chemical substance and ozone-depleting substance industries.
<ul style="list-style-type: none"> ○ Mandates that the government is responsible for the allocation of business fields that are specifically reserved for cooperatives as well as micro-, small- and medium-scale enterprises (<i>usaha mikro, kecil dan menengah – “UMKM”</i>).²² ○ Specifies that the government will support cooperatives and UMKM through the following measures: 1) Partnership programs; 2) Improvement of competitiveness; 3) Provision of support for innovation and broadened target markets; and 4) Dissemination of information.²³ 	<ul style="list-style-type: none"> ○ Only stipulates that the government will provide ease, empowerment and protection for cooperatives and UMKM as regards the implementation of investment.²⁴ ○ Broadens protection and empowerment measures through the addition of the following: 1) Training of human resources; and 2) Access to funding.²⁵
<ul style="list-style-type: none"> ○ States that the government will grant facilities to new investors or to existing investors who expand their investments provided that their investments meet certain criteria (e.g. labor-intensive, high-priority, involve transfers of technology or utilize domestically manufactured capital goods, machinery or equipment).²⁶ ○ Specifies the forms of facilities that may be granted to investors, including the conditions under which facilities can be granted.²⁷ 	<ul style="list-style-type: none"> ○ Broadens the criteria for investments which may enjoy facilities by adding the development of tourism businesses.²⁸ ○ No longer specifies the forms of facilities that may be granted but instead requires these facilities to be granted in accordance with taxation laws and regulations.²⁹

²² Art. 13 (1), Law 25/2007.

²³ Art. 13 (2), Law 25/2007.

²⁴ Art. 13 (1), Law 25/2007, as amended by Art. 77 (3), Bill.

²⁵ Art. 13 (2), Law 25/2007, as amended by Art. 77 (3), Bill.

²⁶ Art. 18 (3), Law 25/2007.

²⁷ Art. 18 (4), Law 25/2007.

²⁸ Art. 18 (3), Law 25/2007, as amended by Art. 77 (3), Bill.

²⁹ Art. 18 (4), Law 25/2007, as amended by Art. 77 (3), Bill.

Law 25/2007	Bill
<ul style="list-style-type: none"> ○ Requires investors to secure licenses via the One-Stop Integrated Services facility, unless otherwise specified, based on applicable laws and regulations.³⁰ 	<ul style="list-style-type: none"> ○ Requires investors to comply with business licensing requirements set by the central government or by regional governments, depending on their authorities.³¹

In relation to the above, it should be further noted that:

1. While Law 25/2007 previously closed certain business sectors to foreign investors only, the Bill seems to apply a rather general approach by eliminating the phrase “foreign investors” in relation to said closed business sectors. However, Law 25/2007 itself acknowledges both foreign and domestic investments³² and said elimination may thus result in uncertainty in terms of whether closed business sectors are designated for foreign investment, domestic investment or both.
2. In comparison with the closed business sectors which are currently outlined under Regulation of the President [No. 44 of 2016](#) regarding the Negative Investment List,³³ the Bill outlines a lower number of closed business sectors and this will presumably result in broader investment opportunities. However, the Bill still states that certain sectors are only to remain open to the central government. These sectors have yet to be specified, however, the Bill states that they will comprise activities that are services-based in nature and which relate to security and defense matters (e.g. museums, organization of aviation navigation).³⁴
3. The Bill only prohibits investments within chemical weapons industries. As a result, it can be argued that the production of weapons, ammunition, explosive devices and combat-related equipment, which were previously closed, will now be open to investment, provided that such production is not chemical in nature.
4. The Bill specifies that an upcoming Regulation of the President will set out further provisions on investment requirements for prioritized business sectors which may receive fiscal or non-fiscal incentives. However, it has been said that this regulation will also elaborate upon the various types of conditionally open business sectors. If this proves to be the case, then the Bill may be in common with

³⁰ Art. 25 (4 - 5), Law 25/2007.

³¹ Art. 25, Law 25/2007, as amended by Art. 77 (5), Bill.

³² Art. 1 (1), Law 25/2007.

³³ For more information on this regulation, see [ILD No. 456](#).

³⁴ Elucidation, Art. 12 (1), Law 25/2007, as amended by Art. 77 (2), Bill.

the arrangements set out under the previous framework of Law 25/2007, despite its attempts to promote a more relaxed investment regime.³⁵

5. Despite of broadening the scope of protection and empowerment measures, the Bill no longer explicitly requires the government to reserve certain business sectors for cooperatives and UMKM. However, under its elucidation section, the Bill states that the government allocates business sectors for cooperatives and UMKM as well as business sectors for large companies, provided that these large companies must enter into partnership arrangement with cooperatives and UMKM, for protection purposes. Along with that, the Bill also specifies that foreign investments are only available to large companies, that can only enter into partnership schemes with cooperatives and UMKM.³⁶ Nevertheless, it is uncertain if these measures are mandatory or not. If they are not mandatory, then cooperatives and UMKM will be forced onto the same level playing field as large companies.

