

INVESTIGATIVE TECHNIQUES FOR ANTI-COMPETITIVE PRACTICES

The APEC Training Course on Competition
Policy

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CONCERNING

**THE PROHIBITION OF
MONOPOLISTIC PRACTICES AND
UNFAIR BUSINESS COMPETITION**



Principles & Purposes

Principle

Business actors in Indonesia must conduct their business activities based on the principles of economic democracy, with due observance of the equilibrium between the interest of business actors & the public interest

Principles & Purposes

Purposes:

- a. Safeguard the public interest & enhance the efficiency of the national economy
- b. Create a conducive business climate by regulating fair business competition in order to ensure certainty in equal business opportunities
- c. Prevent monopolistic practices and or unfair business competition caused by business actors
- d. Creating effectiveness and efficiency in business activities

The Provision

- | | |
|-----------------------------------|--|
| a. Prohibited Agreements | b. Prohibited Activities |
| - Oligopoly | - Monopoly |
| - Price Fixing | - Monopsony |
| - Dividing Territories | - Market Control |
| - Boycott | - Conspiracy |
| - Cartel | - Dominant Position |
| - Trust | - Interlocking Directorate |
| - Oligopsony | - Share Ownership |
| - Vertical Integration | - Mergers, Consolidations & Acquisitions |
| - Exclusive Dealing | |
| - Agreements with Foreign Parties | |

Who Should Enforce Competition Law?

Commission for the Supervision of Business Competition of the Republic of Indonesia (KPPU RI)

Status:

1. The Commission shall be formed to oversee the implementation of this law
2. The Commission shall be an independent institution free for the influence and authority of the government & other parties
3. The Commission shall be responsible to the President

Membership

- a. The Commission shall consists of Chairperson & a Vice Chairperson acting concurrently as member, and not less then 7 (seven) members
- b. Members of the Commission shall be appointed & dismissed by the President upon the approval of the People's Legislative Assembly
- c. Members of the Commission shall be appointed for a term of office of 5 (five) years and they shall be eligible for reappointment for 1 (one) subsequence term of office

The Commission 2012 - 2017



The Duties

- a. Law Enforcement
 - Assess agreements that may result in monopolistic practices and or unfair business competition
 - Assess business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition
 - Assess the existence or absence of the abuse of dominant position which may cause monopolistic practices and or unfair business competition

The Duties

- b. Provide advice and opinion concerning Government policies related to monopolistic practices and or unfair business competition
- c. Prepare guidelines and or publications related to this law

The Authorities

- a. Receive reports from the public or the business actors regarding allegations of the existence of monopolistic practices and or unfair business competition
- b. Conduct research concerning allegations of the existence of business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition
- c. Conduct investigation and or examination of allegations of cases of monopolistic practices and or unfair business competition
- d. Make conclusions regarding the results of its investigation and or examination as to whether or not there are any monopolistic practices and or unfair business competition
- e. Summon business actors alleged of having violated the provisions of this law
- f. Summon and present witnesses, expert witnesses, and any persons deemed to have knowledge about the violation of the provision of this law

The Authorities

- g. Seek the assistance of investigators to present business actors, witnesses, expert witnesses, or any persons who are not prepared to appear in response to the commission's summons
- h. Request the statement of Government institutions related to the investigation and or examination of business actors who have violated the provisions of this law
- i. Obtain, examine and or assess letters, documents or other instrument of evidence for the purpose of investigation and or examination
- j. Determine and stipulate the existence or non-existence of losses suffered by other business actors or society
- k. Notify the business actors alleged of having engaged in monopolistic practices and or unfair business competition about the Commission's decisions
- l. Impose administrative sanctions on business actors violating the provisions of the this law

Source of KPPU Cases

- a. Report of the Reporting Party (registered as a L)
The identity of the reporting party must be kept confidential by the Commission
- b. Report of the Reporting Party with compensation request (registered as a L)
- c. Initiative of the Commission (registered as an I)

