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I. INTRODUCTION

Indonesia may not be one of the famous countries in the world. Tourists mostly know Bali (one of the islands in Indonesia) rather than the country itself. Not too many people are aware that this country is the largest archipelago country in the world, as well as the largest economy in Southeast Asia, and is one of the emerging market economies of the world. Indonesia is also a member of G-20 major economies.

In the 1960s, Indonesian economy deteriorated due to political instability, which led to severe poverty, unemployment, amid enormous annual inflation (up to 1,000 percent). That was then; the New Order administration under President Soeharto has brought a degree of discipline to economic policy that quickly tackles inflation, currency fluctuations, and attracts foreign aid and investment. The New Order has lasted for more than thirty years.

However, high levels of economic growth from 1987–1997 masked a number of structural weaknesses in Indonesia's economy. Growth came at a high cost in terms of weak and corrupt institutions, severe public indebtedness through mismanagement of the financial sector, the rapid depletion of Indonesia's natural resources, and a culture of favors and corruption in the business elite.

During those years, some Indonesian academicians raised the issue of a need for competition policy and law in Indonesia to guarantee a fair business environment in Indonesia. Debates were inevitable in drafting the law as many interests interfered. One fundamental debate was the structural issue on market share threshold, as the government, private sectors, and most economists agreed that the law should focus on conduct rather than structure. Limiting market share was deemed to be irrational and could be contra-productive toward national investment.

Despite these debates, in 1995 some academicians, together with parliament members, discussed major points that were expected to lead to a national competition policy and law. However, the draft was not favorably timed due to the political and economic situation during that period. The draft was then canned and no longer discussed.

II. CRISIS HELPS THE ADOPTION OF COMPETITION POLICY

Since 1997, as with many other countries in Southeast Asia, Indonesia has been in the center of a long and exhausting economic problem. The world economic downturn in 1998 severely damaged the Indonesian economy, which was crowded with enormous foreign debt. It was then believed that one of the factors that influenced the level of damages caused by the crisis was high market concentration in Indonesia, which had not been controlled by sufficient and

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clear competition policy. At that point, the International Monetary Fund ("IMF") presented a bail out package to assist many countries in Southeast Asia, including Indonesia, to help them rise from the crisis. However, the financial commitment was not cheap.

Among the fifty points in the January 1998 IMF Letter of Intent for its loan-rescue program, there were at least seven proposals for the need of a national competition law. Their over-all program was extensive and covered reforms in many areas, including reduction of some export taxes; elimination of the clove monopoly; liberalization of imports of many agricultural commodities; reduction of import tariffs; removal of trade monopolies in cement, rattan, and plywood; removal of local content requirements for automobiles; removal of restrictions on Foreign Domestic Investment; and enforcement of extensive macroeconomic targets. Furthermore, the IMF also required Indonesia to pass a law that would ensure fair competition in the market. This led to the initiative by Parliament to issue their long-standing draft law which was promulgated on March 5, 1999 as the Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

In 2000, a competition agency called Komisi Pengawas Persaingan Usaha ("KPPU"), or the Indonesia Competition Commission, was established based on Article 30 of the Law to supervise the new law's implementation. This Commission created an independent agency free from the Government's and other parties' influence and authority, which reports directly to the President and the Parliament. The Commission is led by Commissioners who are appointed by the President with the Parliament's recommendation. They hold office for five years, with an option for a one-time extension.

III. WHAT HAPPENED WITH THE IMPLEMENTATION?

Indonesian competition law (the Law No. 5/1999) is armed with some visionary objectives that many believe will provide for a more conducive business environment in Indonesia. This law is aimed at safeguarding the interests of the public, and at improving national economic efficiency to improve the people's welfare. It is designed to create a conducive business climate by ensuring the certainty of equal business opportunities for large, middle, and small-scale enterprises in Indonesia; to prevent monopolistic practices and or unfair business competition that may be committed by enterprises; and to create effectiveness and efficiency in business activities. *Wow*! They must be worn out, *right*?