³⁵ Elucidation, Art. 12 (3), Law 25/2007, as amended by Art. 77 (2), Bill.

³⁶ Elucidation, Art. 13 (1), Law 25/2007, as amended by Art. 77 (2), Bill.

III. Provisions on the Ease of Doing Business

Another important element relating to the pursuit of creating more job opportunities in Indonesia is ease of doing business.³⁷ Indeed, the Indonesian Government has for several years been working constantly to improve the country's ranking on the World Bank's Ease of Doing Business Index, a globally-acknowledged index which addresses the overall attractiveness of countries to investors. As its name suggests, this index indicates the level of ease that an investor is likely to experience when engaging in business in a certain country. This ease is primarily manifested through effective and efficient business-related processes. As a result, the Indonesian Government has been working continuously to deregulate and eliminate various unnecessary processes, a project which ultimately triggered the push for an omnibus law approach in the first place, as has now been implemented through the passing of the Bill.³⁸

Part of the attempts on deregulation and elimination of unnecessary processes above is also demonstrated through the revisions of provisions originally set out under the various laws listed under the "Ease of Doing Business" cluster under the Bill, as follows:³⁹

- a. Law No. 6 of 2011 on Immigration ("Law 6/2011");
- b. Law No. 20 of 2016 on Trademarks and Geographical Indications ("Law 20/2016");⁴⁰
- c. Law No. 13 of 2016 on Patents ("Law 13/2016");⁴¹
- d. Law No. 40 of 2007 on Limited-Liability Companies ("Law 40/2007");
- e. *Staatsblad* No. 226 of 1926 jo. *Staatsblad* No. 450 of 1940 on the Law Concerning Nuisance ("Nuisance Law");
- f. Law No. 7 of 1983 on Income Tax, which has been amended several times, most recently by Law No. 36 of 2008 ("Law 7/1983");
- g. Law No. 8 of 1983 on Value-Added Tax for Goods and Services and Luxury Goods Sales Tax, which has been amended several times, most recently by Law No. 42 of 2009 ("Law 8/1983");
- h. Law No. 6 of 1983 on General Provisions and Tax Procedures, which has been amended several times, most recently by Law No. 5 of 2008 ("Law 8/1983");
- i. Law No. 28 of 2009 on Regional Tax and Retribution ("Law 28/2009");
- j. Law No. 7 of 2016 on the Protection and Empowerment of Fisherman, Fish Breeders and Salt Farmers ("Law 7/2016");
- k. Law No. 3 of 1982 on the Mandatory Registration of Companies ("Law 3/1982");
- l. Law No. 6 of 2014 on Villages ("Law 6/2014"); and
- m. Law No. 5 of 1999 on the Prohibition of Monopolistic and Unfair Business Competition Practices ("Law 5/1999").

³⁷ As defined under the Bill, job creation refers to any effort to create jobs through various measures, including the improvement of the investment ecosystem, as discussed in the first two sections, as well as ease of doing business. (Art. 1 [1], Bill)

³⁸ detik.com, "Omnibus Law dan Kemudahan Berusaha," as accessed through: <https://news.detik.com/kolom/d-4857137/omnibus-law-dan-kemudahan-berbisnis> on 27 October 2020.

³⁹ Art. 105, Bill.

⁴⁰ For more information on Law 20/2016, see ILD No. 478.

⁴¹ For more information on Law 13/2016, see ILD No. 466.

The following section of this edition of ILD will focus upon the revisions introduced under the Bill to Law 6/2011, Law 20/2016, Law 13/2016, Law 40/2007, the Nuisance Law, Law 3/1982 and Law 5/1999. The revisions which have now been made to the country's taxation related laws, as well as to Law 7/2016 and Law 6/2014, are to be discussed in separate, forthcoming editions of ILD.

