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Enforcement of Business Competition Laws During the Covid-19 Pandemic

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Abstract

The purpose of this study is to find out how KPPU's policies are in enforcing the competition law for the procurement of government goods and services during the Covid-19 pandemic. During the Covid-19 pandemic, the Indonesian government moved quickly to buy various items needed, ranging from test kits, masks, hand sanitizers, personal protective equipment (PPE) for health workers, to hospital facilities and infrastructure that became referrals for Covid patients. Even President Joko Widodo also instructed ministers to speed up the process of procuring goods and services during the Covid-19 pandemic. The KPPU's policy in enforcing the competition law for the procurement of government goods and services during the Covid-19 pandemic is to issue a legal product in the form of KPPU Regulation Number 3 of 2020 concerning Relaxation of Law Enforcement of Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in Support of the Recovery Program National Economy. Through the various relaxation provisions, KPPU provides policies in law enforcement in the form of convenience for business actors during the economic recovery period from the impact of the Covid-19 pandemic, but by still paying attention to existing business competition rules.

Keywords: *Law Enforcement; Business Competition; Covid-19*

Introduction

Indonesia is a developing country which is still continuing to improve various aspects of state life to advance and develop the country's economy. State intervention in the economy, especially market regulation in the theory of the welfare state, which is very much needed considering the notion of the welfare state in general, according to Spicker, is an ideal model of development that is focused on improving welfare through giving the state a more important role in providing universal and comprehensive social services to its citizens.¹

The occurrence of unfair business competition and the act of monopolizing the market became a picture of the condition of the Indonesian economy in the last 30 years at that time.² The concentration of

¹ Edi Suharto, *Negara Kesejahteraan Dan Reinventing Depsos*, diselenggarakan oleh Universitas Gadjah Mada, 2006, p.6.

² L. Budi Kagramanto, *Mengenal Hukum Persaingan Usaha (Berdasarkan Undang-Undang Nomer 5 Tahun 1999)*, Laros, Surabaya, 2008, p. 3.

economic power by large companies causes prices and products marketed in the market to be controlled by big business actors and causes people to lose the opportunity to buy products with competitive prices and various types.

Enforcement of business competition law is something that really needs to be done in the era of competition to maintain the public interest as well as economic efficiency as a result of competition. Currently, Indonesia has a legal umbrella in the form of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition which aims to safeguard the public interest and improve national economic efficiency, create a conducive business climate, prevent monopolistic practices, and/or unfair business competition, health caused by business actors, and the creation of effectiveness and efficiency in business activities.

During the pandemic, all over the world are competing to procure goods and services to deal with the Covid-19 pandemic in their respective countries or regions. Likewise, the Indonesian government moved quickly to buy various needed items, ranging from test kits, masks, hand sanitizers, personal protective equipment (PPE) for health workers, to hospital facilities and infrastructure that were used as referrals. President Joko Widodo instructed ministers in the cabinet to speed up the process of procuring goods and services. Nevertheless, the government still needs to prioritize transparency and apply the principle of openness in the government's procurement of goods and services (PBJ), because without these two things, it is feared that the budget for handling Covid-19 pandemic of IDR 75 trillion³ specifically for spending in the health sector will be minimally effective and vulnerable to inefficiency, irregularities, and even corruption.

Based on the description above, the formulation of the problem raised in this paper is what policies are implemented by KPPU in enforcing business competition law during the COVID-19 pandemic.

Research Results and Discussion

History of the Birth of KPPU

The Business Competition Supervisory Commission or KPPU, as an independent institution has been appointed by Law no. 5 of 1999, as the institution in charge of supervising and enforcing the implementation of the law. The current KPPU was formed based on the Decree of the President of the Republic of Indonesia No. 75 of 1999. Actually, business competition law enforcement can only be carried out by the police, prosecutors, and courts.

Apart from being an independent institution that is independent from the influence and power of the government or other parties, KPPU is a special organ that has dual duties, apart from creating order in business competition; it also plays a role in creating and maintaining a conducive business competition climate. It should also be noted, although KPPU has a law enforcement function, especially in the field of business competition, KPPU has no right to impose sanctions, both criminal and civil. The only sanctions that can be given by KPPU are administrative sanctions.⁴

In this case, the court is a place for settlement of cases which is officially established by the state, but for business competition law, dispute resolution at the first level is not resolved by the court. The reason that can be put forward is because business competition law requires specialists who have a background and/or understand the ins and outs of business in order to maintain market mechanisms.

