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The Sharing Economy in Indonesia

Certain potential in a climate of uncertainty

There is no doubt that the sharing economy is rapidly expanding globally, with Uber and Airbnb leading the charge for transportation and accommodation services respectively. Airbnb is now worth $25 billion and Uber was recently valued at a whopping $50 billion. The approach is so successful that even large, traditional, companies are beginning to embrace the sharing model themselves, such as Avis and General Motors in the USA.

By some measures, the sharing economy builds a more transparent platform for local trade in that trust between users is enhanced through reciprocal rating scales, reviews and testimonials. The use of background checks is another safeguard augmenting the certainty for users within the system. Along with ease of access and payment, afforded by the Internet, consumers and vendors the world over are turning to asset and service sharing as a more simple and efficient alternative to traditional commercial arrangements.

A major concern overshadowing the meteoric rise of the sharing economy, however, is regulatory uncertainty. Complications regarding insurance, pricing, taxation and labor laws are just some of the regulatory challenges that the sharing economy faces around the world. Opposition to the sharing economy business model has raised such challenges, propagating uncertainty about its efficacy as a model. This is particularly fueled by established businesses that see the collaborative model as a threat. Coupled with outdated legislative frameworks, aggressive lobbying on both sides and governmental inaction, the sharing economy faces an uphill battle that is necessary for the evolution of the services industry. Indonesia is no exception.

A recent Nielsen consumer report ranked Indonesia as the second country globally with a population most willing to use products and services of the sharing economy. It also found Indonesians to be among the most open to sharing or renting their personal assets. The potential social and economic benefits of the

sharing economy for Indonesia clearly present an opportunity that cannot be taken lightly. On the other hand, the possibility of excessive regulatory burden poses a potential threat for the rise of the sharing economy. A delicate balance between protection of consumers, facilitation of innovation and free and fair competition is required.

Last year, under the Susilo Bambang Yudhoyno presidency, deputy transport minister Bambang Susantono publically recognized the future of transport being driven by data technology and the potential this has for easing traffic through more efficient transportation models. While signaling an apparent receptivity, he made clear that safety and liability are of utmost concern and any business would have to comply with Indonesian regulations. The extent to which these regulations evolve to suit a modern, technology-driven business model remains to be seen. Still, it is no surprise that the possibility of a supportive government has led to a rise in transportation sharing businesses across the nation, albeit with growing concern for regulatory barriers. Go-Jek is a case in point.

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Founded in 2011, Go-Jek currently boasts 2500 drivers in Jakarta alone. The motorbike service provides transportation, delivery and courier operations. Initially, regulators opposed the service as it contravened licensing laws related to the transport of passengers. While the regulation could not keep up with the technology, the demand for the service by drivers and consumers continued to grow. The international ride-sharing service, Uber, has faced even more stringent opposition. Recent reports of police arresting Uber drivers and open opposition to the company from Jakarta's governor have presented an apparent challenge to the ride-sharing economy. Still, the use of Go-Jek and Uber's services continues to grow.

An interesting dynamic in Indonesia is that the emerging formal sharing economy, fueled by technological innovation, is challenging a long established informal sharing economy perhaps best symbolized by the *ojek*, a motorcycle-taxi model historically used by locals as a means of transportation and delivery. Go-Jek essentially formalized the use of this service with the help of mobile app technology. The documented success of Go-Jek, Uber and others demonstrates the enormous potential of the sharing economy in Indonesia. How might the government regulate and respond to the increased use of these services? To what extent might entrenched private commercial interests play a role in stemming the growth of companies like Uber and Go-Jek?

The recent arrests of Uber drivers in Jakarta were reportedly linked to local taxi companies joining forces against the service. Similarly, groups of Ojek drivers have been aggressive in their attempts to muscle out Go-Jek operations. The Uber arrests sparked an investigation into the company by the Organization of Land Transportation Owners, suggesting that barriers to the sharing economy may also arise from groups with vested interest. Jakarta's well-established taxi companies are sure to continue to put pressure on such sharing services. Other experiences in the region, however, have proven that these barriers are not insurmountable.

One example of a positive regulated outcome within Southeast Asia is a 'ride-sharing law' made last month in the Philippines, specifically regulating ride-sharing operations. Although vehemently opposed by the local taxi industry, the law found a middle ground between regulatory intervention and providing space for innovative progress. In some ways it was a compromise between the government and Uber in recognition of changing consumer trends and an attempt to facilitate fair competition. Should Indonesia follow a similar trajectory, consumers of the sharing economy could be better protected while simultaneously enabling governments to impose appropriate levies and, in the case of ride sharing apps, ensure more efficient use of transport infrastructure.