Revisions to Law 6/2011

Law 6/2011	Bill
<ul style="list-style-type: none"> ○ Generally defines visa and stay permits as documents that are provided to foreign citizens in order for them to be able to travel to and live in Indonesia, without explicitly clarifying if these documents are available in electronic form or not.⁴² 	<ul style="list-style-type: none"> ○ Clarifies that visas and stay permits will now be available in both hardcopy and electronic formats.⁴³
<ul style="list-style-type: none"> ○ States that visitor visas will be granted to foreign citizens who travel to Indonesia for the following purposes: 1) Government duties; 2) Education; 3) Social/cultural reasons; 4) Tourism; 4) Business; 5) Family matters; 6) Journalism; or 7) Transit in order to continue travel to other countries.⁴⁴ 	<ul style="list-style-type: none"> ○ Broadens the designation of visitor visas, which can now be used by foreign citizens who travel to Indonesia for pre-investment purposes.⁴⁵
<ul style="list-style-type: none"> ○ States that limited-stay visas will be granted to:⁴⁶ <ol style="list-style-type: none"> 1. Foreign citizens who wish to travel to and stay temporarily in Indonesia as: a) Members of the clergy; b) Expert personnel; c) Workers; d) Researchers; e) Students; f) Investors; g) Elderly persons 	<ul style="list-style-type: none"> ○ No longer incorporates elderly persons onto the list of foreign citizens who are eligible to receive limited-stay visas.⁴⁷ ○ However, foreign citizens and their families may now obtain second home limited-stay visas in order to stay in Indonesian for periods of 5 to 10

⁴² Art. 1 (18) and (21), Law 6/2011.

⁴³ Art. 1 (18) and (21), Law 6/2011, as amended by Art. 106 (1), Bill.

⁴⁴ Art. 38, Law 6/2011.

⁴⁵ Art. 38, Law 6/2011, as amended by Art. 106 (2), Bill.

⁴⁶ Art. 39, Law 6/2011.

⁴⁷ Art. 39 (1a), Law 6/2011, as amended by Art. 106 (1), Bill.

Law 6/2011	Bill
<p>and their families; and h) Foreign citizens who are legally married to Indonesian citizens; or</p> <p>2. Foreign citizens who wish to work in ships, floating vehicles or any installations which operate within archipelagic waters, maritime territorial areas, continental shelves and/or special economic zones.</p>	<p>years after previously complying with certain requirements.⁴⁸</p>
<p>o States that visitor visas and limited-stay visas are to be granted and signed by immigration officials at Indonesian representative offices overseas⁴⁹</p>	<p>o No longer specifies that the granting and signing of these visas take place at Indonesian representative offices overseas⁵⁰</p>
<p>o Requires foreign citizens, who possess limited-stay visas and have already secured entry stamps, to submit applications to the Head of the relevant Immigration Office in order to secure limited-stay permits.⁵¹</p>	<p>o Offers exemption to said requirement, on the condition that the foreign citizens in question have obtained their limited-stay permits from immigration checkpoints.⁵²</p>
<p>o States that permanent-stay permits can be granted to, among others, foreign citizens who possess limited-stay permits as: 1) Members of the clergy; 2) Workers; 3) Investors; and 4) Elderly persons.⁵³</p>	<p>o No longer incorporates elderly persons, but now includes foreign citizens who have secured second home limited stay visas, as discussed earlier.⁵⁴</p>
<p>o Exemptions regarding the mandatory provision of guarantors for foreign citizens who are staying in Indonesia will apply if said</p>	<p>o Said exemptions will now apply to the following parties:⁵⁶</p>

⁴⁸ Elucidation of Art. 39 (1a), Law 6/2011, as amended by Art. 106 (1), Bill.

⁴⁹ Art. 40 (2), Law 6/2011.

⁵⁰ Art. 40 (2), Law 6/2011, as amended by Art. 106 (4), Bill.

⁵¹ Art. 46 (2), Law 6/2011.

⁵² Art. 46 (2) and (4), Law 6/2011, as amended by Art. 106 (5), Bill.

⁵³ Art. 54 (1a), Law 6/2011.

⁵⁴ Art. 54 (1a), Law 6/2011, as amended by Art. 106 (6), Bill.

⁵⁶ Art. 63 (4) and (6), Law 6/2011, as amended by Art. 106 (7), Bill.

Law 6/2011	Bill
foreign citizens are legally married to Indonesian citizens. ⁵⁵	<ol style="list-style-type: none"> 1. Foreign citizens who are legally married to Indonesian citizens; 2. Foreign citizens that invest in Indonesia, according to the applicable laws and regulations on investment, provided that said investors deposit immigration guarantees; and 3. Foreign citizens of countries that reciprocally implement exemptions to the guarantee requirement.
<ul style="list-style-type: none"> ○ States that permanent-stay permit possessed by a foreign citizen who is legally married to an Indonesian citizen is cancelled if they are divorced, unless the marriage has lasted for 10 years or more⁵⁷ 	<ul style="list-style-type: none"> ○ States that said cancellation does not apply if the foreign citizens concerned has already been guaranteed⁵⁸
<ul style="list-style-type: none"> ○ In terms of immigration requirements, foreign citizens are obliged to both show and submit travel documents or stays permits when required for immigration supervision.⁵⁹ 	<ul style="list-style-type: none"> ○ No longer requires foreign citizens to show their travel documents or stays permits, yet keeps the requirement for them to submit these documents for immigration supervision purposes.⁶⁰

