

The Concept of Partnership Supervision by the Indonesia Competition Commission and Legal Effort

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ABSTRACT

A partnership is a form of cooperation between micro, small and medium enterprises with large businesses which can be misused. For this reason, it is necessary to supervise the partnership agreement. The institution appointed to carry out supervision is the Indonesia Competition Commission (KPPU). This study was made with the aim of examining the concept of partnership supervision by the Indonesia Competition Commission (KPPU) and the legal remedies that can be taken in relation to the supervision carried out by KPPU. This research is normative legal research, which uses secondary data. The secondary data used is based on primary legal sources consisting of a series of applicable laws and regulations. The analysis was conducted qualitatively in order to examine the existing legal norms more deeply and comprehensively.

ABSTRAK

Kemitraan adalah bentuk kerjasama usaha mikro, kecil dan menengah dengan usaha besar yang dapat saja disalahgunakan. Untuk itu diperlukanlah pengawasan terhadap perjanjian kemitraan tersebut. Lembaga yang ditunjuk untuk melakukan pengawasan adalah Komisi Pengawas Persaingan Usaha (KPPU). Penelitian ini dibuat dengan tujuan untuk mengkaji konsep pengawasan kemitraan oleh Komisi Pengawas Persaingan Usaha (KPPU) dan upaya hukum yang dapat diambil sehubungan dengan pengawasan yang dilakukan oleh KPPU. Penelitian ini adalah penelitian hukum normatif, yang menggunakan data sekunder. Data sekunder yang dipergunakan bertumpu pada sumber hukum primer yang terdiri dari serangkaian peraturan perundang-undangan yang berlaku. Analisis dilakukan secara kualitatif guna menguji norma hukum yang ada secara lebih dalam dan komprehensif.

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I. INTRODUCTION

On August 16, 2022, an objection was filed against the decision of the Indonesia Competition Commission (KPPU) to the Commercial Court located at the Central Jakarta District Court. The decision is recorded with case number no.1/Pdt.Sus-KPPU/2022/PN Jkt.Pst. What is interesting here is that the KPPU's decision that is objected to is not the KPPU's decision on the violation of monopolistic practices or unfair business competition, but the KPPU's decision within the framework of KPPU's authority to supervise the Partnership (agreement). The submission of the objection has been decided. Currently, according to the Case Investigation Information System

(SIPP) of the Central Jakarta District Court dated November 2, 2022, it is already in the status of "Acceptance of Counter-Memory of Cassation."

If you look at SIPP at the Central Jakarta District Court, the "Special Cases" section only mentions KPPU without mentioning what type of case. This differs from the mention of Intellectual Property Rights (HKI), Bankruptcy and PKPU, and Industrial Relations Court (PHI) written above KPPU. The emergence of an objection to the decision of the partnership supervision case by KPPU at the Commercial Court at the Central Jakarta District Court and the submission of Cassation to the verdict handed down by the Commercial Court at the Central Jakarta District Court raises many puzzles for the world of advocate practice and business practices of the business world, including KPPU itself. . By not intending to interfere with the process of submitting a Cassation and the decision of the Cassation by the Panel of Judges at the Supreme Court, this study aims to explain the meaning and concept of supervision by KPPU in partnership agreements and of course related to legal remedies available for the process of supervision of partnership agreements by KPPU.

II. RESEARCH METHOD

This research is normative legal research. As legal research, this research focuses on legal norms that apply or have been in force at a particular time, which in this study are norms related to partnership supervision and the concept of legal remedies in partnership supervision. This study uses secondary data, namely data available to the public. The secondary data used in this study focused on primary legal materials. The primary legal material used in this research is the laws and regulations governing the KPPU with its authorities, including the authority to supervise partnerships and legal remedies against the KPPU's decision products

The analysis was conducted qualitatively to understand better the norms discussed. The results of the analysis will be described descriptively to explain the results of the analysis of the problems discussed in this study.

