

Navigating Apple's Strategic Investments and Regulatory Challenges in Indonesia's Tech Market: Compliance with TKDN and Tax Holiday Regulations

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Indonesia has undergone significant digital transformation in recent years, with smartphone technology serving as one of the key drivers of this change, impacting various aspects of daily life. The number of active smartphone users in the country has consistently increased year after year. In 2015, there were around 54 million active users, a number that surged dramatically to 168 million by 2023¹. Among the most popular smartphone brands in Indonesia is the iPhone, whose market share in Indonesia has achieved approximately 13%. Although this still lags behind Android users, this figure is relatively substantial, especially considering the continuous year-over-year growth, with the most recent data reflecting this trend in 2024².

Even Apple's CEO, Tim Cook has emphasized Indonesia's important role for the company, noting that it is a market with tremendous potential and one that is expected to continue experiencing growth³.

Apple's Current Investment in Indonesia

After over a decade of selling its products in Indonesia, Apple's total investment commitment is IDR 1.7 trillion (US\$106 million)⁴. This investment plan spans three years and includes the establishment of several Apple Developer Academies.

Last time Apple announced the opening of its fourth Apple Developer Academy in Indonesia, located in Bali⁵. This move is part of its effort to fulfill its investment plan, where the first Apple Developer Academy was established in Jakarta in 2018, followed by academies in Surabaya and Batam.

Prior to this initiative, Apple had no facilities in Indonesia, and to date, it still has not opened any Apple stores in the region; hence, its products are distributed through resellers.

However, in 2024, the Indonesian government stated that Apple has yet to fulfill its commitments for the 2020-2023 period. Apple has completed only about IDR 1.48 trillion of the original investment plan, leaving a shortfall of approximately IDR 240

billion. When the Indonesian government urged Apple to meet its commitments, the company requested a 50-year tax holiday, a demand that the Indonesian government found it difficult to accept.

Domestic Component Level Compliance in Indonesia for Mobile Telecommunications Devices

Since the launch of the iPhone 16 series in 2024, Apple has faced a significant challenge in selling its products in Indonesia. In the country, the sale of commodities, including mobile phones, must comply with the Domestic Component Level (*Tingkat Kandungan Dalam Negeri*, or "TKDN") requirements. In Apple's case, to meet the TKDN requirement to market the iPhone 16 series, it needs to increase its investment in Indonesia.

Apart from the fact that TKDN requirement is required under the law, the implementation of the TKDN requirement also aims to ensure fairness for other tech companies that have already established local manufacturing facilities in Indonesia and provide significant investments in the country. For instance, Samsung and Xiaomi have respectively invested

¹ <https://www.statista.com/forecasts/266729/smartphone-users-in-indonesia>

² www.statista.com/statistics/1258390/indonesia-apple-share-in-mobile-phone-market/

³ <https://www.jakartadaily.id/tech-media/16212445582/tim-cook-promises-to-consider-investment-to-build-apple-factory-in-indonesia>

⁴ <https://en.antaranews.com/news/334737/house-urges-apple-to-invest-and-contribute-to-the-economy>

⁵ <https://www.apple.com/gw/newsroom/2024/04/apple-developer-academy-expands-to-bali/>

IDR 8 trillion and IDR 5.5 trillion in Indonesia⁶. PT Samsung Electronics Indonesia or Samsung had even established a mobile phone assembly factory with an investment of US\$ 23 million⁷ in Cikarang, West Java, almost ten years ago.

The current regulation on the TKDN for mobile phones is regulated in Minister of Communication and Informatics Regulation No. 13 of 2021 regarding the Technical Standards for Telecommunications Equipment and/or Mobile Telecommunications Devices Based on Long Term Evolution of Technology Standards and International Mobile Telecommunication-2020 Technology Standards (“**MOCI Reg 13/2021**”). According to this regulation, Long Term Evolution (“**LTE**”) technology devices available in Indonesia must adhere to two primary requirements: having a unique Mobile Equipment Identity (“**IMEI**”) number and meeting the minimum TKDN requirement.

Under the previous regulation, Minister of Communication and Informatics Regulation No. 27 of 2015 on the Technical Requirements for Telecommunications Equipment Based on Technology Standards (“**MOCI Reg 27/2015**”), the minimum TKDN for smartphones was set first at 30%, then increased to 35%⁸. The government itself intends to increase the TKDN for smartphones to 40%⁹, however, as of now, no official regulation has been issued to replace MOCI Reg 13/2021.

Compliance with the TKDN demonstrated through a certificate and/or statement issued by the minister responsible for government affairs in the industrial sector¹⁰. The government established the method for calculating TKDN through MOI Regulation No. 65-IND/PER/7/2016 of 2016 on the Procedures for Calculating the Domestic Component Level Value of Mobile Phones, Handheld Computers, and Tablet Computers. This regulation was later amended by MOI Regulation No. 29/M-IND/PER/2017 of 2017 on Procedures for Calculating the Domestic Component Level Value of Mobile Phones, Handheld Computers, and Tablet Computers (“**MOI Reg 29/2017**”).

According to MOI Reg 29/2017, there are two methods for obtaining a TKDN certificate. The first is the standard scheme, which calculates three aspects of production: manufacturing,

development, and application. All mobile phone brands that obtain TKDN certification through this scheme must have established assembly centres in Indonesia.

