

Two Decades of Indonesian Business Competition Law: Implementation, Enforcement and Contribution to the Economy

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Abstract.

Two decades have been passed the Business Competition Law and the KPPU (The Commission of Supervisory of Business Competition) was born in economic democracy of Indonesia. During that time, the existence of the Business Competition Law and KPPU can be assessed as the executor and enforcer. This paper uses a normative analytical approach to examine the implementation and enforcement of the Business Competition Law and its contribution to the Indonesian economy. Analysis of the implementation, enforcement of the Business Competition Law is based on the cases that occur in Indonesia and based on the KPPU decision. The KPPU decision is seen from the aspect of implementation and enforcement of the Business Competition Law. Then, this paper also tries to connection the enactment of the Business Competition Law with its contribution to the economy. The analysis result is: 1) Business Competition Law, substantially, including a complex legal provisions, which are divided into agreements and prohibited activities. 2) KPPU tries to take a role and authority in law enforcement of business competition, but it is not yet optimal. The legal provisions for business competition have not been able to encourage vertical mobility from small companies to become medium and big companies. Facts and data still note that most companies in Indonesia are small companies. This shows that there is still a concentration of market dominance in several big companies. It is a duty of KPPU to ensure the market runs well, fair competition, and in opportunity are open. 3) KPPU has a challenge to encourage the improvement of the small companies status to medium companies, from medium companies to become a big companies by ensuring an open business climate and fair business competition. Recommendation: 1) KPPU has more realease a technical regulations related to procedures for handling cases that follow various kinds of agreements and or activities that are prohibited by the Competition Law. 2) KPPU must be more proactive and responsive related to the issues of the interests from many people. 3) KPPU must pay more attention to the development of the digital economy industry which has a potential to become one of the contributors to state income. KPPU must ensure that the development of the digital economy runs in fair business competition to bring up many new companies.

Keywords. Business Competition, Business Competition Law, The Commission of Supervisory of Business Competition.

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ABOUT BUSINESS COMPETITION

Economic democracy is one of the topics that have been discussed many years ago by scholars. A few centuries ago, Alexis de Tocqueville worried about democracy based on the majority vote. According to him, the more democratic a country, the greater a threat to the freedom. This is a dilemma situation in the midst of many and strong concept, that democracy is the most appropriate model of the state.¹ For Tocqueville, a democratic state is a country that ensures an equality of the political, social and a dominant economic, and the elimination of unlimited power by the majority.² In this context, state intervention is needed to uphold a justice, including to provide an equal opportunities to all people in the economic field..

The adopted value is the market mechanism will naturally move the economy, state interference cannot be justified, because it can be detrimental.³ Free markets are are not intervened by any power, including the state.⁴ The free market is an economic enclave that is only driven naturally by the mechanisms of the supply and the demand. The government or the state acts as a referee or a native regulator of economic activities.

The essence of a market economy is the decentralization of a decisions relating to "what", "how much" and "how" to produce. It is means that every people must be given a certain space for decision making. A market process only can be developed within a decentralized decision-making structure which means that there are sufficient numbers of independent people who provide supply and demand in a market, because market processes is require a moments of the action and reaction from an unpredictable market actors.⁵

Economic democracy is a form of fair business competition. There is no intervention in the price or quantity of goods or services. There is no privilege granted to one party or a group to have a power for the market.

Fair business competition has a positive impact for the country, for the buyer and for the progress of the industry concerned. Fair business competition breeds competition among the producers to compete in producing the best goods or services. Fair business competition also has a benefits for society, because it has a wide selection of goods and services with competitive prices. The country also get a benefits from fair business competition because there are many business actors that in one another.

The state has a role in economic activities based on a free market through providing market access as freely as possible, providing an incentives to increase the number of national entrepreneurs, providing an infrastructure and making monetary policies that oriented to stability.⁶ The goodness of business competition is to improve the welfare of consumers through reduction prices, encourage an innovation, protect a small and

¹Robert A. Dahl, *Demokrasi Ekonomi: Sebuah Pengantar*, Jakarta: Yayasan Obor Indonesia, 1992, p.3.

²*Ibid.*, p. 2.

³A. Sonny Keraf, *Pasar Bebas Keadilan dan Peran Pemerintah: Telaah Atas Etika Politik Ekonomi Adam Smith*, Yogyakarta: Pustaka Kansius, 1996, p.173.