III. RESULT AND DISCUSSION

Regulation of the existence and authority of KPPU

The existence of the KPPU is based on Presidential Decree No.75 of 1999 concerning the Indonesia Competition Commission (KepPres 75.1999), which is an order from Article 34 paragraph (1) of Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law5/1999). The need for KPPU itself is clearly stated in the provisions of Article 30 paragraph (1) of Law5/1999. KPPU's authority in supervising violations of monopolistic practices and unfair business competition is regulated in Article 36 of Law5/1999, which states that KPPU has the following powers:

- a. "Receiving reports from the public and business actors regarding the alleged occurrence of monopolistic practices and 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. Conclude 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 the violation of the provisions of this law;

- g. Request the help of investigators to present business actors, witnesses, expert witnesses, or any person, as referred to in letters c and f, who are not willing to comply with the Commission's summons;
- h. Request information from Government agencies about 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 public;
- k. Notify the Commission's decision to business actors suspected of conducting monopolistic practices and or unfair business competition;
- l. Impose sanctions in the form of administrative actions to business actors who violate the provisions of this law."

From the formulation of Article 36 of Law5/1999, it is clear that the authority possessed by KPPU in supervising the activities of monopolistic practices and unfair business competition according to Law5/1999. Additionally, Law5/1999 has been amended by Law No. 11 of 2020 concerning Job Creation (Law11/2020). This Law 11/2020 was then followed by the issuance of Government Regulation No. 44 of 2021 concerning the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition (PP44/2021). There are a few significant changes related to KPPU's authority in supervising monopolistic practices and unfair business competition, except that the submission of objections is no longer addressed to the District Court but to the Commercial Court at the District Court.

Furthermore, in Law No.20 of 2008 concerning Micro, Small, and Medium Enterprises (Law20/2008), precisely in the provisions of Article 36 paragraph (2), it is stated, "The implementation of partnerships is supervised in an orderly and regular manner by an institution established and tasked with supervising business competition as regulated in the laws and regulations." With this provision, KPPU, which initially only handled supervision in monopolistic practices and unfair business competition, became involved in supervising the implementation of partnerships. There is no further explanation regarding the form of KPPU's authority in carrying out this supervisory task.

If we look at the formulation of Article 36 paragraph (1) of Law20/2008, which states, "In implementing the partnership as referred to in Article 26, the parties have an equal legal standing and Indonesian law applies to them." it can be interpreted that the supervision mentioned in Article 36 paragraph (2) of Law20/2008 is supervision related to partnership patterns mentioned in Article 26 of Law20/2008. Furthermore, suppose the implementation of the partnership pattern is related to the prohibition regulated in Article 35 of Law20/2008. In that case, the supervision of the Partnership by KPPU is against the partnership agreement in any partnership pattern whose implementation may not be contrary to the provisions of Article 35 of Law20/2008. The formulation of Article 35 of Law20/2008 is as follows:

"Article 35

- (1) Large Enterprises are prohibited from owning and controlling Micro, Small, and Medium Enterprises as business partners in implementing the partnership relationship as referred to in Article 26.
- (2) Medium Enterprises are prohibited from owning and/or controlling Micro Enterprises and/or Small Businesses of their business partners."

As Law5/1999 was amended by Law11/2020, Law20/2008 was also amended by Law11/2020. The changes that are quite significant are changes that include or add explanations to the provisions of Article 35 of Law20/2008 in such a way that it reads as follows:

"Explanation of Article 35

a. Paragraph (1)

What is meant by "owning" is a legal transfer of ownership of a business entity/company and assets or assets owned by a Micro, Small, and Medium Enterprise by a Large Business as its business partner in the implementation of a partnership relationship.

b. Paragraph (2)

What is meant by "control" is the transfer of juridical control over the business activities carried out and assets or assets owned by Micro, Small, and Medium Enterprises by Large Enterprises as business partners in the implementation of partnership relations."

The issuance of Law 20/2008 was followed by the issuance of Government Regulation No.17 of 2013 concerning the Implementation of Law No. 20 of 2008 concerning Micro, Small, and Medium Enterprises (PP17/2013). The PP17/2013 revokes the enactment of Government Regulation No.32/1998 concerning Small Business Guidance and Development (PP32/1998) and b. Government Regulation No.44 of 1997 concerning Partnerships (PP44/1997). In PP32/1998, there are provisions governing the development and supervision of micro, small and medium enterprises by the technical Minister. Meanwhile, PP44/1997 does not regulate anything related to partnership supervision.

