

# **COMPETITION LAW IN INDONESIA: EXPERIENCE TO BE TAKEN FOR THE DEVELOPMENT OF COMPETITION LAW IN CHINA\***

**DR. SYAMSUL MAARIF\*\***

The purpose of this piece is to articulate lessons that can be taken from the adoption and implementation of competition law in Indonesia. The Law, known as Law No. 5 of 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, (“Law No. 5 of 1999”) was adopted in 1999. Many Indonesian lawyers agree that the Law is a revolutionary business legal reform, as it prohibits almost all business actors, including state-owned enterprises, from employing unfair business practices. Many of these practices were adopted by many business actors for tens of years. When the economic crisis hit Indonesia in 1998, people suddenly realized that something was fundamentally wrong with the way Indonesian business actors conducted business and with the way the government developed its industrial and economic development policies. In addition, after years of economic calamity, signs of recovery are not yet on the horizon. Many big business players were supported by the government, which created barriers to fair trade. As a result, business opportunities were rare, unless a business player collaborated with another more established business in the market. This discussion will begin with lessons from the adoption of the law, its development, and the challenges ahead.

---

\* All Indonesian language sources were verified by Eric Buntoro. Due to circumstances beyond this Law Review’s control, we have relied on the integrity of this Author for facts asserted herein that are not supported by a citation.

\*\* Dr. Maarif is a lecturer of competition law at several universities in Indonesia and is the Chairman of Indonesian Anti-Monopoly Authority. This paper was presented at the Conference on Competition Policy and Economic Development conducted by The Institute of Law of Chinese Academy of Social Science at the Jianguo Hotel, Beijing, China, on Sept. 18, 2002. The opinions expressed in this paper are the writer’s own personal views and do not represent the view of the KPPU or its members.

## I. BACKGROUND OF INDONESIA'S COMPETITION LAW

### A. *A Glimpse Into the History of Indonesian Competition Law*

Prior to Asia's financial crisis in 1997, Indonesia was considered one of the most promising countries in Southeast Asia, because it experienced phenomenal economic growth in almost all sectors of its economy. Indonesia was generally viewed as possessing a promising economic future as well as an attractive market for other producer countries.<sup>1</sup> This impressive growth and the extraordinary achievements of the Indonesian economy before 1997 are clearly depicted in a report by Hal Hill:

The Indonesia of the mid-1990s is almost unrecognizable in a comparison with that of the mid-1960s. From the despair of the earlier period, the new regime was able to engineer an amazingly rapid recovery, as manifested in sharply declining inflation and rising growth. Indeed, a little more than a decade on, Indonesia was being hailed as one of the Asia's success stories. Economists cite Indonesia from 1966 to 1968 as one of the most swift and effective instances of inflation control in the 20th century. By the late 1980's Indonesia was being classified among the select group of developing countries destined shortly to become newly-industrialized economies following the successful path of Asia's outward-looking industrial economies.<sup>2</sup>

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. These policies were manifested in government-granted import and trading monopolies and

---

1. ADAM SCHWARZ, *A NATION IN WAITING: INDONESIA IN THE 1990S* 57-59 (Westview Press 1995). For more details, see RIZAL RAMLI, *DEREGULATION: A CRITICAL EVALUATION* (Center for Policy and Implementation Studies, Working Paper, Feb. 27, 1999).

2. HAL HILL, *THE INDONESIAN ECONOMY* 3-8 (2000). Hill, however, also warns that:

Viewed from a 1965 perspective Indonesia's performance has been better than most observers would have dared to hope for. But the record provides no grounds for complacency . . . .

Thus, while economic circumstances are no longer as desperate as they were in the 1960s, the challenges to policy-makers in the 1990s are in many respects just as formidable.