Well, it is not necessary like that. The Law was drawn up based on the principles of the State Philosophy and the 1945 Constitution, and it has been based on economic democracy. It provides equal consideration between the interests of enterprises and the public, and also between efficiency and consumers' welfare, with the main goal to improve the welfare and living standards of the people. *So*, those objectives are not conflicting.

Content of the law is similar to a combination of both European and American styles. It contains three major substantial directives: prohibited agreements, prohibited activities, and abuse of dominant position. It applies a market-share threshold for monopoly, oligopoly, and dominant positions. Exemption and exclusion are provided for, especially those related to the application of other laws or activities by small and medium enterprises. Most of the articles in the Law use a "rule of reason" approach. You can easily identify those by just reading at the end of

the article the language"…that may result in monopolistic practices and unfair business competition."

There are, however, unique features in Indonesian competition law. First, due to the absence of a dismissal procedure, they cannot deny any completed complaints. As result, the Commission is obliged to follow up on every submitted complaint, regardless of the gravity and urgency of other complaints. Second, the administrative fine is relatively low (from IDR 1 billion to IDR 25 billion). This makes for a miserable deterrence effect. For example, in certain cases involving foreign companies, the imposed sanction was far smaller than the profits—only around 1.8 percent of the company's profits. Another unique feature is that they have a limited time to handle cases. It mentions in the Law that the Commission must conclude a case within approximately eight months.

IV. WHAT ARE THE RESULTS AND CHALLENGES?

The enforcement of Law No.5/1999 by KPPU for more than 12 years has become one of the spearheads for the efficiency movement in the economic sector. Certain facts indicate the Law has been a highly effective instrument in promoting efficiency in various industrial sectors; price/rate reductions in several industrial sectors are closely related to the presence of competition in those sectors. If such conditions occur in all Indonesia economic sectors, it is not unrealistic to expect that an efficient over-all economic sector can be realized in the near future.

Enforcement has been undergoing rapid development in recent years, as is evident from the high intensity of reports as well as cases handled by the Commission. For example, in the last five years only, the Commission received 1,271 complaints, of which 237 were received in 2011. Decisions were made in 198 decisions, where 160 decisions stipulated that the parties involved were in violation. Of the aforementioned 160 decisions, 78 decisions (48.75 percent) were appealed at the District Court. *So, basically*, enterprises filed objections against almost half of KPPU's decisions. This indicates a low level of compliance by business actors in implementing KPPU decisions (by setting aside the aspect of substantiation in the decisions).

In the payments of penalties, during the last 10 years, penalties and compensation imposed by KPPU reached a total of USD 220 million. Out of this amount, penalties that obtained permanent legal force (affirmed) were USD 21.5 million. Out of this amount, USD 1.24 million was paid by business actors and was deposited at the State Treasury Office. So, only 5.7 percent of penalties that had obtained permanent legal force were actually paid by enterprises. Meanwhile, looking at competition advocacy, the effectiveness rate of policy advice to the government reached 30.7 percent. Such a figure may be relatively low compared to practices in developed countries, but it is positive for a young competition agency.

The Indonesia Competition Commission realizes that competition law is not a stand-alone policy. It requires the role of every element of government for its implementation, both in the executive and judicative levels. To create harmony among these institutions is not an easy task. After 12 years performing its role in law enforcement, and as a supervisory agency for competition law, this institution still faces many challenges.

The main challenge is that there is still low business compliance in Indonesia. In 2009, KPPU conducted a study of business awareness to assess the extent of business actors' knowledge of competition law nationally. Based on the study, 83 percent of enterprises stated that they were

aware of the existence and the substance of competition law. This figure is quite encouraging and can serve as a supporting factor in enhancing compliance with competition law. However, it is contradictive with the facts on enforcement activities. It implicitly said that business knows of the existence of competition law, but not many are complying with the enforcement process.

