



29 OCTOBER 2020

Omnibus Law Heralds Major Changes to Indonesia's Telecommunications Regulatory Regime

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Law No. 36 of 1999 on Telecommunications (**Telecommunications Law**), which is the core legislation governing the telecommunications sector in Indonesia, is just one of the 78 laws amended by the Omnibus Law on Job Creation (**Omnibus Law**), passed by Indonesia's parliament on 5 October 2020.

The main focus of the changes to the telecommunications sector regulation is to support the acceleration of Indonesia's digital economy – especially by optimising spectrum use in the 5G era, which is expected to become increasingly important to Indonesia's national economy.

With respect to spectrum optimisation, the Omnibus Law introduces significant changes to Indonesia's telecommunications sector regulatory framework by permitting telecommunications operators to cooperate in spectrum sharing for new technologies, and to transfer spectrum rights to each other. It grants to the central government the authority to regulate spectrum sharing arrangements among Indonesian telecommunications operators.

The Omnibus Law also clarifies some previously unclear provisions in existing regulations, for example, as to who should pay the annual radio frequency spectrum fee to the State (ie, the spectrum user or the licence holder).

The Omnibus Law itself is expressed in broad terms but requires implementing regulations to be issued within three months after it is signed into law by the President. We therefore expect certain of the current implementing regulations of the Telecommunications Law, including Government Regulation No. 52 of 2000 on Telecommunications Operations, to be amended, and that new government regulations, presidential regulations and ministerial regulations will be issued during that three-month period.

Set out below is a further summary of the key changes to the Telecommunications Law introduced by the Omnibus Law.

Cooperation in spectrum sharing

The Omnibus Law allows licensed telecommunications operators to share their spectrum with other operators through cooperation arrangements, with prior approval from the central government. However, such cooperation is only permitted for “new technologies”.

Further clarification will be needed on the intended scope of this term. For example, would all 5G services be regarded as new technologies? And what about 5G non-standalone access technology?

Clarification may also be required in relation to existing technology. For instance, based on its authority to arrange spectrum sharing, can the central government also approve cooperation among telecommunications operators for *existing* technology and its development? And will this spectrum sharing cooperation open up the possibility for mobile virtual network operators (MVNO) to enter the Indonesian market?

We expect some clarity to be given on these questions when the implementing regulations are issued.

Transfer of spectrum rights

As mentioned above, it is now possible to transfer spectrum rights to other telecommunications operators, with prior approval from the central government.

Previously, such transfers were expressly prohibited outside of mergers and acquisitions, where approval could be granted by the Minister of Communication and Informatics (**MOCI**).

The Omnibus Law provisions permitting transfer of spectrum rights also cover spectrum optimisation. The concept of spectrum commercialisation arrangements between telecommunications operators is also introduced. Under the previous regulations, a telecommunications operator finding itself unable to pay the licence fee would have to return the spectrum to the State. But now it will be permitted to “transfer” the spectrum to another operator for a fee.

Note: Since the 2020 Job Creation Law was passed by Indonesia's parliament on 5 October 2020, several versions have circulated online. However, we understand that the final version has yet to be issued. This article was prepared based on the 812-page draft of the 2020 Job Creation Law made available on 12 October 2020. Thus, our views are subject to change depending on the final version, which is awaiting the signature of the President to become law.

How such a transfer can be done remains to be seen, and several questions arise that will presumably be addressed in the implementing regulations. For instance: Does this "transfer" refer to the licence itself, or to a sub-licensing arrangement to use the spectrum? And can a transfer cover only part of the spectrum or must it be for the entire spectrum or blocks?

Spectrum sharing permitted

The Omnibus Law expressly authorises the central government to regulate spectrum sharing arrangements. This will give the government the flexibility to introduce new policies that allow telecommunications operators to use the spectrum more efficiently, for example, through a sharing arrangement.

It also allows the government to require spectrum sharing arrangements among telecommunications operators in order to optimise their use of the radio frequency spectrum.

Clarification of these powers should help the government to deal with spectrum allocation issues, particularly in relation to the introduction and roll out of 5G in Indonesia.

For 5G, Indonesia is likely to deploy the high frequency 26 GHz band, but the government has not yet decided on the middle and low frequency bands. It is currently considering a middle frequency band of 2.6 GHz or 3.5 GHz, which is now being used for satellites. Efficiency in spectrum utilisation by telecommunication operators will give the government more room to determine the 5G spectrum allocation. That is one reason why the Omnibus Law explicitly authorises central government to regulate spectrum sharing arrangements.

The existing regulations give MOCI the authority to determine spectrum sharing arrangements, and the relevant regulations set out criteria for spectrum sharing based on usage at different times, in different regions or using different technology. In other words, the same spectrum can be used by two or more operators located in different regions, using the spectrum at different times, or using different technology (eg, terrestrial or satellite).

We do not yet know whether the same criteria will be applied to spectrum sharing arrangements in the implementing regulations for the relevant principles in the Omnibus Law.