³ <https://www.kemenkeu.go.id/publikasi/siaran-pers/siaran-pers-perkembangan-ekonomi-dan-refocusing-anggaran-untuk-penanganan-covid-19-di-indonesia/>.

⁴ Andi Fami Lubis, dkk, 2009, **Hukum Persaingan Usaha: Antara Teks dan Konteks**, Komisi Pengawas Persaingan Usaha, Jakarta, p. 313

Institutions that enforce business competition law must consist of people who have not only legal backgrounds, but also economics and business.

Another reason why an institution is needed that specifically resolves cases of monopolistic practices and unfair business competition is so that various cases do not pile up in court. Institutions that specifically resolve monopolistic practices and unfair business competition can be considered as an alternative dispute resolution, as long as the alternative meaning here is outside the court. In Indonesia, such institutions are often regarded as quasi-judicial.

The philosophical and sociological reasons for the formation of the KPPU can be stated. The philosophical reason that was used as the basis for its formation, namely in supervising the implementation of a rule of law requires an institution that has authority from the state (government and people). With the authority granted by the state, it is hoped that this supervisory agency can carry out its duties and functions as well as possible, and as much as possible be able to act independently. The sociological reasons used as the reason for the formation of the KPPU are the declining image of the courts in examining and adjudicating a case, as well as the burden of court cases that have accumulated. Another reason is that the business world requires a fast settlement and a confidential inspection process. Therefore, it is necessary to have a special institution consisting of people who are experts in the fields of economics and law, so that a quick settlement can be realized.⁵

The problem occurs in the unclear position of KPPU's employees which also has implications for the KPPU secretariat as a supporter of the smooth implementation of KPPU's duties, where in Article 34 of Law no. 5 of 1999 it is stated that the organizational structure, duties, and functions of the KPPU secretariat shall be further regulated by a Commission Decree. As a result, these arrangements have not been able to be integrated with the national institutional and staffing system. So that until now the KPPU secretariat is not included in a state office, and there has been no recognition or equalization of echelonization. The Secretariat, as a supporting element of the duties and authorities of KPPU members, is permanent in that the number of HR continues to increase requiring a professional and accountable management pattern, as well as various budgeting regulations/policies which further narrow the space for non-PNS employees. If this continues, it is possible that the KPPU Secretariat will be abandoned by its employees because under this condition, secretariat employees are treated as temporary employees by the Government, even though they have worked for more than 20 years at KPPU.

Duties of the Business Competition Supervisory Commission

The functions and duties of KPPU are a reflection of KPPU's role in handling business competition cases, namely to realize an efficient Indonesian economy through the creation of a conducive business climate that ensures business certainty. As a commission whose existence has been mandated by Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, KPPU also has the authority and competence to supervise the implementation of Law Number 5 of 1999.

The authorities and competencies possessed by KPPU are based on their functions as follows:⁶

- 1) Assessment of agreements, business activities, and abuse of dominant position;
- 2) Taking action as an exercise of authority;
- 3) Administration implementation.

⁵ Rosdalina Bukido, dkk, **Peranan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Menegakan Undang- Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat**, Jurnal Ilmiah Al-Syir'ah, Vol.15 No.1 Tahun 2007, Institut Agama Islam Negeri (IAIN Manado), hlm.59.

⁶ See Article 5 of Presidential Decree Number 75 of 1999 concerning the Business Competition Supervisory Commission (KPPU).

The Business Competition Supervisory Commission (KPPU) is a law enforcement agency in the field of business competition and the status granted to KPPU is as a supervisor for the implementation of the Business Competition Law. KPPU is a manifestation of the implementation of the Business Competition Law which mandates the establishment of an institution to enforce the Business Competition Law as stated in Article 30 paragraph (1) which reads: "To supervise the implementation of this Law, a Business Competition Supervisory Commission is formed which hereinafter referred to as the Commission."