Compliance can be expected to decrease potential violations that will eventually create a fairer business climate and enhance public welfare. It can be actualized by appropriate sanctions, particularly penalty or confinement. Compliance can also be proven from the number of cases or leniency applications. However, it needs to be admitted that these various efforts may not have been optimum in creating compliance effect among enterprises. There may be several potential factors causing low level of compliance in Indonesia, particularly the low level of imposed sanctions and lack of investigative powers. To date, the sanctions imposed by the commission are limited to administrative measures as provided for in article 47 of the Law, which includes cancellation of agreement, termination of activity, cancellation of M&A, and compensation and penalties ranging between IDR 1 billion to IDR 25 billion.

Realizing the low level of compliance in Indonesia, KPPU has been continuously trying to ensure effectiveness in the enforcement of competition law. The Commission has applied several methods to improve compliance, including advocacy (both with the public as well as with the government), amendments of regulations, and cooperation with other law enforcement apparatuses, including the National Police and Supreme Court.

V. MOVING TOWARD REGIONAL COOPERATION

The Commission is part of international community of competition enforcers. It has been acknowledged as one of the most advanced competition agency in the Southeast Asia, has become a model of how a young competition agency implements competition law and policies, and is also valued as one of the most dynamic competition agencies in the world. At the OECD level, the Commission has been appointed as a regular observer of the OECD Competition Committee from 2005. Now the Commission is thinking of moving toward regional cooperation, especially in ASEAN.

Most international trade from ASEAN member countries goes to non-ASEAN member countries, especially China and the United States. Investment also mostly comes from non-ASEAN member countries. Trade and investment within ASEAN countries are dominated by Indonesia and Singapore. Therefore, by implication, among ASEAN countries only these countries are facing large competition problems, and thus these countries will show the most concern about enforcement cooperation in the region. However, other countries may benefit by certain enforcement cooperation in preventing cross-border cartel infringement.

The problem is; there are only five ASEAN member countries with their own national competition law. Malaysia, the latest, implemented its law in early 2012. Insufficient or imbalanced competition statutory provisions in ASEAN member countries may affect the likelihood of cooperation for competition law enforcement, even against international cartels. Therefore, it is important that each ASEAN member country swiftly establish their competition policy and or national competition law before 2015 to create precaution or enforcement mechanisms for all businesses across ASEAN.

Cooperation in competition among ASEAN member countries is still possible, if each country has a common understanding on how to deal with certain issues. Even cooperation in enforcement is still possible, if member countries have similar needs. Currently, cooperation among ASEAN member countries is conducted through the existence of ASEAN Experts Group on Competition ("AEGC"), a sectoral body within ASEAN structure. However, the objective is still limited to the promotion of competition policy in 2015, a reasonable target that can be achieved. Cooperation in enforcement among ASEAN countries is hard to achieve without proper harmonization on competition policy and laws among member countries, and without the proper establishment of a regional body to deal with cross-border competition issues.

Then, is there any room to cooperate on cartel enforcement in ASEAN? The answer is *yes*, for certain countries with certain conditions. Considering the trade and investment relations between ASEAN member countries, and the existence of effective competition enforcement regimes, most likely Indonesia and Singapore will start to consider cooperating in enforcement activities. This cooperation can be limited to certain behaviors (such as cartels, mergers, and abuse of dominants) or certain foreign industries that can be jointly supervised by both agencies. The scope also can be limited, due to different legal systems in each country. It might be limited to notification, endorsement, and exchange of information in competition enforcement. To begin, each country should take prudent consideration on many issues, including the authority of each agency, exemptions and exclusions given by each law, and also their legal systems and procedures.

VI. CONCLUSION

Competition law and policy are two evolving issues in Indonesia. It well managed and designed to secure business certainty and equal treatment in front of the law. It has recorded a good improvement in terms of quality enforcement and increased state income, as well as public welfare. Problems, challenges, and obstacles are faced by the Commission in carrying out its duties. These challenges have motivated and triggered the Commission to give the best of their performance, which can be acknowledged from important decisions that are beneficial to the community. To continuously achieve those results is certainly not easy. It will demand hard work, passion, responsibilities, and support from various parties, especially the business community.