The provisions for supervision by the KPPU have only been regulated in PP17/2013. In the provisions of Article 31 PP17/2013, it is stated that:

"Article 31

- (1) KPPU shall supervise the implementation of the Partnership as referred to in Article 10, paragraph (1) and paragraph (2) by the provisions of laws and regulations.
- (2) In carrying out the supervision, as referred to in paragraph (1), KPPU coordinates with the relevant agencies.
- (3) Provisions regarding the procedures for supervision as referred to in paragraph (1) shall be regulated by KPPU Regulations."

The provisions of Article 10 paragraph (1) PP17/2013 reads, "Partnerships between Micro, Small and Medium Enterprises and Large Enterprises are carried out by taking into account the principles of Partnership and upholding sound business ethics." Meanwhile, Article 10, paragraph (2) of PP17/2013 states, "The Partnership Principles as referred to in paragraph (1) include the following principles: a. need each other; b. mutual trust; c. mutually reinforcing; and D. win-win solution." From these provisions, it can be seen that KPPU's supervision is carried out on the implementation of partnerships about the implementation of four principles of Partnership, namely mutual need, mutual trust, mutual strengthening, and mutual benefit. These provisions indirectly refer to the supervision of partnership agreements on partnership patterns so that they always pay attention to the four principles of Partnership so as not to violate the provisions of Article 12 PP17/2013, which is identical to the provisions of Article 35 LAW 20/2008.

As an implementation of the provisions of Article 31 paragraph (3) PP17/2013, KPPU subsequently issued KPPU Regulation No.1 of 2015 concerning Procedures for Supervision of Partnership Implementation (PerKPPU1/2015). If you read PerKPPU1/2015, most of the PerKPPU regulates the supervision of partnership patterns with guidelines not to violate the provisions of Article 12 PP17/203 (Article 35 Law20/2008).

Imposition of Partnership Violation Sanctions

The imposition of sanctions on violations of business actors based on Law5/1999 is purely the authority of the KPPU as regulated in Article 36 of Law5/1999. However, this is different in Law 20/2008. Indeed, in the provisions of Article 39 of Law20/2008 it says:

"Article 39"

- (1) Large Businesses violating the provisions of Article 35 paragraph (1) shall be subject to administrative sanctions in the form of revocation of business licenses and a fine of not more than IDR. 10,000,000,000.00 (ten billion rupiahs) by the competent authority.
- (2) Medium Enterprises violating the provisions of Article 35 paragraph (2) shall be subject to administrative sanctions in the form of revocation of business licenses and a fine of not more than IDR. 5,000,000,000.00 (five billion rupiahs) by the competent authority.
- (3) Further provisions regarding the procedure for imposing administrative sanctions as referred to in paragraph (1) and paragraph (2) shall be regulated by a Government Regulation."

However, it needs to be stated which party can impose such administrative sanctions. Only later in PP17/2013 it says:

"Article 32

- (1) The imposition of administrative sanctions is carried out on Large Enterprises or Medium Enterprises committing violations as referred to in Article 12 based on the initiative of KPPU and reports submitted to KPPU by:
 - a) Micro, Small, or Medium Enterprises that are harmed by their ownership and control of their business in a Partnership relationship with Large Businesses;
 - b) Micro Enterprises or Small Businesses that are harmed by their ownership and control of their business in a Partnership relationship with Medium Enterprises; or
 - c) People who know about the alleged violation of the implementation of the Partnership."

As a follow-up to the report, the following provisions in Article 33 to Article 34 of PP17/2013 stipulate the need for a preliminary examination, further examination to a decision on the imposition of sanctions, as well as provisions governing decisions that have definite legal force, without providing an opportunity to carry out the legal effort.