Hal Hill, *The Economy*, in *INDONESIA'S NEW ORDER: THE DYNAMICS OF SOCIO-ECONOMIC TRANSFORMATION* 54, 56 (1994), cited in Frances Hanks et al., *A Competition Law For Indonesia: Report of the ELIPS Project for the Coordinating Ministry for Economy, Finance, and Development Supervision of the Republic Indonesia* 6 (1996).

avored access to government contracts and State bank credit.<sup>3</sup> Not surprisingly, economic development during this period was heavily influenced by corruption and rent-seeking behavior.<sup>4</sup> Those who sought passage of an Indonesian competition law capable of taking on these abuses were unsuccessful in their reform efforts.<sup>5</sup>

### *B. The Development of Competition Law in Indonesia*

In the past, several Indonesian laws and regulations have attempted to regulate fair business competition.<sup>6</sup> Provisions appeared in several laws, such as Article 382 bis of the Criminal Code, Article 1365 of the Civil Code, Law Number 5 of 1984 on Industry, and Articles 7 and 104 of Law Number 1 of 1995 on Companies, all of which limit the possibility of monopolistic practices through mergers. The problem is that these provisions are so general and simple that they prove ineffective to restrict business players from practicing unfair trade. Another problem is that Indonesia does not have a strong and effective law enforcement mechanism. This latter problem only worsened over the years prior to the implementation of Law Number 5.<sup>7</sup>

The idea of formulating a comprehensive policy regarding business competition eventually appeared in the mid 1980s,<sup>8</sup> but it was soon abandoned and forgotten. Although a number of modest efforts were partially undertaken by the government<sup>9</sup> for the purpose of drafting the Business Competition Law, little was actually accomplished. In 1992, the Indonesian Democratic Party ("PDI") constructed a draft called the Simulation of Economic Competition Law, but for various reasons the Government did not take the bill into consideration.<sup>10</sup>

---

3. Summary of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Hadiputranto, Hadinoto & partners.

4. KPPU Press Release, *Potret Persaingan Usaha Indonesia 2001, Merajut Benang Kusut Antara Moral, Perilaku dan Carut Marutnya Kebijakan*, Dec. 2001, 2.

5. KWIEK KIAN GIE, SAYA BERMIMPI JADI KONGLOMERAT 243-44 (1993).

6. See Cooperatives Law Number 5 of 1992, Small Medium Businesses Law Number 9 of 1995, and Consumer Protection Law Number 8 of 1999.

7. BINZIAD KADAFI ET AL., ADVOKAT INDONESIA MENCARI LEGITIMASI 2-13 (2001).

8. The idea was presented by Vice Cabinet Secretary Bambang Kesowo, in the *Draft of Anti-Monopoly Law, A New Wind of Change in the Area of Trade*, Gatra, May 25, 1995. Christiano Wibisono also stated the need for an Anti-Monopoly Law since 1975.

9. For example, in 1995, Trade Minister SB Judono states that his ministry (Ministry of Trade, prior to its amalgamation into the Ministry of Industry and Trade) was preparing a bill regarding business competition. *Id.*

10. *Id.*

It was not until 1997, when the financial crisis demonstrated that Indonesia lacked a clean policy for determining what constitutes fair and unfair business competition, that the government realized that Indonesia also lacked any mechanism for systematically dealing with business actors whose practices cut against the principles of free and fair competition.<sup>11</sup>

In an attempt to end the economic crisis, the Government of Indonesia signed a Letter of Intent (“LOI”) as part of an International Monetary Fund (“IMF”) loan-rescue program in January of 1998. Among the fifty points outlined in the accompanying Memorandum of Understanding, the Indonesian government undertook as a high priority the implementation of a program of government deregulation. The government’s plans for deregulation appeared in seven Presidential Decrees, three Government Decrees, and six Presidential Instructions.<sup>12</sup> Part of the IMF-ordered deregulation prohibits the Indonesian Government from protecting the “cronies” that cause market distortions. I

As part of the commitment stated in the LOI, the Government of Indonesia agreed to enact a law to ensure free and fair business competition. This condition was met by Law Number 5 of 1999, which came into effect in March of 2000. The law regulates fair business practices and prohibits monopolistic behavior and unfair competition by defining and circumscribing business conduct that harms competition through prohibited agreements, prohibited conduct, unfair business practices, and abuse of dominant position.

### C. KPPU: Competition Authority

To ensure its implementation, Law Number 5 of 1999 established a Commission known as *Komisi Pengawas Persaingan Usaha* (“KPPU”). KPPU was officially established by the Presidential Decree No. 75 of 1999, dated July 8, 1999,<sup>13</sup> and the commissioners were appointed by the Presidential Decree No. 162/M of 2000, dated June 7, 2000. The

---

11. Achmad Shauki, *Competition Problems in Indonesia*, Paper presented at FEUI Seminar [*Sumbangan Pemikiran FEUI pada Reformasi dan Pemulihan Ekonomi*], Nov. 1998.