⁴Adam Smith, *An Inquiry into the Nature And Causes of The Wealth Of Nations*, Edinburgh: Mundel, Doic And Stevenson, 1809.

⁵Andi Fahmi Lubis, Ningrum Natasya Sirait, (ed), *Hukum Persaingan Usaha Antara Teks & Konteks*, Jakarta: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, 2009, p. 2.

⁶*Ibid.*, p. 3.

medium- companies from imperfections market, and prevent the emergence of a ruling party with the intention of shut consumer choices.⁷

(LITERATURE REVIEW) INDONESIAN ECONOMIC SYSTEM

The Indonesian Reformation in 1998 touched the fundamental aspects of political and economic democratization. Indonesia is a fertile enclave for economic political dualism in the form of economic intervention by the state.⁸ The state intervention changed into a deviation in the state-business relations that lasted a long time, one of which is the business standing because of a connections. Indonesia is known as a country that release a regulations by limiting the operation of the market economy.⁹

The market is intervened by the policy of the political elite and the state policy. During the New Order era, Indonesia was inevitably having a close relationship between the authorities and the businessmen, namely between the political elite and the economic elite.¹⁰ Many criticisms are made to the New Order Government related to state-business practices that gave rise to client entrepreneurs.¹¹ This practice has benefited a small number of people to control a huge economic assets.

A political system that is centered on presidential figures and institutions, will have an impact on every policy that drives aspects of the economy. Then it can be ascertained that this requires a suppliers of information and interests in making decisions (President Soeharto). The information supplier and stakeholders are political elites who are in President Soeharto's circle. President Soeharto's elite circle enjoys various facilities from his role as a supplier of information to President Soeharto, it is calles as the Rent Bureaucracy.¹² As a result, economic democracy is not realized. The velocity of money only reaches to somr economic elites.

The criticism came in the government of Soeharto President to show partisanship in the democracy economic sector. In this connection, President Soeharto once asked the conglomerates to shares a stock to the Cooperative. The article 33 of the 1945 Indonesian Constitution confirms that the Indonesian economy is not based on a capitalist system that raises a few entrepreneurs, but is based on the economic democracy with cooperatives as its pillars.¹³ Which the prosperity of the Indonesian people is the goal of implementing the economic democracy.

Business-state practices are survive for a long lasting time in the New Order Government. Such practices are not fair economic practices, because they are filled with unnecessary costs, so the price component is

⁷Christopher Bellamy, "Some Reflections On Competition Law In The Global Market," *New England Law Review Fall, Vol. 34, 1999*, p. 17.

⁸Ian Chalmers, *Konglomerasi: Negara dan Modal dalam Industri Otomotif Indonesia*, Jakarta: Gramedia, 1996, p. 8-9.

⁹Rizal Mallarangeng, *Mendobrak Sentralisme Ekonomi Indonesia 1986-1992*, Jakarta: Gramedia, 2004, p. 26.

¹⁰Arief Budiman, *Sistem Perekonomian Pancasila Dan Ideologi Ilmu-Ilmu Sosial di Indonesia*, Jakarta: Gramedia, 1990, p. 34.

¹¹Yahya Muhaimin, *Bisnis dan Politik: Kebijakan Ekonomi Indonesia 1950-1980*, Jakarta: LP3ES, 1990, p. 6.

¹²Arief Budiman, *Negara dan Pembangunan: Studi Tentang Indonesia dan Korea Selatan*. Jakarta: Yayasan Padi dan Kapas, pp. 12-13.

¹³Lihat Jimly Asshiddiqie, *Gagasan Kedaulatan Rakyat dalam Konstitusi Dan Pelaksanaannya di Indonesia*, Jakarta: Ichtisar Baru Van Hoeve, 1994, p. 177-184.

increased. This practice has an impact on entrepreneurship is not develop, because entrepreneurs can penetrate the limits of a the country's power. Interaction between the state and business takes a place intensively, which the entrepreneurs carefully strengthen their connections with the state authorities.¹⁴ The lasting interaction is caused by entrepreneurs using their economic strength to strengthen their interests.

*The economically privileged use their wealth to buy the laws they want, and these laws enable them to flourish. The motto, "use the wealth to get the power, and use the power to protect the wealth," would serve elites of a pre-democratic Asia as a cause and effect of market and governmental failures alike. These auctions involve a mutuality of Coasean bribes. The privileged certainly paid bribes to the government and its officials, but the government also paid bribes to attract needed capital, technology, etc.*¹⁵

The alliance of power and economic power is able to stop the door of economic democracy in Indonesia for a long time, and can fade the desire to develop a business, and can turn off entrepreneurial inspiration.