In this light, the formal sharing economy may actually be a blessing for government regulators. The rise of companies like Go-Jek and Uber means that the government can more easily impose appropriate and fair taxes on an otherwise difficult business model to levy. The catch is that international companies, like Uber, must be officially registered in Indonesia and regulation must adequately encompass these services. The regulators must also ensure that an environment is cultivated where innovation and competition can thrive. Indonesian lawmakers recently announced plans to deliberate such laws in the DPR. Although working out the complexities of regulation may prove challenging and implementation may be difficult, the deliberations are a welcome step. If sharing economy companies can find common ground with government regulators, and if regulators allow space for technological innovation in competition, as in the Philippines, it is likely that the formal sharing model will take on an increasingly important role in Indonesian commerce.

Addressing the Dwell Time Debacle at Tanjung Priok Port

The problem lies deeper than port fees

Jakarta's major international port at Tanjung Priok, North Jakarta, has faced continued scrutiny over the years for long wait times and relentless congestion. Tanjung Priok currently handles over two-thirds of Indonesia's entire international trade volumes. In contrast to the port's importance, the average dwell times have hovered around 6 days over the last few years, a remarkably high dwelling time in global comparisons, resulting in additional costs for shippers in terms of port fees and related expenses. Dwell times measure the average time a container spends in seaport terminals and is often used as a gauge for logistical efficiency. Long dwell times at Tanjung Priok translate into adverse consequences for international trade and the domestic economy.

The port delays may be deliberate, some argue, as they increase profit for the port authority; the longer a ship waits in port, the higher the port fees. This kind of maneuver ultimately hurts trade volume, consumers and the wider economy. Not surprisingly, there is no clear evidence to support the accusation that the delays stem from revenue raising tactics. However, the estimates for expenditure resulting from Tanjung Priok delays are high enough to raise eyebrows. The problem, nevertheless, is not limited to mere port fees. Beyond this, Indonesia's port inefficiency difficulties suggest systemic issues that have a bearing on the nation's broader economic competitiveness.

The poor state of Indonesia's largest international port has an unfavorable impact on the broader economy in various ways. One consequence is that the delays create uncertainty in pricing and the timeframe within which shipments are made, potentially impacting Indonesia's competitive advantage globally. It is also less likely that Indonesia will be incorporated into regional or global supply-chains if a persistent lack of predictability pervades port clearance times. Another adverse consequence arises from the increased costs associated with bottlenecks created at ports. Trade is subjected to higher port fees the longer a ship remains in port, costs that are ultimately passed on to consumers.

The World Bank calculates the present logistical costs of trade as 24.6 percent of Indonesia's GDP—a high figure in comparison to Singapore's 7 percent. Accordingly, the government has taken notice of the inefficiencies. In a recent visit to Tanjung Priok port, President Joko Widodo slammed management officials for providing inaccurate reports on dwell times. The government has since announced that officials responsible for the mismanagement would be reprimanded. It stopped short, however, of announcing any sweeping reforms. While better management may be an important factor in improving the port's efficiency, the lack of a centralized port authority makes it difficult to determine which government agency is responsible for delays. Furthermore, the excessive number of government agencies with a role in port management poses a complex challenge for a much more concerted push to streamline and simplify the processes by which goods can be cleared for import and moved through and out of Tanjung Priok.

In response to the seemingly insurmountable logistical costs, the private sector has, at times, taken on the burden of improving port processing. Logistics company PT Samudera Indonesia Tangguh's managing director recently discussed, in an interview with the Jakarta Post, how the company has responded to high logistical costs through investment in port infrastructure—developing warehouse, distribution center and depot facilities. The company has also built piers at Tanjung Priok Port and Samarinda to mitigate the logistical hurdles. Still, the private sector faces enormous costs that mount long before a container is passed over a ship's rail.

The recent experience of a major multi-national corporation, a regular importer of dairy produce to Indonesia, is a prime example. In 2013, the company faced dwell times of fifty-three days for its fresh produce shipments. This led to associated costs, related to demurrage of fresh produce and loss of sales, rising above 1 trillion Rupiah. The excessive delay arose out of the undue complexity of the import licensing process itself. The company had to acquire approval to import the fresh dairy produce using four different import permits, connected to a raft of different government agencies, each with lengthy and inconsistent process times as well as burdensome procedures. At the time, the company needed to renew a total of thirty-seven different import licenses every six months, with lead times for renewal ranging between 4 to 5 months each. With such overly complicated and prolonged processes, lengthy dwell times are inevitable. Although the private sector has an important role to play, it cannot be expected to improve Indonesia's port challenges alone. Transparent, clean, and efficient licensing procedures that are devised in a way so as to facilitate and not restrict trade must be adopted. Yet the problem is deeper than improving infrastructure or a mere change in the processing formula, imperative as these steps may be.