12. The Presidential Decrees are Keppres No 20/1998, that revoked the special facilities conferred on the National Car project “Mobnas”; Keppres No 15/1998, that revoked Bulog’s monopoly over agricultural products except for rice; and Keppres No 21/1998, that abandoned *Badan Penyangga Pemasaran Cengkeh (BPPC)*. HARIAN SUARA MERDEKA, REFORMASI EKONOMI DIMULAI (1998).

13. Presidential Decree No. 75/1999.

Commission consists of eleven members from different backgrounds of expertise appointed to serve for a period of five years.<sup>14</sup>

The KPPU is designed to be an independent agency that is free from government control and interference.<sup>15</sup> In order to assure its independent position, commission members are appointed or dismissed by the President upon approval of the House of Representatives and are obliged to make reports to the President and the House of Representatives.<sup>16</sup>

Similar to other competition commissions in various other countries, the KPPU has a wide range of duties and authorities. The main duties of the KPPU are as follows:<sup>17</sup>

1. Conducting evaluations of agreements that could result in the occurrence of monopolistic practices and unfair business competition;
2. Conducting evaluations of business activities and/or business actors that could result in the occurrence of monopolistic practices and unfair business competition;
3. Imposing sanctions in accordance with the authority of the Commissioners;
4. Providing suggestions and consideration on government policies regarding monopolistic practices and/or unfair business competition;
5. Establishing guidelines and/or publications regarding Law No. 5/1999;
6. Providing periodical reports on the activity results of the Commission to the President and the House of Representatives.

In addition to fulfilling the above duties, the KPPU is equipped with a wide range of powers that consists of:<sup>18</sup>

1. Receiving reports from the public and/or business actors concerning allegations of monopolistic practices and/or unfair business competition;

---

14. Presidential Decree No. 162/M 2000.

15. Law No. 5 of 1999, art. 30, ¶ 3.

16. *See id.* art. 31, ¶ 2.

17. *Id.* art. 35.

18. *Id.* art. 36.

2. Conducting investigations of allegations of any business activity and/or actions by business actors that might cause monopolistic practices and/or unfair business competition;
3. Conducting investigations and/or examinations of allegation cases of monopolistic practices and/or unfair business competition reported by the public or by business actors or based on the findings by the Commissioners as a result of its investigation;
4. Concluding the results of the investigation and/or examination whether there is any monopolistic practices and/or unfair business competition or not;
5. Summoning business actors alleged to have violated the provisions of Law No. 5/1999;
6. Summoning and bringing witnesses, expert witnesses and anybody considered knowing of any violation to the provisions of Law No. 5/1999;
7. Requesting assistance from the investigators to bring the business actors, witness, expert witness or anybody as referred to under Paragraph (e) and (f) of this article, who are not willing to fulfill the summons by the Commissioners to appear;
8. Requesting information from the Government agency with regard to the investigation and/or examination of the business actors violating provisions of Law No. 5/1999.
9. Obtaining, investigating and/or evaluating letters, documents, or other evidence for the purpose of investigation and/or examination;
10. deciding and determining if there is any loss or not suffered by other business actors or the public;
11. Deciding and determining if there is any loss or not suffered by other business actors or the public;
12. Notifying the Commissioner's decision to the business actors alleged of conducting monopolistic practices and/or unfair business competition; and
13. Imposing administrative sanction to the business actors violating provisions of Law No. 5/1999.

The KPPU is Indonesia's first independent regulatory commission. It is not a part of the executive, legislative, or judicial branches of government.