However, with such a business practices, Indonesia succeed to maintain its economic growth. Economic growth is a cake that should be proportionally divided to all the Indonesian people. But the practice of business-state cronyism, economic growth cannot be enjoyed by all the Indonesian people. Ironically, the biggest portion of the development cake was enjoyed or controlled by a number of entrepreneurs with the Government's support.

In the midst of rapid economic growth, many negative notes and facts about the Indonesian economy during the New Order era. *Indonesia's rapid economic growth, however, was criticized by some as having been built upon the government's over-active role. More specifically, this role consisted of the over-regulation of business in general (and small businesses in particular), the ownership of vast state-enterprises, and the support of crony capitalism.*¹⁶ Friendship relationships are built and applied to relations between the state and business.

Monopolistic, fraudulent or unfair business practices hurt the majority of the Indonesian people. Once political momentum arrived and could not be held back by state power, the change of leadership in Indonesia became a necessity. On May 14, 1998 President Soeharto declared himself to stepping down as Indonesia President and was replaced by his Deputy, B. J. Habibie President. This situation indicates that the honeymoon of country and business has over. The reformation discussed as a major issue have been realized by President B. J. Habibie. One of them is reformation of the Corruption, Collusion and Nepotism practice in the business world.

Learning from the history of the New Order, economic reformation began on March 5, 1999 by enacting Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (the Law on Business Competition). The Business Competition Law becomes *lex specialis* and annuls all the other provisions relating to it.

¹⁴Chalmers, Konglomerasi: Negara dan Modal, p. 21.

¹⁵Paul H. Brietzke Thomas A. Timberg, "An Economic Reform Agenda For Indonesia,?" *Law and Policy in International Business Fall, Vol. 31. 1999*, p. 6-7.

¹⁶Syamsul Maarif, "Competition Law In Indonesia: Experience To Be Taken For The Development Of Competition Law In China," *Washington University Global Studies Law Review Vol. 3, 2004*, p. 334.

*Law No. 5 contains specific and comprehensive rules governing competition between business actors. Prior to the promulgation of Law No. 5, legal provisions governing competition in Indonesia were scattered throughout numerous laws. For example, Article 382 bis of the Indonesian Criminal Code contains provisions governing unfair competition, and the Basic Law of Industry No. 5 of 1984 contains regulations intended to promote competition. Additionally, businesses often cited Article 1365 of the Civil Code as a basis for recovering damages suffered as a result of unfair competition from competitors.*¹⁷

Through the Business Competition Law, Indonesia has aligned itself with other countries in the world that implement free markets. Article 30 of the Business Competition Law mandates the Government of Indonesia to form a The Commission of Supervisory of Business Competition or KPPU. Technically, Article 34 of the Business Competition Law determines the formation of a KPPU based on a Presidential Decree. The KPPU was formed based on Presidential Decree Number 75 of 1999 Concerning the Establishment of the The Commission of Supervisory of Business Competition (KPPU).

KPPU is an authorized institution to implement and enforce the Business Competition Law. Structurally, KPPU is responsible to the President. This position is intended to maintain the independence of the KPPU when implementing and enforcing the Business Competition Law from the intervention from other institutions.

METHODOLOGY

The research uses a normative analytical approach aimed at studying for the implementation and enforcement of the Business Competition Law and its contribution to the Indonesian economy. The main purpose of legal material is to know the meaning of the contained in the terms used by the laws and regulations conceptually, as well as to know their application in practice and legal decisions.¹⁸ Two decades have been born of the Business Competition Law and KPPU in Indonesia's economic democracy. During that time the existence of the Business Competition Law and KPPU can be assessed as the executor and enforcer.

An analysis of the implementation and enforcement of the Business Competition Law is carried out on cases that have occurred and the decisions determined by KPPU against parties who are proven to violate the Business Competition Law. Because this article does not use a case approach, the KPPU's decision is seen based on aspects of the implementation and enforcement of the Business Competition Law. Then, this research also seeks to connection the enactment of the Business Competition Law with its contribution to the economy.

¹⁷ Hikmahanto Juwana, "An Overview Of Indonesia's Antimonopoly Law," *Washington University Global Studies Law Review Winter/Summer Vol. 1, 2002*, p. 185-186.

