Client Update: Indonesia

25 May 2023

BUMN Omnibus Regulations Highlights Special Assignment and Environmental Social Responsibility Programs

The Minister of State-Owned Enterprises ("**Minister**") issued the BUMN Omnibus Regulations at the end of March 2023, which consolidated and integrated over 45 ministry-level regulations. The Ministry's aim in issuing the BUMN Omnibus Regulations is to synchronise the regulations pertaining to state-owned enterprises, which will support the integrated and sustainable management of state-owned enterprises.

The BUMN Omnibus Regulations comprise of three ministry-level regulations:

1. Minister Regulation No. PER-1/MBU/01/2023 on Special assignments and Environmental Social Responsibility Programs of State-Owned Enterprises ("**Regulation 1/2023**");

2. Minister Regulation No. PER-2/MBU/02/2023 on Guidelines for the Governance and Significant Corporate Activities of State-Owned Enterprises ("**Regulation 2/2023**"); and

3. Minister Regulation No. PER-3/MBU/03/2023 on State-Owned Enterprise Organisation and Human Resources.

In this client alert, which will be the first of the alert on the BUMN Omnibus Regulations, we will focus on Regulation 1/2023, which introduces new provisions on special assignment (*penugasan khusus*) of state-owned enterprises, as well as changes to the environmental and social responsibility programs of state-owned enterprises.

Special assignment

The special assignment of state-owned enterprises was first stipulated under Law No. 19 of 2003 on State-Owned Enterprises ("**SOE Law**"). The SOE Law simply stated that the government may directly appoint any state-owned enterprise to carry out a specific business or project, subject to the approval from the Minister.

The foregoing provision was amended under Law No. 6 of 2023 on Ratification of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation ("**Job Creation Law**"), which elaborated that:

1. any special assignment must take into account the characteristics and capabilities of the relevant state-owned enterprise (i.e., it is engaged in a business that is relevant to the special assignment); and

2. if the special assignment is not financially feasible, the government must compensate the state-owned enterprise for costs incurred, including the expected margin, as long as it is reasonable in the context of the special assignment.

For state-owned enterprises, one of the benefits of a special assignment is that the state-owned enterprise will be able to procure land for public interest.

Based on Article 191 of Regulation 2/2023, when a state-owned enterprise acquires land through a special assignment, it is treated as conducting land procurement for public interest specifically for the purpose of the business or project of the special assignment under the legal framework outlined in Law No. 2 of 2012 on Land Procurement for Public Interest Development, as amended by the Job Creation Law. In contrast to regular land procurement, which can often pose significant obstacles to a project, the state-owned enterprise involved in a public interest land procurement benefits from a clear timeline for the procurement process and the resolution of any disputes that may arise.

Regulation 1/2023 lists four elements of special assignment, namely planning, government's determination, implementation, and reporting.

1. <u>Planning</u>

   Before the government determines the special assignment, the board of directors of the relevant state-owned enterprise ("**Receiving SOE**") must prepare a primary blueprint that details the implementation of the special assignment. This blueprint must, at least, evaluate the technical aspects, legal review, as well as the commercial and financial feasibility of the business or project of the special assignment, including sources of funding.

This blueprint will be jointly reviewed and agreed upon by the Receiving SOE, the Minister, the Minister of Finance, and the government authority that will issue the special assignment.

2. Government's determination

Once the blueprint is agreed by the Receiving SOE, the Minister, the Minister of Finance, and the relevant government authority, the government's determination for the special assignment will be issued via a government regulation, a presidential regulation, or a regulation/decree of the relevant government authority, depending on the scope and nature of the special assignment and the corresponding government authority. This provision gives a much-needed clarity on the legal form of the special assignment, which was previously not specified under any law or regulation.

The special assignment must then be included in the Receiving SOE's work plan and budget (*rencana kerja dan anggaran perusahaan* or "**RKAP**"), as well as its long-term plan (*rencana jangka panjang* or "**RJP**"). In our experience, any changes to the Receiving SOE's RKAP or RJP will require additional corporate approval from the Receiving SOE's board of commissioners and shareholders, which is separate from the corporate approval for the special assignment.