The KPPU may investigate alleged violations of the law based on a written complaint or upon its own initiative.<sup>19</sup>

During its first year, the KPPU established important ground rules for its operations. Many similar commissions in other countries may take longer to establish and make progress with their contributions to the enforcement of the Competition Law. However, by the end of 2001 the KPPU had handled forty cases, received thirty-seven complaints from consumers, and initiated three cases of its own initiative.<sup>20</sup>

The first KPPU verdict was upheld on April 20, 2001. The KPPU found that the three bidders were guilty of bid-rigging in a bid conducted by Caltex Pacific Indonesia ("PT. CPI") for supplying pipes to the oil company. The bid-rigging scheme involved exchanging bid prices among bidders at a meeting the night before bidding commenced. PT. CPI was also held guilty of failing to "exercise adequate prudence in ensuring the fair business competition process."

The Commission found that PT. CPI should have expected that collusion would occur in the course of the bidding process. The KPPU ruled that the contract between PT. CPI and PT. Citra,<sup>21</sup> the lowest and winning bidder, be nullified, and that the entire bidding process recommence. PT. CPI accepted the verdict and did not contest the KPPU's decision in court.<sup>22</sup>

The decision attracted a variety of opinions. Some believe that in their first case, the KPPU performed well. The process of investigation and information gathering was thorough and diligent. The KPPU was able to obtain information from the correct sources.<sup>23</sup> Each party was given an opportunity to testify and present their evidence. Another positive remark was that due process was observed and the matter was resolved within the time frame set forth in Law Number 5 of 1999.<sup>24</sup> The KPPU's decision was also transparent, and substantial evidence regarding the violation existed.

---

19. Markus Meier, *Introduction to Competition Law & Policy, and Indonesia's Competition Law & Business Competition Commission*, paper presented to the Supreme Court of the Republic of Indonesia, Jakarta 14, Sept. 6-7, 2001 (text on file with author).

20. KPPU Press Release, at 12.

21. The bidders were PT. Purna Bina Nusa, PT. Patraindo Nusa Pertiwi, and PT. Citra Turbindo Tbk.

22. See *Putusan Komisi Pengawas Persaingan Usaha*, Nomor: 01/KPPU-L-I/2000, Apr. 20, 2001.

23. Articles 36, 39, 40, and 41 of Law Number 5 of 1999 stipulate that during examinations the Commission may summon the business actors or other allegedly potential parties to submit evidence, attend, provide information, but not to evade investigation. Evidence that may be used during examinations are: witness testimony, expert testimony, documents, and correspondence.

24. Law Number 5 of 1999, arts. 39, 43, 44.

## II. CURRENT DEVELOPMENT

### A. *Competition Law and Other Laws*

Law Number 5 of 1999 explicitly states the objectives of Indonesian competition policy. According to Articles 2 and 3, the objective of the Law is to maintain public order, improve efficiency and people's welfare, create an atmosphere of fair competition, inhibit monopolistic practices and unfair business competition, and realize effectiveness and efficiency in all business sectors.<sup>25</sup> Several of the Law's objectives, such as public welfare, consumer welfare,<sup>26</sup> and efficiency<sup>27</sup> can be achieved through the process of fair business competition.

Following the enactment of Law Number 5 of 1999 during the Special General Assembly, the People's Consultative Assembly ("MPR") reaffirmed the goals of economic reform.<sup>28</sup> Decree No. XVI/MPR/1998 on

---

25. *Id.* Ch. 2, arts. 2, 3.

26. Glossary of Industrial Organization Economics and Competition Law, English Version, OECD, Paris, 1993, 15. Consumer Welfare in competition law refers to individual benefits derived from the consumption of goods and services. In theory, individual welfare is defined by an individual's own assessment of his/her satisfaction, given prices and income. Exact measurement of consumer welfare, therefore, requires information about individual preferences. In practice, applied welfare economics uses the notion of consumer surplus to measure consumer welfare. When measured over all consumers, consumer surplus is a measure of aggregate consumer welfare. In anti-trust applications, some argue that the goal is to maximize consumer surplus, while others argue that the producers' benefits should also be counted.

27. *Id.* at 41. Efficiency in the context of industrial organization, economics, and competition law and policy relates to the most effective manner of utilizing scarce resources. Two types of efficiency are generally distinguished: technological (or technical) and economic (or allocative). A firm may be more technologically efficient than another if it produces the same level of output with one or fewer physical number of inputs. Because of different production processes, not all firms may be technologically efficient or comparable. Economic efficiency arises when inputs are utilized in a manner such that a given scale of output is produced at the lowest possible cost. Unlike technological efficiency, economic efficiency enables the comparison of diverse production processes. Efficiency increases the probability of business survival and success and the probability that scarce economic resources are being put to their highest possible uses. At the firm level, efficiency arises primarily through economies of scale and scope and, over a longer period, through technological change and innovation.