Case Registered : Numbers/KPPU/(L)(I)/Year



SCOPE

The Handling Case based on the Report of the Reporting Party

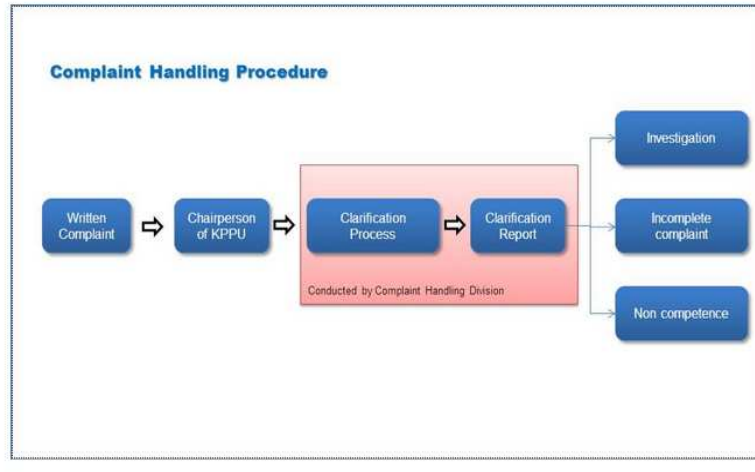
- a. Report
- b. Clarification
- c. Investigation
- d. Filing
- e. Commission Council Hearing
- f. Commission's Decision

The Handling Case based on the Initiative of the Commission

- a. Review
- b. Research
- c. Monitoring of Business Actor
- d. Investigation
- e. Filing
- f. Commission Council Hearing
- g. Commission Decision



PROCEDURES FOR COMPLAINT



Instruments of evidence in Investigations by the Commission shall be in the form of the following:

- a. Witness Statement
- b. Expert Statement
- c. Letters and or Documents
- d. Indication (Indirect Evidence)
- e. Statement by Business Actors

Report (Complaint) Handling Procedure in KPPU

- a. Any person having knowledge of the occurrence of a reasonably suspecting and or a party suffering losses a result of the violation of this law has occurred, may report in writing to the Commission with a clear statement concerning the occurrence of violation, attaching the identity of the reporting party
- b. Complaint Handling Divisions in Investigation Bureau responsible to Conduct Investigation concerning allegations of the existence of business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition



REPORT (COMPLAINT) HANDLING

- a. Report (complaint) must be submitted in written to KPPU Jakarta main office or to 6 (six) representative offices (which are in Surabaya, Balikpapan, Batam, Medan, Makassar, and Manado)
- b. Report (complaint) should be made to the Chairman of KPPU using a proper and national language, Bahasa Indonesia. Report (complaint) must at least defines as the following:
 1. Identification of complainant, reported parties, and witnesses
 2. Explanation on the suspicious violation
 3. Presentation of evidences
 4. Copy of identity of the complainant
 5. Signature of the complainant



CLARIFICATION PROCEDURE

- a. The work unit which is in charge of report handling shall clarify the report
- b. KPPU will clarify the complaint on the following aspects:
 - administrative completion of the complaint
 - address of the complainant
 - identity of the reported parties
 - address of the witness(es)
 - compatibility of the suspicion with the provided evidences
 - appraises the absolute competence

CLARIFICATION PROCEDURE

- c. The result of Clarification shall at least state:
 - that the report constitutes the absolute competency of the Commission
 - that the report has been administratively complete
 - that alleged violation of the Law with the article violated
 - whether to discontinue the report handling process or recommend the direct superior for an investigation
- d. The discontinuing of the report handling process shall be done by the work unit which handles the case if such report does not meet one of the requirements
- e. The results of clarification shall be used to find out the preliminary evidence as ground for Investigation
- f. The Head of the Secretariat of the Commission shall notify the Reporting Party of the results of the clarification
- g. The results of the clarification on the report with compensation for the suffered loss shall be reported by the work unit which handles the case to the Commission in a Commission Meeting for approval to be made in the Report of Alleged Violation in the Preliminary Examination.