From the comparisons set out above, it should be further noted that:

1. The Bill provides greater convenience for foreign citizens in general. This can be seen from the various revisions discussed above, including the possibility of issuing immigration documents in electronic forms and the possibility of obtaining limited-stay permits at immigration checkpoints.
2. Furthermore, the Bill also reflects improved ease of entry into Indonesian territory for foreign citizens, specifically for investment purposes. This can be seen in the broadened scope of the designation of visitor

⁵⁵ Art. 63 (4), Law 6/2011.

⁵⁷ Art. 62 (2g), Law 6/2011.

⁵⁸ Art. 63 (5), Law 6/2011, as amended by Art. 106 (7), Bill.

⁵⁹ Art. 71b, Law 6/2011.

⁶⁰ Art. 71 (1b), Law 6/2011, as amended by Art. 106 (8), Bill.

visas, although the Bill has yet specified the kinds of activities which constitute “pre-investment” activities.

3. In addition, said ease is also demonstrated from the exemption of foreign investors to the requirement to provide guarantors, although it is still required for them to make immigration guarantee deposits. This arrangement seems to provide greater flexibility for parties who are interested in investing in Indonesia but also introduces greater controls over those who are engaging in and profiting from concrete investments within Indonesia.

Revisions to Law 13/2016

Law 13/2016	Bill
<ul style="list-style-type: none"> ○ Regulates that simple patents will be granted in relation to inventions which fulfill the following criteria:⁶¹ <ol style="list-style-type: none"> 1. New; 2. Developed from existing products or processes; and 3. Applicable within the realm of industry. 	<ul style="list-style-type: none"> ○ Adds a criteria for simple-patent inventions to also have a practical use. ○ Clarifies that simple-patent inventions are developed from existing products or processes which include the following: 1) Simple products; 2) Simple processes; and 3) Simple methods.⁶²
<ul style="list-style-type: none"> ○ Patent holders are required to either produce patented products or utilize patented processes within Indonesia in order to support the transfers of technology, absorption of investment and/or job creation.⁶³ 	<ul style="list-style-type: none"> ○ Broadens the measures through which patents are implemented within Indonesia, as follows:⁶⁴ <ol style="list-style-type: none"> 1. For implementation of patented products: the production, importation and licensing of products which are covered by patents; 2. For implementation of patent processes: the production, licensing and importation of products which are generated through processes which are covered by patents; and

⁶¹ Art. 3 (2), Law 13/2016.

⁶² Art. 3, Law 13/2016, as amended by Art. 107 (1), Bill.

⁶³ Art. 20, Law 13/2016.

⁶⁴ Art. 20, Law 12/2016, as amended by Art. 107 (2), Bill.

Law 13/2016	Bill
	<p>3. For implementation of patented methods, systems and usage: the production, importation and licensing of any products which are produced through the application of said patented methods, systems and usage.</p> <ul style="list-style-type: none"> ○ No longer specifies that the implementation of patents in Indonesia should increase support the transfers of technology, absorption of investment and/or job creation.
<ul style="list-style-type: none"> ○ Applications for substantive examinations of simple patents may be submitted concurrently along with applications to obtain the simple patents in question or within a maximum of six months of the submission of the applications to obtain the simple patents.⁶⁵ 	<ul style="list-style-type: none"> ○ Applications for substantive examinations of simple patents must now be submitted concurrently along with the submission of applications to obtain the simple patents concerned, otherwise, these simple-patent applications are deemed withdrawn.⁶⁶
<ul style="list-style-type: none"> ○ Upon the submission of an application for a simple patent, the following actions will be undertaken:⁶⁷ <ol style="list-style-type: none"> 1. The application will be announced by no later than seven business days after the three-month period of the filing date (<i>tanggal penerimaan</i>) of the application; 2. The announcement will last for a period of two months; 3. The substantive examination will commence after the announcement period has ended. 	<ul style="list-style-type: none"> ○ Changes the timeline regarding the procedure for announcements of simple patents as follows:⁶⁸ <ol style="list-style-type: none"> 1. An application will be announced within 14 business days of the its filing date at the latest; 2. The announcement will last for a period of 14 business days; 3. The substantive examination will commence after the announcement period has ended; and 4. The stipulated timeframe for the submission of objections is eliminated in relation to the

⁶⁵ Art. 122 (2), Law 13/2016.