28. Decrees Nos. X/MPR/1998, XVI/MPR/1998. MPR Decree RI No. X/MPR/1998 on the Principles of Development Reform in Accordance with the Rescue and Normalization of National Life as the Nation's Philosophy, Chapter II, General Condition, Sub A. (Economy) it reads:

The development achieved during the 32 years of the New Order regime has substantially declined because of the serious economic crisis that started in the middle of 1997 and continues. The earlier economic foundation was presumed strong, but in fact has shown that it was not resistant to external turmoil and this is exacerbated with micro- and macro economic problems. This is due to the inadequate implementation of national economic policy, that is not in accordance with the guidance under Article 33 of the 1945 constitution where it shows clear monopolistic practices. The businesses, that are closed to the elite government officials received substantial special priorities, that has further led to a social gap and other problems.



Political Economy in Accordance with Economic Democratization also provided guidance as to the new Indonesian paradigm for economic development.<sup>29</sup> The decree demonstrates that the Indonesian government has learned from the past and realized that the economic crisis and market distortion existed because of weak economic foundations, serious structural problems, and government policies favoring a few dominant conglomerates. In order to prevent this sequence of events from occurring in the future, the MPR explicitly stated its new terms in MPR Decree No. IV/MPR/1999 on the State Policy Framework and the General Conditions in Chapter III of the Vision and Mission of the State economic policy. Consequently, Indonesia has developed a strong foundation, both legally and judicially, in its efforts to implement new economic reform objectives.

At present, Indonesia faces economic and trade liberalization and must implement its deregulation plan by improving its laws. Indonesia is also in the process of adapting to a new market economy. Competition law is a necessary element in a modern economy, because it provides a code of conduct that steers business actors towards fair competitive behavior. By providing a strong foundation for competition among businesses, the State also commits to preserve the process of competition itself.<sup>30</sup>

The economic goal of such a policy is to promote consumer welfare through the efficient use and allocation of resources, to develop new and improved products, and to introduce new production, distribution, and

---

The fundamental weakness was also due to the exclusion of the people's economy, that in fact relies on the natural resource base and human resources as comparative and competitive advantages. The existence of conglomerates and a few strong business actors, not supported with the true spirit of entrepreneurship, has caused the economic resistance to become tenuous and noncompetitive.

*Id.* See also MPR RI Decree No. X/MPR/1998 on the Principals of Development Reform and Normalization of National Existence as Nation's Policy.

29. See Decree No. XIV/MPR/1998, art. 2. It states that economic policy should be focused on the formation of structuring the national economy in realization of substantial small and medium business entrepreneurship, and also the formation of interdependency and mutual partnership for small, medium, and cooperative businesses entrepreneurship, including private businesses and conglomerates. State national companies (BUMN) should also achieve economic democratization and national efficiency with high competitive ability. Article 5 states that small and medium sized enterprises and cooperatives are a mainframe of the national economy and should receive equal opportunities, support, protection, and thorough development. Benefits would accrue to the private sector without discarding attention to state-owned companies (BUMN). Article 6 states that conglomerates and BUMN shall possess the right to conduct business and manage natural resources with a fair business philosophy and partnership with small/medium sized businesses and cooperatives. Article 7 provides that the management and use of land and other natural resources shall be fairly executed by avoiding all concentrated power and ownership in terms of developing small, medium, and cooperative business and the people.

30. R. Shyam Khemani, *Framework for the Design and Implementation of Competition Law and Policy*, WORLD BANK OECD 1 (1999).

organizational techniques for putting economic resources to beneficial use. Therefore, it is understandable that the primary function of competition law is to protect and promote competitive conduct and not to protect individual competitors.<sup>31</sup>

Having learned the positive impact of business competition, a number of regulations and laws include fair business competition provisions in their articles, such as the Telecommunication Law. Article 10 of the Telecommunication Law explicitly stipulates that monopolistic behavior and unfair business competition conduct are strictly prohibited in the telecommunications sector.<sup>32</sup>

The telecommunications sector is one of the business sectors that the government has strong influence over. This provision has, to some extent, forced the government to reform the telecommunications sector, particularly with regard to long-established fixed-line services that have long been established. Recently, the Indonesian Government announced its decision to change its policy on fixed-line services from monopoly to duopoly, beginning on August 1, 2002. Now, the fixed-line sector is served by two national providers, Telkom and Indosat.<sup>33</sup> The shift to the duopoly model has proven that business competition is recognized as an important part of creating a healthier climate for businesses.