PERIOD OF CLARIFICATION

- a. In the event that the Report has not complied with the provisions, the concerned work unit shall notify and return the report to the Reporting Party not later than ten (10) days after the receipt of the report
- b. The Reporting Party shall complete the report which has not complied with the provisions not later than ten (10) days since the date of the return of the report
- c. If the Reporting Party does not complete the report within the period specified, such report shall be declared incomplete and the handling thereof shall be suspended
- d. If the Reporting Party does not complete its report within a period of ten (10) days, the Reporting Party can submit new report if new and complete evidence is found

INITIATIVE CASE

- a. The Commission may handle the case based on the data or information, without any report, on any alleged violation of the Law
- b. The data or information can at least derive from:
 - Results of Review
 - News in the Media
 - Results of Monitoring
 - Incomplete Report
 - Hearing Conducted by the Commission
 - Findings in the Examination
 - Other Reliable Sources

COMMISSION'S REVIEW

- a. The Commission conducts a review on industrial sector which shall at least meet the following criteria:
 - industries which control the public interest
 - strategic industries which are vital to the country
 - industries with high concentration
 - national or regional main industries
- b. The Commission selects and decides list of industries to be reviewed based on the proposal of the work unit which handles the review
- c. The review of the industrial sector shall be done by the Review Team as determined by the Chairman of the Commission

REVIEW ACTIVITIES

The review of industrial sector shall include at least the following activities :

- a. Collecting data and information with phases
 - conducting literature study
 - inviting stakeholders
 - conducting field research
 - conducting focus group discussion (FGD)
- b. Processing data and information which has been obtained
- c. Analyzing the industries and policies
- d. Identifying the possible and alleged violation of the law; and
- e. Prepare the results of the Review

REVIEW RESULT

- a. The Review Team shall deliver the Report on Industrial Review to the Commission in the Commission Hearing
- b. The Review Report shall at least contain:
 - industrial structure
 - industrial performance
 - industrial policies
 - possible or alleged violation of the Law
 - Recommendation
- c. The recommendation shall at least contain:
 - suggestions and considerations to the government to rearrange or change the policies
 - continuation to the Investigation phase

The Report of Industrial Review can be upgraded to the Investigation phase if it meets at least the following criteria:

- a. there is an alleged violation of the Law and the violated article
- b. there is an alleged decreasing performance of industry and market or potential losses to consumers

The Commission decides the follow-up action to the Review Report by giving suggestions and considerations to the government and/or continue to the Investigation phase

RESEARCH

- a. The work unit which handles the monitoring of Business Actor conducts a research in order to obtain preliminary evidence on alleged violation committed by Business Actor
- b. In order to obtain preliminary evidence on the alleged violation, the work unit which monitors Business Actor shall conduct at least activities as follows:
 - collecting data from Business Actor, government and other related parties
 - conducting market survey
 - conduct local survey
 - receive carbon copies of letters and/or information related to the alleged violation of the Law

RESEARCH

- a. The work unit which monitors Business Actor shall prepare and present the Research Report in the Commission Meeting/Coordination Meeting
- b. The Research Report shall at least contain as follows:
 - identities of Business Actor
 - market structure
 - possible or alleged violation of the Law
 - possible decreasing of industry or market performance
 - recommendation on whether the research is continued to the Monitoring or Investigation Phase
- c. The Commission shall determine the follow-up action of the monitoring of Business Actor based on the Research Report if the following minimum criteria are met:
 - One (1) Business Actor or a group of Business Actor controls over more than fifty (50) percent of the market share
 - Two (2) or three (3) Business Actors or a group of Business Actor; control over more than seventy-five 75%
 - There is a potential violation of the Law
- d. The Commission decides the follow-up action to the Research based on the Research Report if the following minimum criteria are met:
 - there is an alleged behavior which violates the Law
 - there is alleged decreasing performance of the industry or market

RESEARCH

The Commission may conduct a hearing with Business Actor based on Research Report and at the request of the work unit which monitors Business Actor, if deemed necessary

The work unit which monitors Business Actor will conduct the Research within the period as required

The Research will be ended if the Commission decides to:

- a. follow up the Research with Monitoring
- b. follow up the Research with Investigation