¹⁸ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia, 2008, p. 310

RESULT OF ANALYSIS

a. *The Legal Era of Business Competition*

The enactment of the Business Competition Law in Indonesia received a responses in two forms, praise and criticism.

*The Indonesian Monopoly Law represents only the first comprehensive attempt at competition regulation within Indonesia. The law can be amended, rewritten or supplemented, as needed, in order to effectuate its aims. Additionally, the law will help bring national focus to the underlying values it presupposes, and, thereby, accelerate the further development of those very values.*¹⁹

The enactment of the Business Competition Law, at least can be seen as Indonesia's efforts to reform the economic sector from monopolistic practices and unfair competition that have occurred for years during the New Order. Indonesia is entering a new era, namely a country with the principle of economic democracy that upholds equal opportunity for all parties in the economic field.

The purpose of the enactment of the Business Competition Law is, first, to create an economic democracy with the availability of equal opportunities for all citizens to participate in the production and marketing process of goods and or services. A fair, effective and efficient business climate can encourage economic growth and the operation of a fair market economy.

Second, everyone who has a business in Indonesia must be in a situation on fair competition, so that there is no concentration of economic power in some business actors. As is well known, Indonesia is a country whose economy (private economy) is controlled and managed by a minority of Chinese descent which amounts to approximately 3% but their controls 70% of Indonesia economic assets in various forms.²⁰ This fact is raises a people's jealousy and hatred.

The Business Competition Law is implemented to further distribute welfare to more people as stated by the KPPU Chief.

*We would like to focus our effort on cases that have the greatest impact on society, and usually these kinds of cases are derived from ex officio investigations. Thus, it is also important for us to improve our market studies, which findings could lead to ex officio investigations. Hopefully, we can find initiatives, or cases, that really affect the economy or the people.*²¹

Implicitly, the Business Competition Law should have a positive impact on people's welfare. The existence of KPPU as an institution formed to implement the Business Competition Law is judged by its role in

¹⁹ Lasater, "A Survey Of The," p. 249

²⁰ Amy L. Chua, "The Paradox Of Free Market Democracy: Rethinking Development Policy," *Harvard International Law Journal Spring, Vol. 41, 2000*, p. 317

²¹ Hollman, "Interview With Kurnia," p. 3.

handling cases that occur. The Business Competition Law is the hope and promise of the Indonesia in creating welfare improvement.

Not only praise and hopes are embedded in the Business Competition Law, there are also criticisms that are submitted. At least some of the criticisms submitted by observers can represent all of the criticisms submitted for the Business Competition Law and KPPU. First, the language used in the Business Competition Law is not strict.

*The language of the Indonesian competition law is chameleon-like. While the South African competition law addresses the tension between fairness and efficiency and in almost all cases allows defences based on pro-competitive and efficiency justifications, the Indonesian law does not appear to do so. These ambiguities await the day when they will be resolved by regulations or decisions, whether in favour of an anti-market philosophy of Pancasila or in favour of an efficient, competitive economy.*²²

Ambiguity of the Business Competition Law is might be resolved in the stipulated regulations by KPPU.

Second, the Business Competition Law has been criticized for not having an ideology, making it difficult to implement it effectively.

The Indonesian Monopoly Law has been criticized as being prematurely forced onto a country that did not have the ideological underpinnings in place essential for such a law to be meaningful and effective. Additional criticism of the law has included the fact that the body charged with enforcement of the law has no independence from the executive, who has the power to direct its enforcements and to exempt public and private entities from the law entirely. While these criticisms of the law are well founded, they are somewhat short-sighted.

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The Business Competition Law supports the market mechanism as an economic pillar. Competition is good and profitable. On the other hand, Pancasila mentioned the economy based on mutual interests, namely social justice for all Indonesian people.

Third, the Business Competition Law is considered not fully capable of eliminating the practice of cronyism.