The mounting international pressure on Indonesia to reform its non-automatic import licensing procedures for meat and horticultural imports highlights a system that appears to have been conceived and implemented in a way that is anathema to trade liberalization. In three recent WTO complaints, Indonesia's import licensing procedure for poultry and horticultural products has been challenged by Brazil, the United States and New Zealand respectively. In its request for consultations (WT/DS484/1), Brazil expresses concern that a multiple-agency and multiple-license process presents a 'complex and opaque' system to maneuver, should the importation of chicken meat and chicken products be allowed. The complaint goes on to assert that a non-automatic import-licensing regime unjustifiably restricts trade and creates an unpredictable environment for importers. The document also describes the complex and discretionary procedure currently required, including obtaining an Importer Identity number and accreditation from the Ministry of Trade, registering with the Ministry of Finance, obtaining prior recommendation for product importation from the Ministry of Agriculture and meeting pre-shipment inspection requirements, all within inconsistent timeframes. The United States, in its request for the establishment of a panel (WT/DS455/7), which is very similar to the complaint being formulated by New Zealand, likewise raises concerns about the convoluted process of obtaining a Horticultural Product Import Recommendation, which requires a series of separate discretionary certificates and approvals from the Ministry of Agriculture and Ministry of Trade. The US and NZ complaints argue that this process contravenes Indonesia's international treaty obligations, as Indonesia does not administer its import-licensing regime in a uniform, impartial or reasonable manner. These legitimate complaints underscore the gravity of delaying the processing of imports and points to bureaucratic inefficiencies as the primary concern. Recently, the Indonesian government has announced plans to review possible reforms to increase coordination among stakeholders and thereby boost efficiency. The government's 'maritime highway program,' being rolled out by President Joko Widodo, presents a promising response to the dwell time challenge. Recent agreements to build ports across the country, with increased capacity at

Makassar and a new port to augment Tanjung Priok, should create a network of ports that will, in theory, increase international trade efficiency across the whole country. The widespread rollout of Intraportnet, an online clearance and permit request system, is another potentially useful part of this program, notwithstanding its implementation challenges. Yet another encouraging step is the Indonesian government's push for an integrated port monitoring system, known as the Port Community System (PCS), in an effort to reduce logistical costs. Recognizing the current high price of transportation costs for international trade, President Joko Widodo has called for the system to provide details on when each ship arrives at Tanjung Priok and the goods they carry to and from the port. Should the system, along with other reforms, succeed, Pelindo II, the state run port company, estimates that the reductions in costs could increase Indonesia's economic growth by as much as 2 percent over 5 years.

In reality, the successful implementation of these steps may prove an impossible task as the current shipment process involves steps that entangle a multitude of government agencies including the Ministries of finance, trade, industry, agriculture and the Food and Drug Monitoring Agency. With each of these stakeholders comes an added layer of complexity that a PCS alone will not overcome. Instrumental to a more harmonized and efficient processing system may be legislative action that provides a united, expedited and streamlined procedure. In doing so, what may prove necessary is root and branch reform of the civil service, something that there currently seems to be no stomach for politically.

Local Content Requirement for Information and Communication Technology (ICT) Manufacturers

Inviting a WTO challenge that Indonesia can only lose

In early July 2015, the Indonesian Government issued a new draft regulation, which would require all telecom equipment manufacturers that sell 4G-capable devices to produce these using local content of 30 to 50 percent sourced in Indonesia. It is still unclear as to how the degree of local content will be measured and certified, although it is assumed that the use of Indonesian human resources in manufacturing 4G smartphones could conceivably count towards fulfilling this requirement. By and large, this new regulation is expected to compel smartphone companies to source parts from Indonesian firms as well as carry out some research and design activities locally. The economic and commercial implications of this draft regulation are far-reaching, given that Indonesia is a large and quickly growing market for both smartphones as well as online services.