MONITORING

- a. The Commission shall monitor Business Actor who is listed in the Business Actor in Monitoring
- b. The monitoring of Business Actor shall be implemented in the following methods:
 - monitoring of price and supply
 - Interview
 - meeting with concerned Business Actor
 - periodic report from Business Actor every six (6) months
 - requesting information from competitor of the Business Actor
 - requesting information from the Government
- c. Meeting with Business Actor for evaluation of the monitoring data and information shall be held not later than every six (6) months
- d. The meeting shall be at least attended by one (1) Commissioner as appointed by the Chairman of the Commission

RESULTS OF MONITORING

- a. The work unit which handles the monitoring of business actor shall prepare the Monitoring Report to be presented to the Commission in the Commission Meeting
- b. Monitoring Report shall at least contain as follows:
 - identities of Business Actor
 - market structure development
 - possibility of alleged monopolistic practice and/or unfair business competition
 - measures taken to anticipate Business Actor on possible occurrence of monopolistic practice and/or unfair business competition
 - recommendation on whether or not to continue the monitoring and/or award of appreciation or commencement of Investigation
 - recommendation on giving of the award as well
- c. The work unit in charge of monitoring of Business Actor shall present the Monitoring Report to the Commission in the Commission Meeting

MONITORING

- a. The Commission decides the follow-up action to the recommendation stated in the Monitoring Report
- b. The Commission can grant an award to Business Actor if within a period of minimum three (3) years consecutively such Business Actor does not violate the Law, as stipulated by the Commission Decision
- c. The granting of the award as contemplated in paragraph (3) shall be further stipulated in the Commission Regulation

INVESTIGATION

- a. The work unit which handles the investigation shall appoint investigator to investigate:
 - Results of clarification
 - Review Report
 - Research Report
 - Monitoring Report
- b. The report with the suffered losses shall not be investigated
- c. The report with the suffered losses shall be followed up with Preliminary Examination upon the receipt of the approval from the Commission Meeting

INVESTIGATIVE TECHNIQUES

- a. Investigator who conducts the investigation in order to obtain sufficient, clear and complete evidence on the alleged violation to the following
 - The report
 - Review Report
 - Research Report
 - Monitoring Report
- b. The Investigator in conducting the Investigation shall take at least the following measures:
 - to summon and inquire the Reporting Party, Reported Party, Business Actor and other related parties
 - to summon and inquire the Witness
 - to ask for the opinions of Expert Witness Ahli
 - to obtain letters or documents
 - to conduct On-spot Examination
 - analyze the information, letters, and/or documents and results of On-spot Examination.
- c. The Investigator shall prepare and sign the Minutes of Investigation
- d. The Investigator shall establish coordination with the Work Unit which is in charge of the investigation in conducting the Investigation

INVESTIGATIVE TECHNIQUES

- a. The Reporting Party, Reported Party, Business Actor and other related parties, also Witness and Expert shall meet the summon extended by the Work Unit in charge of the investigation in conjunction with the implementation of the Investigation
- b. The Reporting Party, Reported Party, Business Actor and other related parties, also Witness and Expert shall deliver to the Investigator all letters and/or documents as required in the Investigation
- c. The Reporting Party, Reported Party, Business Actor and other related parties, also Witness and Expert shall sign the Minutes of Investigation

RESULTS OF INVESTIGATION

- a. The work unit which is in charge of the investigation will assess the clarity and completeness of the alleged violation
- b. The assessment will be made by the work unit in the form of Investigation Report
- c. The Investigation Report shall at least contain:
 - Identities of Business Actor which has allegedly committed the violation
 - provisions of the Law which has been allegedly violated
 - at least two (2) evidences
- d. The Investigation Report which has met the requirements shall be submitted to the work unit in charge of Filing and Case Handling
- e. The Investigation Report which does not meet the requirements shall be entered into the Investigation Discontinuation List
- f. The work unit in charge of investigation shall report the progress of investigation to the Commission not later than sixty (60) days as from the investigation is commenced
- g. The Commission may discontinue the Investigation or extend the Investigation period

KPPU CASES

- a. Cases based on The Report (Complain) from the Reporting Party
 - Case Number 26/KPPU-L/2007 concerning Cartel of Short Messaging Services (SMS)
- a. Cases based on the Initiative of Commission
 - Case Number 25/KPPU-I/2019 concerning Price Fixing of Fuel Surcharge in Domestic Airlines Industries