



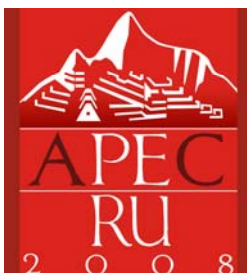
**Asia-Pacific
Economic Cooperation**

2008/SOM3/CPDG/016

Agenda Item: 12

Experiences on Early Development of Indonesian Competition Law

Purpose: Information
Submitted by: Indonesia



**Competition Policy Deregulation Group
Meeting
Lima, Peru
13–14 August 2008**



***Experiences on Early Development of Indonesian Competition Law
13-14 Agustus 2008
Presentation by Mr. Ahmad Junaidi
Communication Director***



Outline

- Introduction
- Case Handling Procedure
- Handled Early and newly cases
- KPPU as Independent Agency
- Role on Policy Advocacy



Introduction

- Internal pressure for fair competition has gained momentum during the Asian Economic Crisis in 1998 to give birth Law No 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition as part of reformation era
- Reformation in the economic sector is done by dismantling heavy state regulation → market economy approach, division of regulator and operator, state owned enterprise → private participation
- KPPU as the agency that supervise the implementation of Law No 5 is mandated to ensure that fair competition is in place through two instruments: law enforcement and policy advocacy



Case Handling Procedure (1)

- To set up procedural law of case handling, KPPU issued a decree in 1999
- The decree received many criticism due to the lack of transparency and lack of due process of law
- The decree was revised in 2006 and serves as legal basis to date



Case Handling Procedure (2)

- Cases can be sourced from complaint or KPPU initiative
- Complaint submitted to KPPU would be reviewed and analyzed based on its merit
- There are two stages before KPPU raise a case
- Research and clarification (60 + 30 days)
- Indictment (30 + 14 days)
- Case exposure to be voted by Commissioner



Case Handling Procedure (3)

- Once a case is launched, there are two stages of investigation: preliminary (30 days) and further examination (60 + 30 days)
- Defendant would have opportunity to raise defend at the stage of Commissioner Panel
- Commissioner Panel would announce its decision within 30 days
- KPPU initiative case would undertake the same procedure



Case Handling Procedure (4)

- Defendant would have opportunity to appeal against KPPU decision to District Court
- Both defendant and KPPU would have opportunity to appeal against District Court ruling directly to the Supreme Court



Challenges in Case Handling Procedure

- Limited guidelines issued by KPPU
- Limited time for complaint review
- Limited authority to searching evidences
- Increasing number of complaints
- No minimum jurisdiction thresholds = all complaint must be followed up by KPPU
- Less capacity to conduct market survey



In handling initial case and new type of illegal acts

- Pursuant to the relevant article in the Law Number 5/1999 but it is interpreted by using competition best practices of OECD, those of UNCTAD and also landmark decisions of experienced competition agency such as FTC (USA) and Competition Commission (European Union)

For example on defining essential facilities concept, price fixing and trust case

- Considering related landmark decision of Indonesia Supreme Court



KPPU as Independent Agency (1)

- Guarantee by Law that KPPU will free from government or any other parties influence
- Commissioner elected by the Parliament and appointed by President
- Commissioner is not member of the cabinet and do not take order from executive
- Budget is approved by the Parliament



KPPU as Independent Agency (2)

- Each Commissioner is independent
- Case decided by assigned Commissioner Panel
- No other Commissioners or Chairman could intervene in deciding a case
- Decision is subject to review by court



Role in Policy Advocacy (1)

- Government policies tend to be the source of market distortion or create monopolization
- The law only confers authority to review policy after being issued
- KPPU actively reviews policies that deem as creating market distortion, prior or after issuance



Role in Policy Advocacy (2)

- KPPU can propose opinion to issuing agency but no mandatory response is required by law
- Some agencies positively response KPPU opinion and voluntarily consult KPPU before issue its policies
- Some agencies are ignorant → political, parliamentary, or public approach
- In corporate with economic coordinating minister, we have been drafting legal framework obligating all economic regulations drafting to be overviewed by KPPU



Challenges in Policy Advocacy

- No mandatory consultation prior issuing a policy that will affect competition
- No mandatory response to KPPU opinion
- Less harmonization with competition policy
- Less pro competitive culture in various governmental agencies
- Lack of information among small and remote regional government



KPPU Statistic

- Number of complain received
From 2000-2008 total of complain received in KPPU was 133 cases
- Number monitoring
From 2000-2008 total of monitoring received in KPPU was 21 cases
- Number of cases and status
The total of cases that handled by KPPU (2000-2008) was 159 cases. Among 159 cases, 24 cases was not proven have indication of the allegation of Law No 5/1999, 8 cases decided to changed behavior, 64 cases was proven have the allegation of Law No.5/1999, 18 cases not proven have the allegation of violent in Law No. 5/1999, and 3 cases was given suggestion and recommendation from KPPU. For 42 cases was in process now.
- Number of opinion and status
For giving suggestion and recommendation to government, KPPU have 52 suggestion and recommendation that given to some sector of government. Ten of them have given comments to KPPU and followed up suggestion from KPPU.
- Sectors of opinion
Some of sector of government that had received suggestion and recommendation from KPPU was some minister that relate to public sector such as; Transportation, Telecommunicaton, Energy, Finance, Trade, Transmigration, law and human rights, labour, and the others were local government that relate to public sector.



Thank You

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