⁶⁶ Art. 122, Law, 13/2016, as amended by Art. 107 (4), Bill.

⁶⁷ Art. 123, Law 13/2016.

⁶⁸ Art. 123, Law 13/2016, as amended by Art. 107 (5), Bill.

Law 13/2016	Bill
	processing of simple patents thus any submitted objections will directly affect considerations relating to substantive examinations.
<ul style="list-style-type: none"> ○ Mandates that the Minister of Law and Human Rights (“MOLHR”) is responsible for deciding whether or not to accept a simple patent application within 12 months.⁶⁹ 	<ul style="list-style-type: none"> ○ Shortens this period to six months.⁷⁰

From the above comparison, it can be noted that:

1. The broadened measures for the implementation of patents within Indonesia are seemingly intended to ease the operation of businesses. The easing of the implementation of patents is arguably in line with provisions set out under the TRIPS Agreement, which was officially ratified by Indonesia through the issuance of Decree of President No. 24 of 1979. The TRIPS Agreement states that patent rights should be available without any discrimination in terms of the relevant field of technology or whether products are imported or locally produced.⁷¹
2. Furthermore, the implementation of patents through the licensing arrangements may also benefit more parties as more businesses may utilize patented products or processes without having to develop them from scratch, while the patent holders will still gain profits from the royalties and other economic benefits set out under the licensing arrangements.
3. The period for the processing of simple patent applications has now been shortened, which is in line with the intention of establishing more effective and efficient processes for investors in doing business in Indonesia.

⁶⁹ Art. 124 (1), Law 13/2016.

⁷⁰ Art. 124 (1), Law 13/2016, as amended by Art. 107 (6), Bill.

⁷¹ World Trade Organization official website, “Overview: The TRIPS Agreement”, accessed through: https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm on 27 October 2020.

Revisions to Law No. 20/2016

Law 20/2016	Bill
<ul style="list-style-type: none"> ○ Sets out six reasons why certain trademarks cannot be registered, including, among others, if a mark does not contain any distinguishing elements or features and if a mark contains a general name and/or logo.⁷² 	<ul style="list-style-type: none"> ○ Broadens the reasons for not allowing trademarks to be officially registered to include trademarks containing forms that are functional in nature.⁷³
<ul style="list-style-type: none"> ○ Submitted applications for trademark registrations should undergo substantive examinations through the implementation of the following protocol:⁷⁴ <ol style="list-style-type: none"> 1. If there are no objections regarding an application, then the substantive examination should commence within 30 business days of the announcement period ending; 2. If there are any objections regarding an application, then the substantive examination will commence within 30 business days of the period for the submission of rebuttals ending; and 3. Regardless of the conditions under which an examination commences, the examination period is set at 150 business days. 	<ul style="list-style-type: none"> ○ Changes the timeline for the implementation of substantive examinations. As a result, the examination protocol now breaks down as follows:⁷⁵ <ol style="list-style-type: none"> 1. If there are no objections regarding an application, then the substantive examination should commence immediately after the announcement period has ended. The examination, in this case, should last for 30 business days; 2. If there are any objections regarding an application, then the substantive examination will commence within 30 days of the period for the submission of rebuttals ending. The examination in this case should last for 90 business days.

⁷² Art. 20, Law 20/2016.

⁷³ Art. 20, Law 20/2016, as amended by Art. 108 (1), Bill.

⁷⁴ Art. 23, Law 20/2016.

⁷⁵ Art. 23, Law 20/2016, as amended by Art. 108 (2), Bill.

Law 20/2016	Bill
<ul style="list-style-type: none"> ○ Sets a time limit for the collection of trademark certificates by trademark owners or their proxies, which is set at 18 months after the relevant issuance date of the certificate, otherwise, the registered trademark will be deemed withdrawn and eliminated.⁷⁶ 	<ul style="list-style-type: none"> ○ No longer incorporates any provision on the 18-month limitation on trademark owners (or their proxies) collecting issued certificates.⁷⁷

From the comparisons above, it should be further noted that:

1. The addition of functional nature as a reason of why a trademark cannot be registered provides better clarity, since this character may overlap with the character of objects which are protected by industrial design rights, as regulated under Law [No. 31 of 2000](#) on Industrial Designs.
2. The period for trademark examinations has now been shortened and should commence immediately after the end of the announcement period. This means that the sooner a trademark is processed, the sooner it will be afforded full protection.
3. The elimination of the 18-month limitation period on applicants collecting their trademark certificates will also provide greater convenience for businesses as the protection will remain valid regardless of whether a trademark certificate has been collected by the trademark owners or not.