The second method for calculating TKDN is based on innovations and has been used exclusively by Apple. This method assigns TKDN values according to investments made in the establishment of innovation centers. The TKDN values are determined by the amount of investment, classified as follows:

- IDR 250 billion (or around USD15,722,203, with an exchange rate of USD 1 being equal to IDR15,903) for a TKDN of 20%;
- IDR 400 billion (or around USD25,157,187) to IDR 550 billion (or around USD34,591,132) for a TKDN of 25%;
- IDR 550 billion to IDR 700 billion (or around USD44,019,292) for a TKDN of 30%;
- IDR 700 billion to IDR 1 trillion (or around USD62,884,703) for a TKDN of 35%; and
- Above IDR 1 trillion for a TKDN of 40%.¹¹

It is known that Apple’s previous TKDN certification has expired, and ideally, the renewal will require Apple to meet the investment shortfall of IDR 240 billion (Apple had promised an investment of IDR 1.71 trillion but only IDR 1.48 trillion was realized).

Apple’s Request for a 50-Years Tax Holiday and Indonesia’s Investment Incentives

Apple was reported to have requested a tax holiday for 50 years as a requirement to realize the investment and establishing an Apple factory in Indonesia¹². A tax holiday is a government policy that provides tax exemptions or reductions to certain sectors for a specific period of time. The primary aim of a tax holiday is to encourage investment in certain sectors, stimulate economic growth, and create job opportunities. This policy is typically applied to strategic sectors or industries that are considered vital for the country’s economic development¹³. The government often offers tax holiday policies to attract foreign investors, especially in strategic sectors such as technology and energy.

⁶ <https://expatlifeindonesia.com/apples-investment-proposal-in-indonesia-smaller/>

⁷ <https://en.tempo.co/read/675546/samsung-invests-billions-on-new-factory-in-cikarang>

⁸ Article 4 paragraph (1) of MOCI Reg 13/2021

⁹ <https://www.digitalnewsasia.com/mobility/concern-and-confusion-greet-indonesia-new-smartphone-rules>

¹⁰ Article 3 and Article 6 of MOCI Reg 13/2021

¹¹ Exchange rate per 2 December 2024.

¹² <https://jakartaglobe.id/tech/indonesian-lawmaker-calls-apples-tax-holiday-demand-absurd-supports-iphone-16-ban>

¹³ pajak.go.id/index.php/en/node/104330.

A tax holiday is a form of tax incentive, where the tax burden is either fully exempted or reduced for companies that invest in the country for a certain period. Typically, this policy is only applicable for a limited time, typically spanning just a few years. Hence, Apple's request is considered excessive and disproportionate to the contribution it would provide to Indonesia. If Apple is seeking a tax holiday for such an extensive period, it would be important to understand the provisions required by the prevailing regulations.

Tax holidays generally are regulated under Minister of Finance Regulation No. 130/PMK.010/2020 of 2020 as lastly amended by Minister of Finance Regulation No. 69 of 2024 ("**MOF Reg 130/2020**") on the Provision of Corporate Income Tax Reduction Facilities. The applicable tax holiday facility consists of the reductions in corporate income tax or *pajak penghasilan badan*.

Criteria of tax holiday facility duration in Indonesia are as follows:

Investment Value (IDR)	Facility Duration
> 500 billion until < 1 trillion	5 years
>1 trillion until < 5 trillion	7 years
>5 trillion until < 15 trillion	10 years
>15 trillion until < 30 trillion	15 years
>30 trillion	20 years

Considering the provisions of MOF Regulation 130/2020 as outlined above, if Apple intends to obtain an extensive period of tax holiday facility, then Apple must balance this by making significant investments in Indonesia..

Key Challenges of Apple's Strategic Investment in Indonesia's Market

Regardless of the regulatory requirements imposed by the government, considering the potential growth of Apple users in Indonesia year on year, investing in Indonesia would undoubtedly present significant opportunities for Apple. Indonesia should be able to serve as a key market for Apple. Fulfilment of investment obligations in Indonesia will be crucial for strengthening its market position in the region¹⁴.

In connection with the banning of the iPhone 16 series in Indonesia¹⁵, given the current circumstances in which there are significant numbers of iPhone users in Indonesia, a prolonged ban may affect the Company's market share and revenue in the long run, especially if the ban applies to other Apple products besides the iPhone 16 series.

Previously, Apple proposed an investment of US\$ 100 million to the Indonesian government, however, the proposed value was deemed by the government to be inconsistent with principles of fairness. Several key principles of fairness must be met for Apple to invest in Indonesia, including ensuring that the investment in Indonesia is on par with Apple's investments in other countries, particularly in Southeast Asia. The government also expects a greater contribution to domestic job creation. In response, the government has requested that Apple increase its investment to US\$ 1 billion, a request to which Apple has agreed. According to statements made by the Minister of Industry, Apple has expressed its willingness to establish a manufacturing facility in Indonesia as part of the US\$ 1 billion investment.

Apple is expected to honor its commitment, as this investment will also provide significant benefits for the people of Indonesia..

¹⁴ <https://www.cnnindonesia.com/ekonomi/20241126123435-92-1170734/4-alasan-pemerintah-tolak-tawaran-investasi-apple-rp15-t/amp>

¹⁵ www.detik.com/bali/bisnis/d-7622648/keterlalu-an-apple-minta-pembebasan-pajak-50-tahun-di-indonesia.

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The article above was prepared by Dentons HPRP's lawyers

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