

Omnibus Law

Legal Insight

The Post Job Creation Act (Omnibus Law) Procurement of Goods/Services Regulation

Following the issuance of Law Number 11 of 2020 concerning Job Creation (the "**Job Creation Act**"), the Indonesian government has issued 49 (forty nine) implementing regulations, consisting of 45 Government Regulations and 4 President Regulations. One of them is Presidential Regulation Number 12 of 2021 concerning Government Procurement of Goods/Services ("**PR 12/2021**") as an amendment to Presidential Regulation Number 16 of 2018 ("**PR 16/2018**").

PR 12/2021 was issued as a result of the changes in the provision on using product/services from Micro and Small Businesses ("**MSB**") and Cooperatives for the Procurement of Goods/Services as stipulated in Law Number 20 of 2008 on Micro, Small, and Medium Businesses, which was amended by the Job Creation Act. The changes include provisions that in procuring goods/services, at least 40% (forty percent) of the products/services procured by the central government and regional governments must originate from domestic production by MSB and Cooperatives. This is based on the objective of the Government of the Republic of Indonesia ("**Government**") to provide Ease, Protection and Enhanced Utilisation of MSB and cooperatives as the leading economic sector in Indonesia and also for MSB and cooperatives to participate in all procurement carried out by the Government.

From the regulation, we can see that the Government is providing more flexibility for MSB and cooperatives, which we believe will help develop MSB and cooperatives in Indonesia. We have highlighted the following items related to MSB and cooperatives that are important to know from the PR 12/2021:

A. Use of Domestic Products

The most striking difference provided in PR 12/2021 concerns the mandatory use of domestic products by Ministries/Institutions/Regions ("Project Owner").

In the previous regulation, the obligation to use domestic products only applied if there were any participants in the procurement who were offering domestic products. Under the latest regulation, the requirement of domestic products is specifically stated must contain a total Domestic Component Level (*Tingkat Komponen Dalam Negeri – TKDN*) value plus Company Benefit Weight (*Bobot Manfaat Perusahaan - BMP*) value of at least 40% without such condition as stated in previous regulation, because the words "any participants in the procurement" have been removed, so that the requirement to use domestic component will always be applicable (unless of course if there is a situation as mentioned below). This change, understandably, is to encourage more domestic producers to participate in the procurement held by the Project Owner. However, like the previous regulation, imported products may also be procured provided that: (i) the goods are unable to be produced domestically, or (ii) the domestic production volume does not meet the needs.

Pursuant to the foregoing, we are in the view that in the future, the use of domestic products from MSB and cooperatives will be increased as a result of the above provisions.

B. Use of Products/Services of MSB and Cooperatives

To ensure utilization of domestic products of MSB and cooperatives, PR 12/2021 obliges Ministries/Institutions/Regions, as Project Owner, to allocate funds of at least 40% (forty percent) of the budgeted expenditure on goods/services to domestic products of MSB and cooperatives. Prior to the issuance of PR 12/2021, there was no concrete effort by the Government in the form of a regulation to support the role of MSB and cooperatives as only the expansion of participation of small businesses was mentioned.

As a further effort to support MSB and cooperatives, we also note that the budget ceiling value for goods/construction work/other service procurement packages for small businesses, has been increased from IDR 2,500,000,000 (two billion five hundred million Rupiah) to IDR 15,000,000,000 (fifteen billion Rupiah). This aligns with the criteria for MSB stipulated in the Job Creation Act and Government Regulation Number 7 of 2021 on Ease, Protection and Enhanced Utilisation of Cooperatives and

Micro, Small and Medium Businesses, which set the criteria for MSB as follows:

Business Size	Business Capital	Minimum Annual Sales
Small	IDR 1,000,000,000- IDR 5,000,000,000	IDR 2,000,000,000- IDR 15,000,000,000
Medium	IDR 5,000,000,000- IDR 10,000,000,000	IDR 15,000,000,000- IDR 50,000,000,000

Based on the above description, we are of the view that the increase of the budget ceiling from Rp2,500,000,000 (two billion five hundred million Rupiah) to Rp15,000,000,000 (fifteen billion Rupiah) and the allocation of 40% (forty percent) for MSB and cooperatives, are significant and concrete effort made by the Government so that the demand for MSB and cooperatives participation to the procurement of goods/services carried out by the Project Owner will definitely increase. Therefore, the objective of the Government to cultivate and prioritize MSB and Cooperatives has been accomplished.

C. Changes in the types of contracts for the procurement of goods/construction work/other services

The previous regulation only provided for two types of contracts for procurement of goods/services: (i) contracts for the procurement of goods/construction work services/other services, and (ii) contracts for the procurement of consultancy services. Meanwhile, PR 12/2021 has expanded the types of contracts in the procurement of goods/services, which are now consist of the following:

No.	Type of Procurement	Type of Contract						
		Lumpsum	Unit Price	Combination of Lump Sum and Unit Price	Framework Contract	Turn-Key	Time Base	Cost Plus Fee
1.	Procurement of Goods/Other Services	√	√	√	√	-	-	√
2.	Procurement of Construction Works	√	√	√	-	√	-	√
3.	Procurement of Non-construction Consultancy Services	√	-	-	√	-	√	-
4.	Procurement of Construction Consultancy Services	√	-	-	-	-	√	-

Further, to accommodate other types of contracts or new types of contracts in the future, the new regulation also allows the use of any types of contracts that are in accordance with the characteristics of the work so long as the selection of these types of contracts still observes the principles of efficiency and effectiveness and is not against the law.

We believe that with the variety of types of the contracts especially the provision that allows to use of any types of contracts that are in accordance with the characteristics of the work could bring more flexibility and convenience to MSB and cooperatives business actors in doing their business activities with the Project Owners.

E. Online Store

In the procurement of goods/services, the Project Owner basically can conduct a transaction in an E-marketplace, one of which is the Online Store. Compared to the previous regulation, PR 12/2021 provides more clarity on the criteria for goods/services that can be procured through an Online Shop, which are as follows:

- (i) They are standard goods/services or can be standardized;
- (ii) The goods/services are of a low-risk nature; and
- (iii) The price is already formed on the market.

Please also note that the goods/services above are those not displayed in the Government's electronic catalogue.

We view that with the new provisions on Online Store and the requirements for Project Owner to allocate 40% of the procurement budget for MSB and cooperative in PR 12/2021, will make the Project Owner to be able to look for products from MSB and cooperatives and buy it so hopefully such action can increase the development of MSB and cooperative's business activities. As informed by the official at LKPP, the implementing regulation regarding procurement through Online Stores is in the process and will be issued in a near future.

F. Construction Dispute Board

As a part of an effort to accelerate infrastructure development, which can be hampered by disputes from time to time, PR 21/2021 provides a new alternative forum for dispute resolution, the Construction Dispute Board, in which the mechanism will follow the regulation of Minister of Public Works and Public Housing. This additional alternative forum for dispute resolution is in line with the provisions under Construction laws and regulations and hopefully the settlement of disputes through the Construction Dispute Board will be able to provide benefits for the relevant parties, such as savings in time and costs, and preserving the ability to maintain good relations between the parties.

We are in the view that the alternative dispute resolution through the Construction Dispute Board will provide convenience for MSB and cooperative's business actors to participate in the procurement of construction work as they have the alternative to solve a dispute, if any, faster, affordable and mutually beneficial which can maintain good relations between the contracting parties.

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