Ironically, while the enterprise system was intended to remove power from the state, the existence of wide swaths of ambiguity in the competition law could play into the hands of state officials, who could be inclined to discriminate in favour of their "own" and may have the freedom to do so without accountability. Mirroring Indonesian law in the days of Suharto, the Indonesian competition law could be applied opaquely and discriminatorily--to grant privileges to relatives and friends and punish ethnic Chinese. What Indonesia needed

²² Eleanor M. Fox, "Equality, Discrimination, And Competition Law: Lesson From And For South Africa And Indonesia," *Harvard International Law Journal Spring Vol. 41, 2000*, p. 592

²³ Kieran A. Lasater, "A Survey Of The Domestic Approaches To Antitrust Taken By The OPEC Member Nations: Do They Practice What They Preach," *Penn State International Law Review Fall 2004*, pp. 248-249

*most in a competition law, it did not get: clear legal rules and neutral principles assuring competition on the basis of merit, rather than cronyism, privilege, or bribery.*²⁴

The Competition Law is the foundation for erase the practice of cronyism in business. Although, it is not easy, need a time and consistency in enforcing the provisions of the Competition Law.

Solution recommendation given by experts from Australia, Dr. Robert Ian McEwin, he recommended that:

“Indonesia does not regulate too many problems, but only regulates business competition issues. Robert suggested that Indonesia also learn from the experiences of Singapore and the European Union. They only set a few restrictions but written in simple language, so they are clear and easy to interpret. Robert also emphasized that the law does not mean much. What's more important is how the law is interpreted. For example, he explained that American law is very confusing and contradictory, but over time they have succeeded in forming a system that creates a culture of good business competition.”²⁵

The Business Competition Law has many regulations, one of which is agreements and prohibited activities. Various matters regulated in the Business Competition Law are considered not optimal in their implementation and enforcement. Furthermore, Robert recommended for Indonesia to focus on the regulations related the problems in business competition.²⁶ This strategic recommendation may be is a key for the implementation of the Indonesia Business Competition Law in the coming years.

The implementation and enforcement of business competition law shows how relevant these criticisms are today. KPPU is certainly very aware of this matter. Therefore, the law enforcement by KPPU is risking the interests of the nation and Indonesian citizen, as well as a form of consistency of the mandate given to them.

To determine the direction of their work, KPPU has determined their mission, which is as follows:²⁷

- 1) To actualize a fair mentality of business competition;
- 2) To actualize a law enforcement for business competition;
- 3) To actualize a fair partnership agreement among a big, micro, small and medium businesses and cooperatives; and
- 4) To actualize a credible and accountable institutions.

b. Pelaksanaan Hukum Persaingan Usaha

The momentum of economic reformation is maintained by the enactment and implementation of Law Number 5 of 1999 concerning Monopolistic Practices and Unfair Business Competition by KPPU. Theoretically, there are two countries types related to Business Competition Law. The first type is a country that applies Business Competition Law and has an effective enforcement system. The second type is a group of countries that

²⁴ Fox, ” Equality, Discrimination, And, ” p. 592.

²⁵ <https://www.hukumonline.com/berita/baca/lt4ec5c8ce04bf3/persaingan-usaha-lemah-hambat-pertumbuhan-ekonomi>.

²⁶ <https://www.hukumonline.com/berita/baca/lt4ec5c8ce04bf3/persaingan-usaha-lemah-hambat-pertumbuhan-ekonomi>.

²⁷ <https://www.kppu.go.id/id/tentang-kppu/visi-dan-misi/>

have Business Competition Law but are still struggling to develop an effective law enforcement system, because of the influence of their social and political traditions.²⁸ Indonesia is categorized into the second group. *When I was working as a professor, I found a lot of criticism directed to KPPU, especially on the law enforcement and case handling procedure. So I think it's very important to change the current law and it's implementing regulation in order to bring it in line with the principle of due process of law and to enhance KPPU's enforcement effort.*²⁹ The chief of KPPU understands that the key to implementation the Business Competition Law is in the law enforcement and the procedures of handling a case.

After the enactment of the Business Competition Law, the implementation of this law is a measure in the evaluation of KPPU's working performance. To enforce the Business Competition Law, KPPU uses a *per se illegal* approach and *rule of reason* for the reported or founded cases. The rule of reason approach is an approach to make an evaluation of the consequences of an agreements or business activities to determine that an agreement or business activity is inhibiting or supporting a competition business.

Conversely, the *per se illegal* approach states that an agreement or a business activity can be said is illegal if without any further proof of the arising impact from that agreement or business activity.³⁰ That two approaches are used by KPPU to analyze the cases by referring to the article in Business Competition Law to determine the guilt of the reported party.