⁷⁶ Art. 25, Law 20/2016.

⁷⁷ Art. 25, Law 20/2016, as amended by Art. 108 (3), Bill.

Revisions to Law 40/2007

Law 40/2007	Bill
<ul style="list-style-type: none"> ○ Defines limited-liability companies as legal entities which constitute capital partnership, should be established based on agreement, conduct their business activities through authorized capital which is distributed into shares, and comply with prevailing laws and regulations.⁷⁸ 	<ul style="list-style-type: none"> ○ Broadens the definition of limited-liability companies to include individual legal entities (<i>badan hukum perorangan</i>) that meet the criteria for UMKM, as referred to under various laws and regulations which address UMKM.⁷⁹
<ul style="list-style-type: none"> ○ The mechanism to be used in order to tackle the single control of duly-established companies involves the transfer of shares.⁸⁰ 	<ul style="list-style-type: none"> ○ The mechanism to be used in order to tackle the single control of duly-established companies has now been broadened to encompass both transfers of shares and the issuance of new shares.⁸¹
<ul style="list-style-type: none"> ○ Exemptions to the minimum of two founders rule for the establishment of limited-liability companies apply to the following parties:⁸² <ol style="list-style-type: none"> 1. Companies whose shares are wholly owned by states; or 2. Companies who organize stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions, as referred to under Law No. 8 of 1995 on the Capital Market. 	<ul style="list-style-type: none"> ○ Broadens said exemptions to include the following entities:⁸³ <ol style="list-style-type: none"> 1. Regionally owned enterprises; 2. Village-owned enterprises; and 3. Limited-liability companies that meet the criteria for UMKM.

⁷⁸ Art. 1 (1), Law 40/2007.

⁷⁹ Art. 1 (1), Law 40/2007, as amended by Art. 109 (1), Bill.

⁸⁰ Art. 7 (5), Law 40/2007.

⁸¹ Art. 7 (5), Law 40/2007, as amended by Art. 109 (2), Bill.

⁸² Art. 7 (7), Law 40/2007.

⁸³ Art. 7 (7), Law 40/2007, as amended by Art. 109 (2), Bill.

Law 40/2007	Bill
<ul style="list-style-type: none"> ○ The stipulated minimum authorized capital for any establishment is set at IDR 50 billion.⁸⁴ 	<ul style="list-style-type: none"> ○ No minimum amount of authorized capital has been set as regards the establishment of limited-liability companies in which the amount is to be determined by the founders of the companies concerned.⁸⁵ This arrangement is in line with the current provision set under Regulation of the Government No. 29 of 2016 on the Amendment to Authorized Capital for Limited-Liability Companies.⁸⁶
<ul style="list-style-type: none"> ○ Imposes certain charges in relation to the validation, approval and announcement of certain actions regarding limited-liability companies, the amounts of which were to be detailed in a Regulation of the Government.⁸⁷ 	<ul style="list-style-type: none"> ○ Provisions regarding said imposition are no longer elaborated upon, yet revised into provisions which specify that charges relating to individuals as legal entities should be regulated in accordance with the applicable laws and regulations concerning non-tax state revenue.⁸⁸
<p style="text-align: center;">Not included</p>	<ul style="list-style-type: none"> ○ Limited-liability companies that fall under the UMKM criteria may be established by one person and the establishment is to be completed through the drawing up of establishment statement in the Indonesian language that addresses certain matters (i.e., purposes and objectives, authorized capital, and other relevant information to the establishment of the companies) which should be submitted to MOLHR electronically.⁸⁹ ○ Any amendments to the establishment statement above must be stipulated by the

⁸⁴ Art. 32, Law 40/2007.

⁸⁵ Art. 32, Law 40/2007, as amended by Art. 109 (3), Bill.

⁸⁶ For more information on this regulation, see ILB [No. 2931](#).

⁸⁷ Art. 153, Law 40/2007.

⁸⁸ Art. 153, Law 40/2007, as amended by Art. 109, (4) Bill.

⁸⁹ Arts. 153A and 153B (1), Law 40/2007, as amended by Art. 109 (5), Bill.