The new regulation is not without controversy and has given rise to a number of concerns from several of Indonesia's trading partners. For instance, the American Chamber of Commerce (AmCham) and the United States Trade Representative (USTR) have expressed a number of serious concerns. Both AmCham and USTR have been trying to dissuade the Indonesian authorities from implementing the planned measures by voicing concerns that the regulation will hamper efforts of big companies like Apple to further expand into Indonesia. Another primary concern for those opposed to the draft regulation, as it currently stands, is the unpreparedness of local manufacturers to meet a surge in demand for Indonesian sourced components. Opponents of the regulation believe that the regulation could force smartphone producers into what is essentially a less efficient and thus more costly allocation of their resources, thereby undermining their relative competiveness vis-à-vis local manufacturers.

The proposed regulation would also almost certainly run afoul of Indonesia's international trade obligations. Article 2.1 of the WTO Agreement on Trade Related Investment Measures (the TRIMS Agreement) provides that domestic laws requiring the mandatory purchase or use of domestic products are inconsistent with the obligation of national treatment under GATT Article III: 4, thereby constituting a violation of one of the WTO's core non-discrimination obligations. Local content requirements are policy measures that require companies to use a certain percentage of the goods they produce or sell from local manufacturers or producers. The overall objective of local content requirements is normally to develop local competitive

industries or to increase employment. Local content requirements subject imported products to less favorable conditions than domestic products.

The new local content regulation currently being considered has the potential of discriminating against foreign smartphone manufacturers. There was no phone manufacturing industry in Indonesia until recently, when several companies including Polytron and Samsung submitted plans to the Ministry of Industry to commence production of some components locally. As it stands today, most smartphones sold in Indonesia are made abroad. Forcing companies to assemble far removed from China's electronics supply chain could push up production costs by as much as 50 percent. The Indonesian Cell Phone Association (APSI) acknowledges that rare earth elements such as Neodymium that are needed to produce phone speakers and microphones are predominately found in China. Clearly the local content requirements currently being envisaged by the Ministry of Industry in Indonesia are being developed in the absence of meaningful dialogue with the affected industry stakeholders and without taking into account the realities imposed by regional and global supply chains.

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Indonesia is not the first to contemplate the introduction of local content requirements for the ICT sector. In 2012, India adopted a policy imposing local content requirements on the procurement of telecommunications and information technology products by both government and private sector entities. Under the Indian policy, telecoms equipment manufacturers are required to gradually increase the share of local content in each product in order to reach specified thresholds within a determined timeframe. However, Indonesia and India's local content initiatives differ greatly in terms of the policy rationales invoked to justify them. The Indian Government has shrewdly relied on a number of carefully formulated national security concerns, providing detailed reasoning behind the need for some 14 categories of ICT products to be purchased solely from Indian-owned equipment vendors and the security concerns it sought to address by imposing this requirement. Indonesia, on the other hand, has argued that its local content requirements have been conceived with a view to capturing a bigger share of the value from this sector for local producers and to boost employment. Indonesian policymakers have also touted a desire to reduce the country's trade deficit as a motive for introducing the planned local content rules. Whereas the rational invoked by Indian officials makes a WTO challenge of its local content rules considerably more difficult, the justifications furnished by Indonesian officials practically invite a WTO challenge. Any dispute brought by an affected trading partner against Indonesia would be almost impossible to lose, given that the policy rationales provided make the Indonesian local content rules a *prima facie* violation of WTO rules.

The difference in policy rationales underscores the fact that Indian policymakers at least have some understanding of what their international treaty obligations entail and what the implications of these commitments are for domestic policy making. However, this is something Indonesian policymakers are unfortunately either ignorant of or largely unconcerned about.

University Pelita Harapan - UPH

Founded in 1994 with the vision of educating a new generation of leaders for Indonesia and the wider ASEAN region, University Pelita Harapan is the number one private university in Indonesia according to the QS World University Ranking 2013. UPH was the first University in Indonesia to introduce programs entirely taught in English, the first to offer a liberal arts curriculum, and the first to introduce a multi-disciplinary approach to its programs. While consistently underlining the vision of "knowledge, faith and character", UPH, in cooperation with overseas partner universities, has developed a very rich curriculum in many areas of study, ensuring that its graduates are respected globally and appreciated by modern business and industry.

The Center for Trade and Investment - CITI

Established in September 2014, CITI's objective is to raise awareness in Indonesia of the importance of an outward-looking and liberal trade and investment policy, so as to ensure the country's continued commercial competitiveness and support its economic development goals. CITI runs a number of research, education and outreach initiatives with the generous support of both the Swiss State Secretariat for Economic Affairs (SECO) and the WTO Secretariat (WTO Chairs Program).

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This quarterly newsletter seeks to provide updates, insights and analysis on current developments in Indonesia in the area of trade and investment law and policy. Constructive Feedback and comments are welcome.

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