Looking back at Article 30 paragraph (1), it is clear that the Business Competition Law provides a mandate to establish a supervisory agency in the field of business competition, where this institution has the status as a supervisor for the implementation of the Business Competition Law and is a quasi-independent institution that is free from influence and government powers and other parties and is responsible to the President.

KPPU in carrying out its duties can be represented as a ruler in business competition law, because KPPU has the power to impose sanctions for violators of the rule of law, this is as stated expressed by Sudikno Mertokusumo in his book *Knowing The law*, that the ruler has the power to impose sanctions for violations of legal rules.⁷

As one of the institutions responsible for implementation of Law Number 5 of 1999, then this commission is responsible for the early stages of implementing the Act. Decisions made by the Oversight Commission can be appealed to a higher court level. The Commission has broad jurisdiction and has four main tasks. First, the legal function, as the only institution that oversees the implementation of this Law. Second, the administrative function, because this commission is responsible for adopting and implementing supporting regulations. Third, the mediating function, because this commission receives complaints from the private sector, conducts independent investigations, conducts questions and answers with all parties involved, and makes decisions, and the fourth function is the police, because this commission is responsible for implementing the decisions it makes.

KPPU is a special institution that has dual duties, apart from creating order in business competition, KPPU also has a role to create and maintain a conducive business competition climate. The Business Competition Law has explained the duties of the KPPU as stated in Article 35 which reads:

- a. Conduct an assessment of agreements that may result in monopolistic practices or unfair business competition as regulated in Articles 4 to 16;
- b. Conduct an assessment of the business activities and or actions of business actors that may result in monopolistic practices and or unfair business competition as stipulated in Article 17 to Article 24;
- c. Conduct an assessment of the presence or absence of abuse of dominant position which may result in monopolistic practices and or unfair business competition as regulated in Articles 25 to 28;
- d. Take action in accordance with the authority of the Commission as regulated in Article 36;
- e. Provide advice and considerations on Government policies related to monopolistic practices and or unfair business competition
- f. Prepare guidelines and or publications related to this Law;
- g. Provide periodic reports on the work of the Commission to the President and the House of Representatives.

⁷ Sudikno Mertokusumo, 2005, **Mengenal Hukum**, Liberty, Yogyakarta, 2005, p.20.

Authority of the Business Competition Supervisory Commission

KPPU which is domiciled as supervisor is given the authority as stipulated in Article 36 and Article 47 has given special authority to KPPU. The authority in question is active authority and passive authority.⁸

Active authority is the authority given to KPPU through research. KPPU has the authority to conduct research on the market, activities and dominant positions, besides that KPPU is also authorized to conduct investigations, conclude the results of investigations and/or examinations, summon business actors, summon and present witnesses, request assistance from investigators, request information from government agencies, obtain and examine documents and other evidence, decide and determine and impose administrative witnesses.⁹ Passive authority is to receive reports from the public or from business actors regarding allegations of monopolistic practices and/or unfair business competition.

The powers granted by the Business Competition Law to KPPU as stated in Article 36 are:

- a. Receive reports from the public and or from business actors regarding the alleged occurrence of monopolistic practices and or unfair business competition;
- b. Conduct research on allegations of business activities and or actions of business actors which may result in monopolistic practices and or unfair business competition;
- c. Conduct investigations and or examinations of cases of alleged monopolistic practices and or unfair business competition reported by the public or by business actors or found by the Commission as a result of its research;
- d. Concluding the results of the investigation and or examination regarding the presence or absence of monopolistic practices and or unfair business competition;
- e. Summon business actors suspected of having violated the provisions of this Law;
- f. Summon and present witnesses, expert witnesses, and anyone deemed aware of violations of the provisions of this Law;
- g. Request assistance from investigators to present business actors, witnesses, expert witnesses, or any person as referred to in letters e and f, who are not willing to comply with the Commission's summons;
- h. Request information from Government agencies in relation to investigations and or examinations of business actors who violate the provisions of this Law;
- i. Obtain, examine, and or evaluate letters, documents or other evidence for investigation and or examination;
- j. Decide and determine whether or not there is a loss on the part of other business actors or the community;
- k. Notify the Commission's decision to business actors suspected of conducting monopolistic practices and or unfair business competition;
- l. Imposing sanctions in the form of administrative actions to business actors who violate the provisions of the Act.