Law 40/2007	Bill
	<p>General Meeting of Shareholders and electronically submitted to the MOLHR.⁹⁰</p> <ul style="list-style-type: none"> ○ It should be noted that founder of a UMKM company is individual and is only permitted to establish one UMKM company within the span of a given year.⁹¹ ○ If, at any time, the capitalization of any UMKM companies exceeds the UMKM criteria, as stipulated under Law No. 20 of 2008 on UMKM, then said companies must comply with the general provisions which are set out under Law 40/2007.⁹² ○ Boards of directors of UMKM companies must always act in the interests of the relevant companies and are obliged to draw up financial statements for their companies.⁹³ ○ If UMKM companies wish to be dissolved then such resolutions must be drawn up in statements which address said dissolutions while the MOLHR must also be notified regarding any dissolutions.⁹⁴ Conditions that may trigger dissolutions include, among others, resolutions of shareholders, court decisions, the end of a stipulated establishment period, insolvency and so forth.⁹⁵ ○ UMKM companies may be granted with facilities regarding their establishment fees.⁹⁶

⁹⁰ Arts. 153B (2) and 153C (1), Law 40/2007, as amended by Art. 109 (5), Bill.

⁹¹ Art. 153E, Law 40/2007, as amended by Art. 109 (5), Bill.

⁹² Art. 153H, Law 40/2007, as amended by Art. 109 (5), Bill.

⁹³ Arts. 153D and 153F, Law 40/2007, as amended by Art. 109 (5), Bill.

⁹⁴ Arts. 153G (1), Law 40/2007, as amended by Art. 109 (5), Bill.

⁹⁵ Art. 153G (2), Law 40/2007, as amended by Art. 109 (5), Bill.

⁹⁶ Art. 153I, Law 40/2007, as amended by Art. 109 (5), Bill.

Law 40/2007	Bill
	<ul style="list-style-type: none"> ○ Shareholders in any UMKM companies will not have to bear any personal liability regarding any arrangements which are made for and on behalf of the relevant companies unless several exemption criteria are met (e.g. the requirements for limited-liability companies have not yet been fulfilled, shareholders have acted in bad faith, and so forth).⁹⁷

In general, the revisions that have now been made to Law 40/2007 offer many new advantages and conveniences for UMKM and will presumably support the development of UMKM within Indonesia. Moreover, having more UMKM established as limited-liability companies might also provide better certainties as they will have the status of a legal entity.

Revocation of the Nuisance Law

The Bill revokes the Nuisance Law.⁹⁸ In essence, this law addressed the requirement for a business to obtain a permit confirming that there would be no nuisance within the location in which the relevant business activities were to be implemented.⁹⁹ However, it should be noted that the requirement to obtain distribution permit has been inapplicable since 2019, as the Minister of Home Affairs issued Circular No. 503/6491/SJ dated 17 July 2019 which stipulates that regional governments are no longer authorized to issue nuisance permits or imposing levies towards these permits.

Revocation of Law 3/1982

The Bill also revokes Law 3/1982,¹⁰⁰ which required business players to notify and register various information relating to their businesses with the Minister of Trade.¹⁰¹ Failure to comply with the requirements set under Law 3/1982 would then trigger the imposition of criminal sanctions.¹⁰² However, in practice, this requirement seemed loosely applied while sanctions were barely enforced. Moreover, the requirement to notify various information set out under the now revoked Law 3/1982, are also covered under other laws, including Law 40/2007, which therefore resulted in confusion and inefficiency.

⁹⁷ Art. 153J, Law 40/2007, as amended by Art. 109 (5), Bill.

⁹⁸ Art. 110, Bill.

⁹⁹ easybiz.id, "Jangan Mengabaikan Izin Gangguan HO Kalau Mau Bisnis Anda Lancar" as accessed through: <https://www.easybiz.id/jangan-mengabaikan-izin-gangguan-ho-kalau-mau-bisnis-anda-lancar/> on 27 October 2020.

¹⁰⁰ Art. 116, Bill.

¹⁰¹ Arts. 5 (1), 9 (1), 11 - 17, Law 3/1982.

¹⁰² Arts. 32 - 35, Law 3/1982.

Revisions to Law 5/1999

Law 5/1999	Bill
<ul style="list-style-type: none"> ○ Businesses may file their objections against the decisions rendered by the Business Competition Supervisory Commission (<i>Komisi Pengawas Persaingan Usaha – “KPPU”</i>) regarding allegations of violations to Law 5/1999 to the relevant district court within 14 days of receiving notification of the KPPU decisions concerned.¹⁰³ ○ Furthermore, said district court should start examining such objections within 14 days of receiving them.¹⁰⁴ 	<ul style="list-style-type: none"> ○ States that all such objections should now be submitted to and examined by the commercial court, instead of by the district court.¹⁰⁵
<ul style="list-style-type: none"> ○ The district court concerned must complete the examination and render its decision within 30 days since commencing the examination; ○ Businesses that are dissatisfied with a district-court decision against their objections may submit a cassation petition to the Supreme Court within 14 days, in which the Supreme Court resolve the case within 30 days since receiving the cassation petition.¹⁰⁶ 	<ul style="list-style-type: none"> ○ The timeframe during which commercial court and the Supreme Court are required to render a decision regarding the objections has no longer been incorporated and the procedure for these processes refer to the applicable laws and regulations¹⁰⁷
<ul style="list-style-type: none"> ○ The KPPU is authorized to impose administrative sanctions in relation to violations to Law 5/1999, in which the sanctions include the imposition of fines 	<ul style="list-style-type: none"> ○ No longer specifies the ceiling threshold for the fine, yet maintains the floor threshold at the amount of IDR 1 billion.¹⁰⁹

¹⁰³ Art. 44 (2), Law 5/1999.