PP17/2013, with the amendments to Law20/2008 with Law11/2020, was also revoked and replaced with Government Regulation No.7/2021 concerning the Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises (PP7/2021). The authority to supervise partnerships is regulated in Article 119 paragraph (1) PP7/2021 concerning the provisions of Article 104 paragraph (1) and paragraph (2) PP7/2021, which are similar to the provisions of Article 10 paragraph (1) and paragraph (2) PP17/2013.

"Article 104

- (1) Partnerships between Micro Enterprises, Small Businesses, and Cooperatives with Medium Enterprises and large businesses are carried out by taking into account the principles of Partnership and upholding sound business ethics.
- (2) The principle of Partnership, as referred to in paragraph (1), includes the principle of mutual: a. need; b. trust; c. strengthen, and D. profitable."

In addition, it can be stated that the provisions of Article 119 paragraph (2) PP7/2021 state that "In carrying out the supervision as referred to in paragraph (1), the Indonesia Competition Commission coordinates with the relevant agencies." Furthermore, Article 119 paragraph (4) PP7/2021 states that "The implementation of supervision and evaluation of partnerships can be carried out jointly between ministries/non-ministerial government institutions related to the Indonesia Competition Commission."

Further arrangements in Article 120 PP7/2021 are similar to those in Article 32 PP17/2013 regarding the imposition of administrative sanctions by KPPU.

"Article 120

- a. The imposition of administrative sanctions is carried out on large businesses or Medium Enterprises that commit violations as referred to in the Partnership, based on the initiative of the Indonesia Competition Commission and reports submitted to the Indonesia Competition Commission by:
 - a) Micro, Small, or Medium Enterprises that are harmed by their ownership and control of their business in Partnership with large businesses;
 - b) Micro Enterprises or Small Businesses that are disadvantaged over their ownership and control of their business in a partnership relationship with Medium Enterprises; or
 - c) People who know about the alleged violation of the implementation of the Partnership."

The provisions of Articles 121 to 123 of PP7/2021 are, in principle, identical to the provisions of Articles 33 to 35 of PP17/2013. It should be noted that PerKPPU1/2015 has also been replaced with KPPU Regulation No.4 of 2019 concerning Procedures for Supervision and Handling of Partnership Cases (PerKPPU4/2019) prior to the amendment of Law 11/2020. So the title given to PerKPPU4/2019 has clearly added the meaning of handling partnership cases in addition to supervision. PerKPPU4/2019 is issued as an implementation of PP17/2013.

KPPU's authority to handle cases and legal remedies

If you look at the description of the findings and analysis above, the questions that arise become a matter of legislation. It is something that, at the legal level only limited as a form of supervision, "without" the authority to impose sanctions, which can be expanded in government regulation in such a way as to give the meaning of having the authority to handle cases and make decisions. Moreover, the decision relates to the revocation of permits when the supervision ordered by law is only limited to the supervision of civil agreements so as not to violate an unlawful cause, which is regulated in the law. In this case, a judicial review needs to be submitted to the Supreme Court to assess the extent of the authority granted in a government regulation whose content is not regulated in the law used as the basis for making the government regulation.

The next thing about the legal remedies that have occurred can be understood as the inability of the Commercial Court at the District Court to distinguish between cases of monopolistic practice and unfair business competition and problems of partnership supervision. In such cases, it is necessary to issue a Supreme Court Circular Letter (SEMA) to provide firmness and confirmation to the Commercial Court at the District Court to examine the types of cases decided by KPPU before being formally accepted. If this is a case related to partnership supervision, then the object file must be rejected.

IV. CONCLUSION

The facts and analysis above show that there are still many disharmony concepts in various regulations that raise many questions in the future. Dis-harmonization occurs not only at the horizontal level but also at the vertical level. In addition, the rules at the statutory level can also lead to clarity in forming and implementing regulations. Likewise, an implementation that needs to be fully understood at the level of substance can lead to chaos.

As stated above, the role of the Supreme Court is essential to synchronize the rules through the level of judicial review without having to question whether the party conducting the judicial review is harmed. Judicial review is not a matter of whether there is an injured party. However, it is a form of concern to harmonize the laws of all regulations under the law, both horizontally, vertically, and in their implementation.

Referensi

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