To fulfill their duties, KPPU uses both approaches to prove a prohibited agreements, such as monopolistic practices, oligopolies, price fixing, territorial division, price discrimination, predatory prices, resale price maintenance, boycotts, cartels, oligopsonies, vertical integration, closed agreements, misuse dominant position, conspiracy, fraud in determining production costs. In Indonesia, monopolies and/or unfair business competition practices generally involve political elites or government elites.³¹

The following is law enforcement by KPPU for cases over a period of 20 years:

The first decision of KPPU was the case of PT Caltex Pacific Indonesia or PT CPI in the procurement of casing and tubing through a tender that has been legally and convincingly proven to violate Article 22 of Law Number 5 of 1999 Concerning Monopolistic Practices and Unfair Business Competition, because the determination of tender winners is by collusion between participants tender. KPPU also instruct the PT. CPI to stop casing and tubing procurement activities no later than 30 days after the PT CPI receives notification of the decision. The KPPU's first decision was dated April 21, 2001. At the time this research was completed, the KPPU has made 345 decisions. The last decision of the KPPU is related to the violation sumption of Law Number 5

²⁸ Warren S. Grimes, "Wealth Distribution, Free Trade And Competition Law, *Southwestern Journal of International Law* Vol. 18, 2011, p. 67.

²⁹ Hugh Hollman, "Interview With Kurnia Toha, Chairman Indonesian Commission For The Supervision Of Business Competition," *Antitrust Source* June, Vol. 18, 2019, p. 1.

³⁰ Lubis, Sirait, (ed), *Hukum Persaingan Usaha*, p. 55.

³¹ Juwana, "An Overview Of," hlm. 194. Hal senada disampaikan Muhaimin, dalam Muhaimin, *Bisnis dan Politik: Kebijaksanaan*, Chalmers dalam Chalmers, "Konglomerasi: Negara dan Modal."

Year 1999 concerning Monopolistic Practices and Unfair Business Competition in the auction of a Government cooperation project with a Business Entity in the supply of drink water in the city of Bandar Lampung, Lampung Province. Decision No. 14 / KPPU-L / 2009 dated February 26, 2020.

KPPU also uses *per se illegal* approach and *rule of reason* for their handled cases. The *per se illegal* approach was applied to the price fixing case by several entrepreneurs of Air Conditioning or AC in Patas City Bus, who are members of the road transport association (Organda). The agreement was accommodated by the Regional Representative Council or DPD of the Organda in DKI Jakarta through the Letter of DPD Organda concerning the Tariff Adjustment of the Patas AC City Bus Public Transport in the DKI Jakarta area on September 5, 2001. This agreement was considered a violation of Article 5 of Law Number 5 of 1999.³²

Table 1. Law Enforcement of Law Number 5 Year 1999 Concerning Monopolistic Practices and Unfair Business Competition (2000-2016)

| TAHUN | PENETAPAN | PUTUSAN | PERKARA BERJALAN | TOTAL |
|--------------|-----------|------------|------------------|------------|
| 2000 | 0 | 2 | 0 | 2 |
| 2001 | 1 | 4 | 0 | 5 |
| 2002 | 4 | 4 | 0 | 8 |
| 2003 | 2 | 7 | 0 | 9 |
| 2004 | 2 | 7 | 0 | 9 |
| 2005 | 4 | 18 | 0 | 22 |
| 2006 | 6 | 12 | 0 | 18 |
| 2007 | 4 | 27 | 0 | 31 |
| 2008 | 20 | 48 | 0 | 68 |
| 2009 | 3 | 32 | 0 | 35 |
| 2010 | 5 | 37 | 0 | 42 |
| 2011 | 0 | 13 | 0 | 13 |
| 2012 | 0 | 9 | 0 | 9 |
| 2013 | 0 | 12 | 0 | 12 |
| 2014 | 0 | 19 | 0 | 19 |
| 2015 | 0 | 18 | 4 | 22 |
| 2016 | 0 | 0 | 7 | 7 |
| TOTAL | 51 | 269 | 11 | 331 |

³² Lubis, Sirait, (ed), *Hukum Persaingan Usaha*,” p. 62.