¹⁰⁴ Art. 45 (1), Law 5/1999.

¹⁰⁵ Arts. 44 (2) and 45 (1), Law 5/1999, as amended by Art. 118 (1 - 2), Bill.

¹⁰⁶ Art. 45 (4), Law 5/1999.

¹⁰⁷ Art. 45, Law 5/1999, as amended by Art. 118 (2), Bill.

¹⁰⁹ Art. 47, Law 5/1999, as amended by Art.118 (3), Bill.

Law 5/1999	Bill
<p>ranging from a minimum of IDR 1 billion up to a maximum of IDR 25 billion.¹⁰⁸</p>	
<ul style="list-style-type: none"> ○ Mandates for the imposition of criminal sanctions in relation to various violations of the provisions which are set out under Law 5/1999, including: 1) Businesses that refuse to be investigated, refuse to present evidence or that obstruct investigations; 2) Businesses which become involved in price-fixing and so forth.¹¹⁰ ○ The criminal sanctions comprise finer ranging from a minimum of IDR 1 billion to a maximum of IDR 100 billion, or imprisonment for a minimum of three months to a maximum of six months to substitute the fines.¹¹¹ ○ Further to the above, businesses may also have the following additional criminal sanctions imposed on them: 1) License revocations; 2) Suspension of certain periods of office in relation to certain positions; or 3) Termination of business activities.¹¹² 	<ul style="list-style-type: none"> ○ Criminal sanctions can only be imposed if businesses refuse to be investigated, refuse to present evidence or obstruct investigations and can only comprise maximum fines of IDR 5 billion or one year of imprisonment at maximum.¹¹³ ○ The provisions regarding the imposition of additional criminal sanctions are removed.¹¹⁴

¹⁰⁸ Art. 47, Law 5/1999.

¹¹⁰ Art. 48, Law 5/1999.

¹¹¹ Art. 48, Law 5/1999.

¹¹² Art. 49, Law 5/1999.

¹¹³ Art. 48, Law 5/1999, as amended by Art.118 (4), Bill.

¹¹⁴ Art. 49, Law 5/1999, as eradicated by Art. 118 (5), Bill.

From the comparisons above, it should be further noted that:

1. It has now been clarified that resolutions to unfair business competition cases between businesses and the KPPU are to be resolved through the commercial court.

The amendments introduced under the Bill arguably reduce the possibility of criminal sanctions being imposed, as is reflected in the eradication of basis for the imposition of these sanctions. Furthermore, the reduced amount of fines as well as the eradication of additional criminal sanctions will arguably be harmful to the country's business climate in the long run as the sanctions may be deemed to be less severe and threatening for businesses. Meanwhile, the KPPU's 2019 report revealed that the examination of cases initiated by the KPPU increased by 24% over the 2018 case numbers.¹¹⁵ This doubtless means that businesses operating in Indonesia are not yet fully aware of how to comply with the regulatory framework for fair business competition. With this in mind, the loosening of sanctions may affect businesses, ultimately making them increasingly reluctant to comply with the regulations on fair business competition.

¹¹⁵ KPPU Annual Report 2019, p.33.

Conclusion

The revisions to the various laws discussed above, that have now been introduced under the Bill, demonstrate how the Bill seeks to offer greater convenience for businesses in general, be they foreign or domestic, particularly those who fall into the UMKM category. The ultimate hope, of course, is that more people will be encouraged to establish businesses in Indonesia, which should, in turn, result in more job opportunities.

However, as far as it manages to provide much greater accessibility to the Indonesian marketplace, the Bill also seems to be striving to strike a balance as is demonstrated through, among others, the elimination of the mandatory allocation of business sectors for UMKM or the relaxed sanctions for parties violating fair business competition framework. Nevertheless, we will still have to wait and see if the Bill's forthcoming implementing regulations ultimately manage to achieve a greater balance in terms of the conveniences discussed herein, as it is important to ensure that increased investments within the country are more beneficial than they are harmful in the long run. ^{VN}

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