3. Implementation

To implement the special assignment, the Receiving SOE may enter into a cooperation with a third party, which could be another state-owned enterprise, a regional-owned or private-owned enterprise, a cooperative, a research and development institution, an assessment and implementing agency, or a university and higher-educational institution.

Regulation 1/2023 also asserts that any bookkeeping for the special assignment must be separate from the Receiving SOE's other books. This requirement is in line with Regulation 2/2023, which requires the Receiving SOE's RKAP for the special assignment to be presented separately from the Receiving SOE's RKAP for its main business.

The detailed work program (*program kerja*) of the special assignment must cover matters on marketing and sales, procurement, production and product quality, engineering and technology, finance and accounting, system and organisation, human resources development, research and development, environmental conservation, and investment (under Appendix II of Regulation 2/2023).

4. Reporting

The Receiving SOE must report the implementation of the special assignment to the Minister, Minister of Finance, and the relevant government authority on an annual basis and at any time as requested by those authorities.

Environmental and Social Responsibility Programs of State-Owned Enterprises

Another matter regulated by Regulation 1/2023 is the environmental and social responsibility programs (*Program Tanggung Jawab Sosial dan Lingkungan BUMN* or "**TJSL Program**") of state-owned enterprises. These programs are corporate social responsibility initiatives that specifically apply to state-owned enterprises.

Previously, TJSL Program was regulated under Minister Regulation No. 05/MBU/04/2021 on Environmental Social Responsibility Programs of State-Owned Enterprises, as amended by Minister Regulation No. 6/MBU/09/2022 ("**Previous TJSL Regulation**"). While Regulation 1/2023 retains most of the provisions in the Previous TJSL Regulation, there are several exceptions as discussed below.

1. What is a TJSL Program?

   The TJSL Program is a corporate social responsibility program that all state-owned enterprises must undertake. This Program may take the form of:

   (i) micro and small business financing; and/or

   (ii) provision of assistance and/or other related activities.

   Specifically for micro and small business financing, a state-owned enterprise may establish a separate program called the Micro and Small Business Financing Program ("**UMK Financing Program**").

2. UMK Financing Program

   The UMK Financing Program is only available to state-owned enterprise foster partners (*mitra binaan*) that meet the following criteria:

   (i) are owned by Indonesian citizens;

   (ii) are not eligible for loans or do not have access to loans from funding agencies or banks;

   (iii) are independent and are not subsidiaries or branches of any companies owned or controlled by, or directly or indirectly affiliated with any medium and large-scale enterprises; and

   (iv) have potential business that can be developed.

Priority will be given to micro and small businesses that conduct businesses in sectors that are aligned with that of the state-owned enterprise foster partner's, can support the business of the state-owned enterprise, and are in nearby areas.

The UMK Financing Program may be in the form of:

(i) working capital in the form of sharia loan or financing, which must not exceed IDR250 million for each micro and small business; and

(ii) additional funding in the form of sharia loan or financing to finance short-term needs for up to a year, which must not exceed IDR100 million for each micro and small business.

A state-owned enterprise may cooperate with any other state-owned enterprise, any of their subsidiary, or any affiliated company that conducts business as a financing institution, a bank, or an institution capable to disburse loans as appointed by the Minister. Regulation 1/2023 adds that a state-owned enterprise may provide their UMK Financing Program in the form of a grant to their cooperation partner, instead of being directly involved in carrying out the UMK Financing Program.

3. Reporting obligation

All state-owned enterprises must submit quarterly and annual financial statements for their TJSL Program to the Minister. These statements will be audited separately from the state-owned enterprise's annual financial statement by a public accountant.

Conclusion

In our view, Regulation 1/2023 introduces a key change by clarifying the legal form of special assignment for state-owned enterprises, whether in the form of a government regulation, a presidential regulation, or a regulation/decree of the relevant government authority. The introduction of this legal basis eliminates the ambiguity for state-owned enterprises and their subsidiaries in carrying out a special assignment.