Requirement to pay state fee for spectrum

Under the previous regime, *users* of the spectrum (ie, 3G/4G network providers) had to pay an annual fee to the State, which varied depending on the frequency

type and bandwidth. The Omnibus Law has replaced the term "*user of radio frequency spectrum*" with "*holder of a business licence to use radio frequency spectrum*".

The Omnibus Law makes it clear that only the *holder* of a spectrum licence is required to pay the fee to the State for the spectrum. This change is intended to remove confusion as to which party is responsible for paying the fee, which became an issue in dispute in the IM2 case, which was decided on by the Anti-corruption Court in 2013 and upheld by the Supreme Court in 2014.

In the IM2 case, IM2 (a mobile broadband company) cooperated with Indosat (a network service provider) to use Indosat's spectrum to offer internet services to IM2's customers. IM2 did not pay the state fee for the spectrum since the spectrum was owned by Indosat, and IM2 was only cooperating with Indosat to use its spectrum. In 2013, Indonesia's Anti-corruption Court found IM2 guilty of illegally enriching itself by not paying the fee to the State for using Indosat's spectrum.

The new provision should avoid double charging of the annual fee under any reselling arrangement for telecommunication network/services.

Cancellation of satellite orbit fees

Under the Telecommunications Law, Indonesian telecommunications providers that use satellites must obtain a satellite orbit licence and pay a one-time fee to the State for the licence. In practice, however, the government never actually imposed such a fee. While retaining the requirement to obtain this licence, the Omnibus Law removes the requirement to pay any fee for it.

Authority to revoke licence to use spectrum

The Omnibus Law allows the central government to revoke a spectrum licence where the spectrum is not being used optimally, or where there are broader public interest considerations at play. This is not new, since the government already has the authority to do that under the existing regulatory regime.

Optimising use of passive infrastructure

The Omnibus Law requires business players with "passive infrastructure" used for telecommunications service activities to share access to such infrastructure with other telecommunications operators. "Passive infrastructure" includes ducting, towers, poles and other infrastructure that can be used for telecommunications networks. In addition, business players owning non-passive infrastructure may now

open that up for use by telecommunication operators and broadcasters.

While existing ministerial regulations already contemplate such infrastructure sharing, the Omnibus Law confirms this by amending the Telecommunications Law itself.

Removal of telecommunications equipment certification requirement

The Telecommunications Law currently requires that any telecommunications tools and devices that are traded, made, assembled, imported or used in Indonesia must observe the relevant technical requirements and be based on a licence.

The requirement for telecommunications tools and devices to be "based on a licence" is removed by the Omnibus Law (noting that the government has never issued such a licence in practice).

However, telecommunications tools and devices must still comply with the relevant Indonesian technical standards and specifications, which will be set out in implementing regulations to be issued under the Omnibus Law.

Upper and lower tariff limits

The Omnibus Law introduces a new provision authorising the central government to determine the upper and lower limits of telecommunications tariffs by considering the public interest and ensuring there is no unfair business competition. However, it is unclear what types of "tariffs" the Omnibus Law is referring to here. Further regulations should help to clarify this.

Streamlining of telecommunications licensing

The Omnibus Law provides that telecommunications sector licences will take the form of business licences issued by central government. Under the prior regulatory framework, telecommunications sector licences were issued by MOCI. The Omnibus Law confirms that this authority now lies with the central government, not MOCI.

In 2018, the central government introduced a new licensing registration system with the aim of consolidating business licensing under a single online platform – the Online Single Submission (OSS) system.

Telecommunications licences have been issued through the OSS system since that time, with authority to issue these licences being delegated to OSS from

MOCI. The Omnibus Law therefore appears to confirm that the licences are now administered directly by central government.

Sanctions

Administrative sanctions under the Omnibus Law no longer only take the form of warning letters and business licence revocation for offenders in the telecommunications sector. New sanctions include temporary closure of business, and fines. Further details on the criteria, amount of the fines, and sanction enforcement procedures will be contained in proposed government regulations.

Telecommunications business players operating without a valid telecommunications licence may face criminal sanctions in the form of imprisonment for up to ten years (previously six years) and/or a fine of up to 1.5 billion rupiah (previously 600 million rupiah).

Market reaction and key takeaways

The changes to the telecommunications sector introduced by the Omnibus Law have been welcomed by many telecommunications players in Indonesia. This is largely because the Omnibus Law opens up the possibility of spectrum sharing arrangements and transfers of spectrum rights to other telecommunications operators. Uncertainty remains, however, as to why the spectrum sharing arrangement is apparently being limited to new technology.

Since the high cost of obtaining spectrum rights has been a major issue for telecommunications businesses, greater legal certainty regarding spectrum sharing arrangements will be welcome.

The clarification provided by the Omnibus Law on who is responsible for paying fees to the State is also a positive development, as it should remove some of the confusion over regulatory interpretations in the recent past.

Business players in the telecommunications sector are now waiting for the implementing regulations over the months ahead, since the full impact of the Omnibus Law on the telecommunications sector will only become clear once these regulations have been issued.



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