Enforcement of Business Competition Law

According to Arie Siswanto, what is meant by competition law is a legal instrument that determines how competition should be conducted.¹⁰ The condition of competition is actually a

⁸ Mustafa Kamal Rokan, "Hukum Persaingan Usaha: Teori dan Praktinya di Indonesia", Rajawali Pers, Jakarta, 2012, p. 278.

⁹ Ibid

¹⁰ Arie Siswanto dalam Hermansyah, Pokok-Pokok Hukum Persaingan Usaha di Indonesia, (Jakarta: Kencana, 2008), p. 1.

characteristic that is inherent in human life which tends to outperform each other in many ways.¹¹

Unfair business competition can be understood as a condition of competition between business actors that runs unfairly. According to Article 1 point 6 of Law No. 5 of 1999, Unfair Business Competition is competition between business actors in carrying out production and or marketing activities of goods and or services that is carried out dishonestly or against the law or hinders business competition.

Business competition law was born because of the economic argument. During the reform era, business competition became one of the important instruments for the development of the Indonesian economic system. Since the enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, business competition has received recognition as an economic pillar in the Indonesian economic system based on Pancasila and the 1945 Constitution.

Law Number 5 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition brings a bright spot for the people in carrying out conducive and fair business competition. As stated in Article 2 of Law Number 5 of 1999, that the principles and objectives of business competition are: "Business actors in Indonesia in carrying out their business activities are based on economic democracy by paying attention to the balance between the interests of business actors and the public interest".

Furthermore, over time, there have been changes in the handling of business competition cases so that the legal rules continue to change following developments in society. Based on Law Number 11 of 2020 concerning Job Creation, several changes have been made to several provisions in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, especially those related to sanctions in the form of administrative actions that may be imposed by the Commission, examination of objections to the Commission's decision, and rationalization of the provisions of criminal sanctions as well as making adjustments to the implementing regulations of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

With these changes, it is hoped that the implementation of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition can further take place in line with the spirit contained in Law Number 11 of 2020 concerning Job Creation to create and expand job opportunities through improving the ecosystem. Investment and business activities, so as to create more conducive business practices and focus on fair business competition within the framework of professional and accountable supervision by the Commission.

Considering that the regulation concerning the prohibition of monopolistic practices and unfair business competition is a very dynamic matter, it is hoped that the Commission can carry out its duties and functions in a more professional, measurable and accountable manner, as well as continuously develop and implement the necessary best practices.

Problems in Handling Business Competition Cases

KPPU is a state institution that is given a fairly broad authority, namely to carry out investigations, prosecutions, and give decisions on cases of violations of Law Number 5 of 1999. This summarizes all the authorities of other law enforcers (police, prosecutors, and judges), so that KPPU's authority is often referred to as a super body.¹²

According to Todung Mulya Lubis, there is a violation of KPPU's functions, because it carries out three functions, namely as police, prosecutors, and judges, as a result, KPPU does not provide legal

¹¹ Arie Siswanto, *Hukum Persaingan Usaha*, Cetakan Pertama, Ghalia, Jakarta Indonesia, 2002, p. 13.

¹² KPPU, *Super body tapi "Ringkih"*, <http://www.hukumonline.com>, accessed on December 8, 2010.

certainty.¹³ Three powers that are in one institution will cause many problems both in terms of balance and in terms of the practice of exercising authority.

A small example of ambiguity in KPPU's authority in handling business competition cases, namely, although KPPU has the authority to conduct research and investigations, KPPU does not have the authority to conduct independent searches of business actors who are indicated to have violated Law No. 5/1999, paragraph (2) of the Regulation of the Business Competition Supervisory Commission Number 1 of 2010 concerning Procedures for Handling Cases in its provisions it is stated that the commission may cooperate with investigators of the Indonesian National Police to search and/or confiscate letters and/or documents.¹⁴, however, the KPPU is still unable to conduct a search on its own without the cooperation of the Indonesian National Police Investigators.