The goal of creating a fair competition regime has also affected other laws, such as the Oil and Gas Law and the Electricity Law. In these laws, the Government of Indonesia acknowledged the importance of competition and its positive impact for all business activities.

### *B. The Impact of Competition Law on Business Sectors*

Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition requires business actors to compete on a relatively level playing field. The goals of the law include safeguarding the public interests, improving the efficiency of the national economy as a means of improving the people's welfare, creating effectiveness and efficiency in business operations, securing equal

---

31. Donald F. Turner, *The Durability, Relevance and Future of American Antitrust Policy*, 75 CAL. L. REV. 797, 798 (1987).

32. See Law No. 36 of 1999, art. 10 (concerning telecommunication).

33. Over the past several years, the fixed line sector was being monopolized by Telkom as the State Enterprise before the government finally announced its policy to open the telecommunication market. Particularly, the fixed line sector was to be opened for participation by other companies. See also Blueprint of Indonesia's Telecommunication Sector (Minister of Telecommunication Decree No. 72/1999 concerning Blueprint).

business opportunities, and preventing monopolistic and unfair business practices.<sup>34</sup>

It has to be recognized that not all business actors are completely aware of the substance of Law Number 5 of 1999. Unfair business practices such as bid rigging, price fixing, and market allocation are considered common business practices, and are frequently practiced by business actors. Bid rigging, for instance, can be easily found in a tender offer situation, particularly in the government procurement area. Currently, seventy percent of the reports received by the KPPU are related to conspiracy in a tender offer, either in the area of government procurement or the private sector. The KPPU's first decision also dealt with bid rigging in a tender offer.<sup>35</sup> Bid rigging, price fixing, and market allocation, in addition to being frequently found in Indonesia, are also practiced through many business associations in Indonesia.<sup>36</sup>

However, recent developments have shown us that gradual changes in the behavior of business actors have occurred. Business actors are now more concerned with agreements or other business behavior that could lead to violations of Law Number 5. These business actors are now more cautious about the decisions they make and policies they adopt.

Airfare competition in the National Airlines industry is one example of how the competition law was effective. Competition law forced these airlines to reduce the cost of their airfare in order to compete with other airlines.<sup>37</sup> Years ago, when the National Airlines industry was heavily regulated and still closed to new entrants, the airfare was set by the Association of Indonesia's National Air Carrier by agreement that fixed prices between competitors. Consumers were forced to pay high airfare costs and waive somewhat unprofessional services provided by the airlines. Now, everything has changed; consumers are now able to select their preferred airline based on a variety of airfares and services.

Having various competitors in the airline industry has made all national airlines fiercely compete in order to survive. As a result of the KPPU's recommendation to the government to revoke the Association's authority to set the airfare scheme, the Association of Indonesia's National Air

---

34. Law No. 5 of 1999, art. 3(a)-(d).

35. See PT Caltex Pacific Indonesia's decision, Putusan Komisi Pengawas Persaingan Usaha, Nomor: 01/KPPU-L/2000 (Apr. 20, 2001).

36. *Id.*

37. See also *Harian Jawa Pos, Perang Tarif Antar Maskapai Makin Seru (1)* (2002).

Carrier policy on airfare is no longer referenced on all Indonesian airline airfare.<sup>38</sup>

Similar circumstances also surround taxi tariffs in the Jakarta region. The Jakarta Land Transportation Association forced its members to comply with its decision to increase taxi tariffs.<sup>39</sup> The Association's authority to set tariffs for taxi fares is based on a Ministry of Transportation decree, which allows the private association of taxi companies to set taxi tariffs. The KPPU, with the authority given by Law Number 5 of 1999, sent a letter to the Ministry of Transportation, explaining that the Ministry's decree would likely result in higher taxi prices for consumers and could harm competition.<sup>40</sup> Now, one finds that taxi companies are no longer implementing the same tariffs for their services.

