

# Omnibus Law

## Legal Insight

### Highlights on Distribution of Goods under Implementing Regulation of the Job Creation Act

The Indonesian government has recently enacted Government Regulation No. 29 of 2021 concerning the Operation of the Trade Sector (“**GR 29/2021**”) as one of the implementing regulations of Law No. 11 of 2020 on Job Creation (the “**Job Creation Act**”).

The main focus of the Indonesian government in the issuance of the Job Creation Act and its implementing regulations is to simplify and/or make doing business easier in Indonesia including in the trade sector as set out in GR 29/2021. Our view is that GR 29/2021 brings new opportunities for foreign investment companies, specifically in the retail sector. Basically, GR 29/2021 governs the following matters:

1. policies and control of export and import activities;
2. use and completeness of labels with the Indonesian language;
3. distribution of goods;
4. trade infrastructure;
5. standardization;
6. export development;
7. legal metrology; and
8. supervision of trade activities and supervision of goods stipulated as being under supervision.

In this article, we focus on the main changes which have been made in GR 29/2021 in relation to the distribution of goods, as follows:

#### 1. Distribution of Goods

Overall, the provisions on the distribution of goods in GR 29/2021 are mostly a reaffirmation of Minister of Trade Regulation No. 22/M-DAG/PER/3/2016 concerning General Provisions for the Distribution of Goods as amended by Minister of Trade Regulation No. 66 of 2019 (“**MOTR 22/2016**”).

Under GR 29/2021, essentially, the distribution of goods to retailers may be conducted by (i) the producer through a distributor, (ii) a distributor/agent and (iii) a distributor acting as the importer.

GR 29/2021 also affirms that a manufacturer is prohibited from distributing goods directly to consumers. Exceptions to this prohibition are manufacturers which fall into the category of micro and small scale businesses and manufacturers of goods that spoil easily or will not last for more than 7 (seven) days.

In relation to the role as importer, the prohibition on importers distributing directly to retailers except for importers who are also taking the role of distributors still remains the same as stated under MOTR 22/2016. Further, GR 29/2021 affirms that retailers are prohibited from importing goods.

#### 2. Term of Appointment of Sole Distributors

Prior to the enactment of GR 29/2021, the appointment of a sole distributor by a producer was made by signing an agreement, the provisions of which were mutually agreed between the sole distributor and the producer, including determining the period of the agreement.

Following the enactment of GR 29/2021, the Indonesian government now requires the appointment of the sole distributor to have a minimum period of 5 (five) years, which must be extended at least 1 (one) time as stipulated in Article 35 paragraph (4) of GR 29/2021.

However, the Indonesian government has not made comprehensive provision for the appointment of sole distributors since it will be further regulated by a Minister of Trade Regulation.

### 3. Mandatory Use of Labels with the Indonesian Language

After GR 29/2021 comes into effect, the use of a label in the Indonesian language will apply to (a) producers, for domestically produced goods, (b) importers, for imported goods and (c) packers of domestic produced goods or imported goods packaged in Indonesian territory.

We note that previously the mandatory use of labels in the Indonesian language only applied to (a) producers, for domestically produced goods and (b) importers, for imported goods as stipulated in Article 2 paragraph (2) of Minister of Trade Regulation No. 73/M-DAG/PER/9/2015 concerning Mandatory Use of Labels in the Indonesian Language as lastly amended by Minister of Trade Regulation No. 79 of 2019 (“**MOTR 79/2019**”).

Our view is that the addition of packers as a party which needs to comply with the mandatory use of labels in the Indonesian language will provide legal certainty for consumers in Indonesia.

The exemption from the use of labels in the Indonesian language provided for in GR 29/2021 is the same as previously found in MOTR 79/2019, whereby (a) bulk goods that are packaged and traded directly in front of consumers or (b) goods produced by micro and small business enterprises are exempted from having to use labels in the Indonesian language.

Furthermore, GR 29/2021 requires the label to show information regarding the name and origin of the goods, and the entrepreneur's identity, including the name and address of the entrepreneur. Moreover, an entrepreneur who uses a packer's services must include information such as the packer's name and address on their goods to comply with GR 29/2021.

The GR 29/2021 also mandates the Minister of Trade to specify certain goods that need to be provided with labels in the Indonesian language in a Minister of Trade Regulation.

### 4. Foreign Investment Companies in the Retail Sector

GR 29/2021 introduces a new policy with regard to retail activity for foreign investment companies.

Previously, Presidential Regulation No. 44 of 2016 concerning List of Business Fields that are Closed to and Business Fields that are Conditionally Open to Investment (“**PR 44/2016**”) allowed foreign investment companies with up to 67% foreign shares ownership to engage in the business of department stores with an area of 400 – 2,000 m<sup>2</sup> which located in a mall.

While the above conditions are no longer included in Presidential Regulation No. 10 of 2021 concerning Investment Business Fields (“**PR 10/2021**”), which replaces PR 44/2016, the conditions are being retained through GR 29/2021. This includes provisions in GR 29/2021 that the minimum area of a department store is 400 m<sup>2</sup> and that grocery stores in the form of department stores are open for foreign investment if they are integrated with or located in a shopping center (shop, mall or plaza which has obtained a business license). It is worth noting that the owner of the department store and the mall may be different entities. Meanwhile ownership of department stores which are not integrated with or located in a shopping center is limited to local companies. GR 29/2021 also has further provisions on collaborations between grocery stores and micro, small and medium enterprises and a limitation on outlets for grocery stores, which will be further regulated in a ministerial level regulation.

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