Meanwhile, with respect to existing special assignment arrangements, state-owned enterprises must report the implementation of the special assignment once every year (or at any time if requested) to the Minister of Finance, the minister who oversees the sector of the state-owned enterprise in question, and the government authority that issued the special assignment. Moreover, state-owned enterprises with existing special assignment arrangements should prepare a separate bookkeeping on the implementation of the special assignment.

Lastly, in relation to the TJSL Program, Regulation 1/2023 does not substantially revise the Previous TJSL Regulation, except that under Regulation 1/2023, a state-owned enterprise may provide their UMK Financing Program in the form of a grant to their cooperation partner, instead of being directly involved in carrying out the UMK Financing Program. State-owned enterprises, as well as their affiliates and subsidiaries may consider revising their internal rules related to their TJSL Program to accommodate this addition.

This client alert is part of a series, the next publication will outline Regulation 2/2023.

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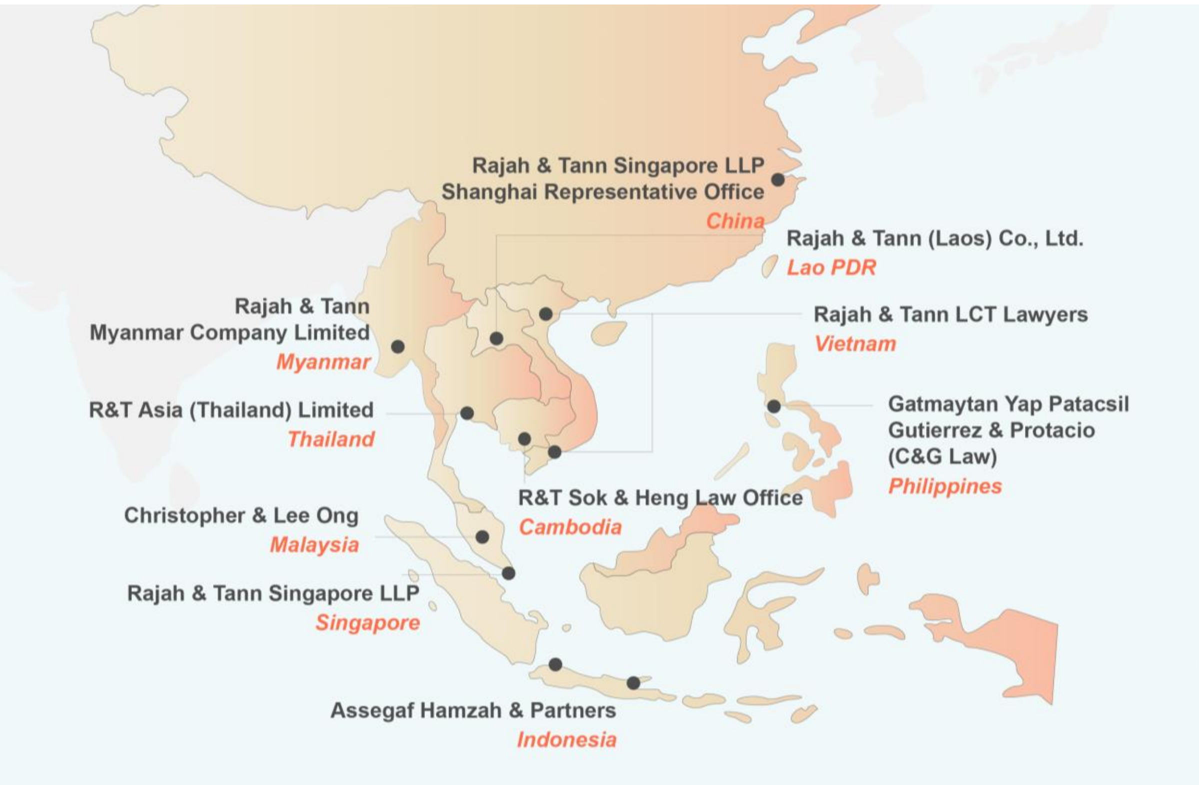

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