The *rule of reason* approach is contained in the Cineplex 21 case with Decision Number: 05 / KPPU-L / 2002. This case involved several reported parties in Group 21, namely: PT Camila Internusa Film (Reported I), PT Satrya Perkasa Esthetika Film (Reported II), and PT Nusantara Sejahtera Raya (Reported III). Reporting parties in their letter dated July 5, 2002 stated that principally, the reported party was suspected of monopolistic practices and the abuse of dominant positions in the distribution of Hollywood films because of their majority shareholding in similar industries, so that they were consecutively considered violating Article 17, Article 25 and Article 27 of Law Number 5 Year 1999.³³ KPPU also uses the Business Competition Law approach of *rule of reason* in the case of resale price maintenance (RPM).³⁴

During the period of 2000-2016, the KPPU decision is 269 cases or an average of 15.8 cases each year. Whereas during the period of 2017-2020, KPPU decision is 76 cases or an average of 19 cases each year. The total resolved cases by KPPU reached 345 cases until the first quarter of 2020 or an average of 16 cases each year. The important KPPU cases include SMS cartels, aviation industry cartels, Alfa acquisition by PT. Carrefour. KPPU handled the cases of unfair business competition for the procurement of goods and services, including acquisition of stock. Even the portfolio of cases handled by KPPU can be said is complete.

Since 2009, minus 2013, almost every year the KPPU released 45 KPPU regulations. The first regulation is KPPU Regulation Number 01 of 2009 concerning Pranotification, Merger, Consolidation, and Acquisition. The last regulation released by KPPU is KPPU Regulation No. 4 of 2019 concerning the Procedures for Supervision and Handling Partnership Cases. The most important regulations are KPPU Regulation Number 1 of 2019 concerning Procedures for Handling Monopolistic Practices and Unfair Business Competition Cases.

c. The Contribution of Business Competition Law to the Economy

Twenty years after the Business Competition Law and KPPU in Indonesia, of course the purpose of their formation can be seen from their contribution to the Indonesian economy, which monopolistic practices and unfair competition are much reduced. KPPU set its vision in the 2015-2019 KPPU Strategic Plan consisting of: "The realization of a climate fair business competition in encouraging an efficient and equitable national economy to improve people's welfare." This vision is in line with development priorities, the design of the macroeconomic framework, the programs of Ministries and Institutions, across Ministries/Institutions, and across regions as well as institutional frameworks, regulatory frameworks and indicative funding frameworks, and still in line with the 2018 development theme which emphasizes on investment and accelerating infrastructure development. This vision is expected to be a booster of economic growth in 2018 while simultaneously reducing existing inequality,

³³ *Ibid.* hlm 78.

³⁴ Thomas K. Cheng, "Convergence And Its Discontents: A Reconsideration Of The Merits Of Convergence Of Global Competition Law," *Chicago Journal of International Law Winter Vol. 12, 2012*, hlm. 442

both between individuals and between regions.³⁵ The purpose of the Article 3 of the Business Competition Law consist of:

- 1) To maintain the public interest and improve national economic efficiency as an effort to improve people's welfare;
- 2) To create a conducive business through the regulation of fair business competition, so as to ensure the certainty of equal business opportunities for big businesses actors, medium business actors, and small business actors;
- 3) To prevent monopolistic practices and or unfair business competition arising from business actors; and
- 4) To create effectiveness and efficiency in business activities.

It is a mandate that given by the Business Competition Law to KPPU to be implemented. If it is read positively, the effort or implementation of the Business Competition Law by KPPU is intended to improve economic efficiency and to improve people's welfare by creating a conducive business climate, and prevent monopolistic practices and/or unfair business competition, so as to create effectiveness and efficiency in business activities.

The enactment of the Business Competition Law and the existence of KPPU have a contribution to the economy in Indonesia. The Central Statistics Agency (BPS) said there had been an increase in the number of companies in Indonesia, it is 3.98 million new companies based on the 2016 Economic Census. While in 2006 data, BPS recorded 22.7 million companies.³⁶ There was a increase of 17.51% percentage. Of this amount, 26.26 million businesses (98.33%) is a Micro-Small Business (MSE) scale and 450,000 companies is a Medium-Big Scale Business (UMB).³⁷ If this is the data, then KPPU still has a challenge to ensure the distribution of wealth is not concentrated in a some group of companies. The majority of companies in Indonesia as much as 98.33% are small-scale companies. The role of KPPU is to ensure a business competition runs naturally, and opportunities are open to all parties, small, medium and big companies. The KPPU task is to encourage fair business competition so that these small companies can rise become medium companies.

KPPU needs to maintain the manufacturing of industry sector and other industries in order to grow and develop fair business competition, so that the industry has competitiveness and contributes to sustainable economic growth.