KPPU's authority is only limited to the provisions stipulated in Law Number 5 of 1999, so that improvements must be made to Law Number 5 of 1999, especially regarding the authority of KPPU to conduct searches, it is intended that KPPU can act quickly in finding evidence of violations so that business actors cannot eliminate the evidence which is the object of KPPU's examination of the violation he has committed.

Another problem is regarding the KPPU's greatest authority, which is related to the KPPU's decision, which is stated in Article 36 letter (j), letter (k) and letter (l). In Article 36 letter (j) it is explained that KPPU has the right to decide and determine whether there is a loss on the part of business actors and in the wider community, letter (k) gives the authority to KPPU to notify the decision that has been determined by the Commission to business actors suspected of violating against this Law and Article 36 letter (l) which is the authority of KPPU to impose sanctions in the form of administrative actions to business actors imposed by KPPU's decision.

If seen at a glance from the authority possessed by KPPU based on Article 36, it will be seen that KPPU has a very large and strong authority, but if examined further, this enormous authority still has weaknesses, especially in terms of execution. In fact, it should be noted that all decisions issued by the KPPU must receive an execution determination by the District Court. This means that sanctions for business actors who have been given a decision by KPPU can only be implemented after the decision is submitted to the District Court for execution. This seems inefficient because it takes more time for the execution request to be submitted to the court.

In Article 36 letter (l) it is stated that KPPU may impose administrative sanctions on business actors who violate the provisions of this Law, the administrative sanctions referred to are regulated in Article 47, namely:

- (1) Determination of the cancellation of the agreement as referred to in Article 4 to Article 13, Article 15 and Article 16.
- (2) An order to business actors to stop vertical integration as referred to in Article 14.
- (3) Orders to business actors to stop activities that are proven to cause monopolistic practices and or cause unfair business competition and or harm the community.
- (4) Order to business actors to stop abuse of dominant position.
- (5) Determination of cancellation of merger or consolidation of business entities and acquisition of shares as referred to in article 28.
- (6) Determination of compensation payment.

¹³ Todung Mulya Lubis, "Perlu Judicial Review Undang-Undang Anti Monopoli", <http://www.antaraneews.com>, accessed at 17:54 WIB, 30 September 2010.

¹⁴ See Article 35 paragraph (2) of the Regulation of the Business Competition Supervisory Commission Number 1 of 2010 concerning Procedures for Handling Cases.

- (7) The imposition of a fine of a minimum of Rp. 1,000,000,000 (one billion rupiah) and a maximum of Rp. 25,000,000,000 (twenty-five billion rupiah).

In addition to administrative sanctions, there are main criminal penalties that are subject to this as regulated in Article 48 of Law Number 5 of 1999, namely:

- (1) Violation of the provisions of Article 4, Article 9 to Article 14, Article 16 to Article 19, Article 25, Article 27, and Article 28 is subject to a maximum fine of Rp. 25,000,000,000.00 (twenty-five billion rupiahs.) and a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiahs), or imprisonment in lieu of a fine for a maximum of 6 (six) months.
- (2) Violation of the provisions of Article 5 to Article 8, Article 15, Article 20 to Article 24, and Article 26 of this Law is subject to a fine of a minimum of Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. Rp. 25,000,000,000.00 (twenty-five billion rupiah), or imprisonment in lieu of a fine for a maximum of 5 (five) months.
- (3) Violation of the provisions of Article 41 of this Law is punishable by a minimum fine of Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah), or imprisonment in lieu of a fine. a maximum of 3 (three) months.

Article 49 of Law Number 5 of 1999 also regulates the additional penalties imposed in the form of:

- (1) Revocation of business license; or
- (2) Prohibition for business actors who are proven to have violated this Law from serving as directors or commissioners for a minimum of 2 (two) years and a maximum of 5 (five) years; or
- (3) Cessation of certain actions or activities that cause losses to other parties. However, the authority to impose criminal sanctions is not on the KPPU.

