

## Omnibus Law for Plantation Sector - What's It All About?

The long wait for the enactment of the Job Creation Law, also known as the Indonesian Omnibus Law, ended on 2 November 2020 (the "**Job Creation Law**"). This historical and unique law (not to mention any controversies arising therefrom) was finally issued during the COVID - 19 pandemic and after numerous public dialogues, forum group discussions, etc. In general, this Omnibus Law provides for new norms and terminology for Business Licensing (*Perizinan Berusaha*), and amends a number of articles in many laws, including the plantation law.

### The New Term, Business Licensing (*Perizinan Berusaha*)

The Job Creation Law introduces the new term of Business Licensing (*Perizinan Berusaha*) for any type of plantation business activities which will be applied based on the risk-based approach (please see our article on [Omnibus Bill on Job Creation: Simplification on Business Licensing](#)). As the reader may know, there were previously several types of license in the plantation law, namely (i) processing plantation business permit (IUP-P); (ii) cultivated plantation business permit (IUP-B) and (iii) integrated plantation business permit (IUP). With the risk-based approach concept, there is a possibility of change of business licensing requirements to be applied in the plantation industry.

As provided in the Job Creation Law, any plantation companies that wish to conduct plantation business activities (processing and/or cultivation) have to acquire a Business License from the central government. A failure to obtain the license will lead to the company attracting an administrative sanction, such as (i) temporary suspension, (ii) penalty, and/or (iii) enforcement (*paksaan*) from the central government. We are still not clear what type of enforcement is contemplated here, and we will need to wait until the issuance of the implementing regulation dealing with this matter including the business licensing for the plantation industry.

### Minimum and Maximum Plantation Areas

This Job Creation Law stipulates that the central government will determine the limitation on the minimum and maximum plantation areas that may be cultivated. However, this will be further provided for via a government regulation. Pending the issuance of the implementing regulation, the current maximum limit on plantation areas is found in Ministry of Agriculture Regulation No. 98/2013 (as amended by Ministry of Agriculture Regulation No. 29/2016), which details maximum areas of certain plantation types, such as 100,000 hectares for palm oil plantations.



In connection with this provision, the Job Creation Law also prohibits plantation companies which enter into partnership (*kemitraan*) or plasma nucleus (which would be the holder of an integrated IUP or cultivated IUP) from transferring its land title if it would cause the land area of the company concerned to become less than that required in the Job Creation Law. Previously, this provision applied to any type of the plantation company, including processing plantation companies.

### Cultivation of Land

As provided in the Job Creation Law, a plantation company must cultivate its plantation area at the latest 2 (two) years from the issuance of the land certificates (previously 3 years); the state may repossess the uncultivated land area in accordance with the Indonesian laws and regulations. This provision is definitely not favorable for most new plantation companies in Indonesia as they will be required to accelerate plantation development while, at a practical level, there are a lot of hurdles such as inconsistencies between regional regulations and central regulations. Hopefully, the issuance of this Job Creation Law and its implementing regulations will resolve this fundamental issue; one of the strategies to deal with this circumstance, at this moment, is for the relevant plantation company to have a compactible business development plan in accordance with the timeframe provided in this Job Creation Law.

In addition, from this Job Creation Law, we could highlight that plantation business activities may only be performed upon acquiring the land titles and plantation License to Do Business (*Perizinan Berusaha* previously the business permit (IUP)). This provision is in line with Constitutional Court Decision No. 138/PUU-XIII/2015 to emphasize that having both documents is mandatory to conduct plantation business activities, and not an option. This is bound to become another challenge for investors as the process to acquire land title takes around one to three years, in addition to the huge amounts of money involved, i.e. land compensation.

### **How Easy is Foreign Investor Participation?**

Under the Job Creation Law which amends the plantation law, the transfer of ownership in a plantation company to the foreign investor still requires the approval from the government, which is in this matter, to obtain approval from the central government. However, with the spirit of the Job Creation Law which is to ease the business licensing process with the aim to attract new investors, we expect that the implementing regulations to be adjusted to simplify the process and therefore require less requirements as well as less time consuming as was the case in the past.

### **Environmental Approval**

Although the Job Creation Law has removed the provision of the obligation of plantation companies to obtain environmental licenses as a requirement to obtain IUP, this does not mean that no environmental license is required. Instead, the spirit of the Job Creation Law is to centralize provisions on the protection and environmental management into one regulation sector which is the law on protection and environmental management and its implementing regulations. The environmental license, whose term has been changed into the “environmental approval” under the Job Creation Law, will be implemented based on the risk-based approach and the assessment of the business.

For further information on this particular environmental issue, please see our article on [Omnibus Bill on Job Creation: Simplification on Business Licensing](#).

### **Plasma Obligation, still Required?**

Prior to the enactment of the Job Creation Law, it was mandatory for all plantation companies engaged in cultivation activities (integrated IUP or cultivation IUP) to facilitate the plantation development of the surrounding community for at least 20% of the total plantation area. It is widely known that this provision has been a hurdle and relatively difficult for many plantation companies to comply with due to the limited availability of land surrounding companies’ plantation areas.

Now? With the issuance of the Job Creation Law, this provision is still there but only applies to plantation companies cultivating land some or all of which was originally (i) other land use areas (*area penggunaan lain*) which are located outside the HGU; and/or (ii) released forest areas. Thus, if the lands originate from those areas, the plantation companies are still required to fulfill a plasma obligation, but it is limited to 20% of the above areas rather than 20% of the whole plantation area.

This new approach, albeit we would need to read how these changes are going to be stipulated in the respective implementing regulations, could be seen as a positive update for investors considering the technical difficulties that companies have seen over the years in fulfilling the plasma obligation requirement because of the scarcity of lands available for plasma works because of the growth of construction projects, increasing economy in remote areas, growing forestry area and development in Indonesia, and the implementation of *Tanah Objek Reforma Agraria* (TORA) by the government.

### **Plantation Processing Companies Obligation**

As previously stated in the plantation law, plantation processing companies which use imported materials are obliged to develop a plantation area within a certain period of time (previously 3 (three) years) once the operation unit has successfully commenced operation. However, the government will make further provision on this in the implementing regulation.

### **Limitation of Foreign Investment Participation**

Previously, the plantation law stipulates that the development of plantation business activities must be performed through domestic capital investment (PMDN) and foreign capital investment (PMA). Further, it was also stated that the foreign investment participation must be limited taking into account the national interest. The Job Creation Law currently, however, states that the development of plantation business activities must be performed through the capital investment in compliance with the provisions in the capital investment laws and regulations. We understood that this change is to simplify the provision and to refer any provision regarding capital investment including foreign investment to the Investment Law. Meanwhile, under the Investment Law which was amended by the Job Creation Law, it sets new sectors of business that are (a) open for investment, (b) closed for investment and (c) only open to be managed by the central government. Please see our article on [Omnibus Law on Job Creation: New Opportunities for Investment](#).

While, based on our reading on the provisions, the amended Investment Law does not mention in specific that the plantation industry being fully open for foreign investment, we need to anticipate any possibility of a new limitation of foreign investment participation in the forthcoming of presidential regulation about the new negative investment list (*daftar negatif investasi*) and other implementing regulations concerning the plantation business activities.

**Pending Implementing Regulations**

There are several provisions in the Job Creation Law that are to be further provided for in implementing regulations (i.e. government regulations). We note from the Job Creation Law that all implementing regulations must be issued no later than 3 (three) months from the promulgation of the Job Creation Law.

However, it does not say anything about repercussions if the government cannot meet the deadline. Delays in the issuance of implementing regulations is an issue that has materialized on many occasions in the past.

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