The Ministry of Industry said that the manufacturing industry contributed the most to the growth of 19.62%, followed by the agricultural sector by 13.45%, trade by 13.02% and construction by 10.60%, metal goods industries such as computers, electronic and electrical goods plants 1.70%, transportation equipment industry 1.68%, chemical and pharmaceutical industries 1.59%, and textile and apparel industries 1.25%, textile

³⁵ <https://www.kppu.go.id/id/tentang-kppu/visi-dan-misi>.

³⁶ <https://news.detik.com/berita-jawa-timur/d-4767511/kppu-akan-kawal-bisnis-online-yang-makin-subur>.

³⁷ <https://news.detik.com/berita-jawa-timur/d-4767511/kppu-akan-kawal-bisnis-online-yang-makin-subur>.

and apparel industries grow 15.08%, the repair service industry and machinery installation 10.33%, and the food and beverage industry 8.33%.³⁸

The survival of this industry determines the survival of the millions of people who work in it. KPPU must ensure that the industry is not controlled by a small number of companies, whether through market control, or through corporate processes such as mergers or acquisitions. The digital economic sector is no less important. Currently, the industrial sector 4.0. growing rapidly in Indonesia, there are many business start-ups that must be maintained through fair business competition. KPPU must focus on this sector

The development of Indonesia's digital economy is the largest and fastest growing in Southeast Asia with a projection of USD 40 billion or 567.409 trillion rupiah in 2019, compared to Thailand (USD 16 billion), Singapore (USD 12 billion), Vietnam (USD 12 billion) , Malaysia (USD 11 billion) and the Philippines (USD 7 billion).³⁹

The digital economy industry has the potential to be a vehicle for increasing domestic gross income and for the recruitment of Indonesian employment. Indonesian young people who have creativity and have a high entrepreneurial spirit must be in an enclave that is maintained in a situation of fair business competition. In this case the KPPU's challenges are:

- 1) The problem of business competition in Indonesia is dominated by anti-competitive actions taken by companies/actors with government consent such as permissive regulations through business associations and granting monopoly rights to a person or some business groups, so that it effect in the emergence of "barrier to entry" against new competitors in similar industries.
- 2) Tax relief and subsidies have an impact in companies to accumulate their capital rather than depositing taxes on the government.
- 3) Anti-competitive actions in terms of providing government needs including collusion in bid rigging, job manipulation, contracts and other fraud action.
- 4) Anti-competitive actions in the form of vertical integration, resale price maintenance and market allocation.⁴⁰

All anti-competitive actions can be taken by companies that have strength in capital and network with a strong position in the market. KPPU is a superbody with a mandated to ensure and to maintain the market in fair competition with no monopoly or oligopoly practice.

³⁸ <https://katadata.co.id/berita/2020/01/06/jadi-tumpuan-ekonomi-ri-sektor-manufaktur-2019-tumbuh-melambat>.

³⁹ <https://news.detik.com/berita-jawa-timur/d-4767511/kppu-akan-kawal-bisnis-online-yang-makin-subur>.

⁴⁰ <https://www.hukumonline.com/berita/baca/1t5e0a2ed32b52e/hukum-persaingan-usaha-dalam-pandangan-prof-ningrum-natasya-sirait>.

CONCLUSION

In closing, several things can be conveyed as a conclusion from the results of the analysis. First, the Business Competition Act, substantially, includes complex legal provisions. Many things are regulated in this act by divided into agreements and prohibited activities.

Second, KPPU is trying to take the role and authority in law enforcement of business competition, but it is not yet optimal. The legal provisions of business competition have not been able to encourage vertical mobility of small companies to become medium or big companies. Facts and data still note that most companies in Indonesia are small companies. There is still a dominance market concentration in a small number of big companies. This is the duty of KPPU to ensure that the market runs well, the competition is fair and opportunities are open.

Third, KPPU has a challenges to encourage the improvement of the status of small companies to medium companies, medium companies to big companies by ensuring an open business climate and fair business competition.

As a recommendation, several things can be proposed.

First, KPPU has release more technical regulations in handling procedures of the case such as an agreements and/or activities that are prohibited by the Competition Law.

Second, KPPU must be more proactive and responsive to issues related to the interests of many people.

Third, KPPU must pay more attention to the development of the digital economy industry which has the potential to become one of the contributors to the state income. KPPU must ensure that the development of the digital economy runs in fair business competition to bring up many new companies.

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