All business actors who have been decided by the KPPU have a maximum period of 14 days to file an objection to the results of the KPPU's decision to the District Court which then the District Court will strengthen or cancel the KPPU's decision based on Article 44 of Law Number 5 of 1999. Laws taken by business actors are submitted to the general court environment. This shows that there is a conflict in the procedures for handling business competition cases, especially regarding the role of the PN in handling objections to the KPPU's decision.¹⁵

This contradiction arises because Article 25 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power states that:¹⁶

"The general court has the authority to examine, hear, and decide on criminal and civil cases in accordance with the provisions of the legislation".

The general court, in this case the PN, has a general nature to decide criminal and civil cases, while the substance of business competition law is special. The objection to the KPPU's decision should be examined by a special judicial body as well, as in the United States there is a special institution to decide and handle business competition cases in the civil sector, namely the Federal Trade Commission (FTC) and business competition cases in the criminal realm are handled by the DOJ- AD.

Then in handling business competition cases, namely when giving a decision, there is a vagueness of norms in the nature of the KPPU's decision. Article 44 paragraph (1) only states "Business actors may file an objection to the District Court no later than 14 (fourteen) days after receiving notification of the

¹⁵ Siti Anisah, "Permasalahan Seputar Tata Cara Pengajuan Keberatan Terhadap Putusan KPPU," Jurnal Hukum Bisnis, vol. 24, No. 2, 2005, p. 4.

¹⁶ See Article 25 paragraph (2) of Law Number 48 Year 2009 concerning Judicial Power (LN. No. 157 Year 2009, TLN. No. 5076).

decision¹²; this does not emphasize the nature of the KPPU's decision. There were also inconsistencies between the provisions of Article 46, Article 44 paragraph (4), and Article 44 paragraph (5) of Law Number 5 of 1999.

On the one hand, Article 46 stipulates that the KPPU's decision will automatically have permanent legal force if no objection is raised and the KPPU can apply for an execution determination to the District Court. Then, in Article 44 paragraph (4) and paragraph (5) it is stated that if the business actor does not carry out the decision, this article in fact orders the KPPU to submit the decision to the investigator for investigation. Moreover, with the provision that the decision is only sufficient initial evidence for investigators to carry out an investigation, it is as if there is a denial of the legal force that the KPPU's decision actually has.

Withdrawing the KPPU's decision by placing the KPPU's decision only as sufficient initial evidence for investigators actually negates the permanent legal nature of the KPPU's decision, again the question arises what is the nature of the KPPU's decision? Even when an appeal is submitted to the District Court, the KPPU often loses due to the unclear nature of the decision, only being considered as preliminary evidence, and other matters.

Therefore, in order to improve work performance and optimize the duties, functions and authorities of the KPPU, it is necessary to make improvements to Law Number 5 of 1999. Improvements made to Law Number 5 of 1999 must regulate the scheme and authority of KPPU in handling business competition cases in a comprehensive manner. Obviously, this is needed to provide legal certainty for the community, especially for business actors.

Enforcement of Business Competition Law during the Covid-19 Pandemic

It is an undeniable fact that the economies of various countries in the world, including Indonesia, have been badly hit by Covid-19. Business competition which has long been believed to be a recipe for producing optimal outcomes from the market is also affected.²²

Business actors, instead of looking for the best way to compete with their competitors through various investments in creating business innovations, will instead focus more on not going out of business in the Covid-19 pandemic era. The Business Competition Supervisory Commission (KPPU), as the authority tasked with maintaining fair business competition, has a significant role in the Indonesian economy affected by the pandemic. On the one hand, KPPU still has to focus firmly on enforcing Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. On the other hand, the pandemic condition must also be considered by KPPU to implement various easing of business competition law enforcement.

In certain sectors, KPPU must of course remain firm and even more "fierce" in enforcing the law. For example, KPPU must focus on supervising various health-related commodities. Commodities such as medicines, medical equipment and support for medical personnel such as Personal Protective Equipment (PPE) must be protected from scarcity and price soaring due to anti-competitive measures such as hoarding and price fixing.¹⁷

To support the national economic recovery and support the implementation of Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for handling the Covid-19 Pandemic and/or in the context of dealing with threats that pay for the National economy and/or financial system stability into law, the Business Competition Supervisory Commission (KPPU) issued a regulation regarding relaxation of law enforcement in supporting the national economic recovery program as well as supporting the implementation of the tasks of the COVID-19 Handling Committee and the National

¹⁷ <https://katadata.co.id/redaksi/indepth/5ee720073c882/pene-gakan-hukum-persaingan-usaha-di-era-pandemi>.

Economic Recovery (PEN) based on Presidential Regulation of the Republic of Indonesia Number 82 of 2020 concerning the Covid-19 Handling Committee. 19.

KPPU provides several relaxations for the law enforcement carried out. The various relaxations are explained through KPPU Regulation No. 3 of 2020 concerning Relaxation of Law Enforcement on Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in Support of the National Economic Recovery Program (Perkom 3/2020), which was signed by Kumia Toha, Chair of KPPU-RI on November 9, 2020.

Through these various relaxation provisions, KPPU hopes to provide convenience for business actors during the economic recovery period from the impact of the Covid-19 pandemic while still paying attention to existing business competition rules. This rule has been in effect since November 9, 2020.

Guntur Syahputra Saragih, Member of KPPU and Spokesperson for the Commission, explained that there are several forms of relaxation provided by KPPU. First, relaxation of law enforcement on the implementation of the procurement of goods and/or services using the State Budget or Regional Revenue and Expenditure Budget. Second, relaxation of law enforcement on plans for agreements, activities and/or using a dominant position aimed at handling Covid-19 and/or increasing the economic capacity of business actors in running their business. "The two relaxations are given if business actors meet various criteria determined by the KPPU."¹⁸

Relaxation of law enforcement on the procurement of goods and/or services is provided for procurement aimed at meeting medical needs and/or providing supporting facilities for handling Covid-19. For example, such as procurement of drugs, vaccines, construction of emergency hospitals, appointment of hotels/buildings for self-isolation, or procurement of medical needs/other supporting facilities for handling Covid-19 as well as in the context of distributing social assistance and government social networks to the community.

Then the relaxation of law enforcement on plans for agreements, activities and/or using a dominant position is given by KPPU after business actors submit a written request to KPPU. Based on the request, KPPU will analyze the agreement plan, activities and/or use of dominant position and make a decision on it no later than 14 days after the request is received by KPPU.

"The KPPU's decision on the request may be in the form of allowing the implementation of the agreement, activities and/or the use of a dominant position, or allowed but with certain conditions, or even rejecting the written request. deemed to have been approved by the KPPU."

In addition, KPPU also provides relaxation for two terms of obligations of business actors, namely related to the obligation to submit notification of mergers and acquisitions, and the obligation to submit responses to written warnings in the implementation of partnerships.

Commission regulation Number 3 of 2020 explains that for transactions of merger, consolidation, or acquisition of shares and/or company assets, relaxation is given in the form of increasing the notification obligation calculation time to 60 days after the transaction is legally effective. Prior to the relaxation, the deadline for submitting notification obligations was 30 days.

Meanwhile, the supervision of the implementation of the partnership as referred to in Law no. 80 of 2008 concerning Micro, Small and Medium Enterprises, relaxation is given in the form of increasing

¹⁸ Guntur Syahputra Saragih, KPPU merelaksasi penegakan hukum demi pemulihan ekonomi nasional, begini kriterianya, <https://nasional.kontan.co.id/news/kppu-merelaksasi-penegakan-hukum-demi-pemulihan-ekonomi-nasional-begini-kriterianya>.

the implementation time of each written warning to 30 days. Where previously without relaxation, the response of business actors to each written warning from KPPU was 14 days.

In more detail, the following is a description of KPPU Regulation No. 3 of 2020 concerning Relaxation of Law Enforcement on Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in Support of the National Economic Recovery Program, as follows:

A. Article 5 Reads

- (1) In order to support the National Economic Recovery Program, the Commission shall implement Relaxation of Law Enforcement on the implementation of the procurement of goods and/or services which are financed using the State Revenue and Expenditure Budget or Regional Revenue and Expenditure Budget.
- (2) The procurement of goods and/or services as referred to in paragraph (1) meets the following criteria:
 - a. In the context of fulfilling medical needs and/or providing supporting facilities for handling Corona Virus Disease 2019 (COVID-19), such as:
 1. drug procurement;
 2. procurement of vaccines;
 3. construction of an emergency hospital for handling Corona Virus Disease 2019 (COVID-19);
 4. appointment of hotels or buildings in the context of isolation and handling of Corona Virus Disease 2019 (COVID-19); and/or
 5. Procurement of medical needs and/or other supporting facilities in the context of handling Corona Virus Disease 2019 (COVID-19).
 - b. In the context of distributing social assistance and the Government's social safety net to the community.

B. Article 6 Reads

- (1) The Commission may apply Relaxation of Law Enforcement on plans for agreements, activities and/or use a Dominant Position aimed at handling Corona Virus Disease 2019 (COVID-19) and/or increasing the economic capacity of Business Actor in running their business.
- (2) The relaxation as referred to in paragraph (1) shall be given by the Commission after the Business Actor submits a written request to the Commission cq. Deputy for Law Enforcement.
- (3) Upon the request as referred to in paragraph (2), the Commission will provide relaxation as follows:
 - a. allow the conduct of agreements, activities and/or use of the Dominant Position;
 - b. allow agreements, activities and/or use of the Dominant Position to be carried out under certain conditions; or
 - c. Refuse a written request for a planned agreement, activity and/or use of a Dominant Position.
- (4) The request as referred to in paragraph (2) can be submitted by electronic mail to the email address: kppu.go.id or sent directly to the Commission's office.

C. Article 7 Reads

Regarding delays in Notification obligations on Merger, Consolidation, or Acquisition of shares and/or company assets, the Commission applies Law Enforcement Relaxation in the form of increasing the time for calculating Notification obligations to 60 (sixty) Days since the Merger, Consolidation, or Acquisition of shares and/or company assets takes effect legally effective.

D. Article 8 Reads

With regard to the supervision of the implementation of the Partnership, the Commission applies the Relaxation of Law Enforcement in the form of increasing the time for each written Warning to be 30 (thirty) Days.

E. Article 9 Reads

- (1) The head of the work unit in charge of law enforcement conducts an analysis of the planned agreement, activity and/or use of the Dominant Position as referred to in Article 6 to be reported in the Coordination Meeting no later than 7 (seven) Days after receiving the written request.
- (2) Decisions on Relaxation of Law Enforcement upon written request as referred to in paragraph (1) shall be decided in the Commission Meeting.
- (3) The decision on Relaxation of Law Enforcement as referred to in paragraph (2) shall be decided in a Commission Meeting no later than 14 (fourteen) Days after the request is received.
- (4) In the event that after a period of 14 (fourteen) days the Commission has not issued a Decision on Relaxation of Law Enforcement as referred to in paragraph (3), the request is considered approved.

On April 1, 2022 Ukay Karyadi, Chairman of the Business Competition Supervisory Commission of the Republic of Indonesia issued Regulation of the Business Competition Supervisory Commission of the Republic of Indonesia Number 2 of 2022 concerning Revocation of Regulation of the Business Competition Supervisory Commission Number 3 of 2020 concerning Relaxation of Law Enforcement on Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in Support of the National Economic Recovery Program.

The reason for the revocation of Commission Regulation Number 3 of 2020 is because business activities have been able to adapt to the conditions of the Corona Virus Disease (COVID-19) pandemic through the application of new habits, so that there is no need to relax law enforcement on monopolistic practices and unfair business competition and supervise the implementation of partnerships. This Commission Regulation comes into force 30 (thirty) days from the date of stipulation.

39 Conclusion

Based on the results of the study, it can be concluded that the enforcement of business competition law during the covid-19 pandemic is carried out by making legal products in the form of KPPU Regulation No. 3 of 2020 concerning Relaxation of Law Enforcement on Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in Support of the National Economic Recovery Program. Through these various relaxation provisions, KPPU provides convenience for business actors during the economic recovery period from the impact of the Covid-19 pandemic while still paying attention to existing business competition rules. Several forms of relaxation are given by KPPU. First, relaxation of law enforcement on the implementation of the procurement of goods and/or services using the State Budget or Regional Revenue and Expenditure Budget. Second, relaxation of law enforcement on plans for agreements, activities and/or using a dominant position aimed

at handling Covid-19 and/or increasing the economic capacity of business actors in running their business.

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