### III. OBSTACLES AND CHALLENGES IN THE IMPLEMENTATION OF THE ANTI-MONOPOLY LAW

Undeniably, many obstacles arose during the three-year implementation of competition law in Indonesia. Most of these obstacles arose because of unclear provisions or articles in Law Number 5 of 1999 and the lack of publicity of the substantive contents of competition law. In this respect it should be noted that many of the ambiguous provisions in Law Number 5 relate to the enforcement of competition law.

The vagueness of these provisions has triggered various criticisms and comments, particularly from the legal community. For example, the Law Number 5 of 1999 provides for a mechanism by which any objections to the KPPU's decision can be submitted to the district court.<sup>41</sup> This mechanism, however, has never been recognized in the civil or criminal procedural laws in Indonesia. Indonesia's procedural laws only recognize the for appeal, cassation, and contesting of decisions.<sup>42</sup>

The vagueness of the objection mechanism was shown in the recent KPPU decision on the Indomobil tender. In the *Indomobil* case,<sup>43</sup> the

---

38. See *Harian Bisnis Indonesia*, Tarif penerbangan tak lagi mengacu ke INACA, Sept. 20, 2001.

39. *Harian Bisnis Indonesia*, KPPU duga Organda lakukan Kartel tarif, Sept. 18, 2001.

40. Markus Meier, *The Republic Indonesia's Antitrust Law and its Commission for Business Competition*, presented at the seminar on Indonesian Economic Institution Building in a Global Economy: Competition Policy and Institutional Development, Borobudur Hotel, Jakarta, Aug. 13, 2001.

41. Law Number 5 of 1999, art. 44(2).

42. RETNOWULAN SOETANTIO AND ISKANDAR OERIPKARTAWINATA, *HUKUM ACARA PERDATA DALAM TEORI DAN PRAKTEK [CIVIL CODE LEGAL PROCEDURE IN THEORY AND PRACTICE]* (1995).

43. PT Indomobil Sukses International decision, Putusan KPPU Nomor: 03/KPPU-I/2002 (May

KPPU legally and conclusively convicted eight business actors for violating Article 22 of Law Number 5 of 1999. The KPPU imposed various ranges of fines on the eight convicted parties. The convicted parties contested the decision and brought it to the district court. However, due to the unfamiliar and unregulated nature of the process, the court had difficulties determining how to treat the objection process. One of the questions that arose was whether the objection to the decision included the substantive, material, or procedural issues, because the law does not clearly explain whether the judge should examine substantive, material, or procedural issues.

In addition, the concept that the KPPU is unable to become a party during the trial complicated the court's determination of the appropriate objection process.<sup>44</sup> The different perceptions of the KPPU and the court with regard to the procedures under Law Number 5 of 1999 also contributed to the uncertainty of the process.

Another issue that became an obstacle in the implementation of competition law in Indonesia is the concept of an independent commission as the enforcer of competition law. The KPPU has a wide-range of authority, including a role similar to judicial institutions, which has caused controversy among law enforcers. Some people are afraid that the KPPU could abuse its expansive power for the benefit of particular people or political parties. These people believe that the extensive role of the KPPU violates the prevailing procedural laws. They argue that none of the other law enforcement agencies have such extensive powers, including the power to investigate, prosecute, and convict. As a result, they believe that justice will be jeopardized because the mandate appears to include matters that touch upon the competency of the police department, the public prosecutor, and the courts.<sup>45</sup> Therefore, it is very important to publicize Indonesia's competition law, particularly to permit law enforcers to avoid the misperception of the extensive role of the Competition Commission. One method of avoiding this misperception is by conducting comparative studies with the role of similar Competition Commissions in other countries.

The misperception and other weaknesses of the law should be viewed as important lessons in the further study of the implementation of

---

30, 2002).

44. See also *Hukumonline.com*, *Hukum Acara Sidang Keberatan Putusan KPPU Tidak Jelas*, at [http://www.hukumonline.com/artikel\\_detail.asp?id=5924](http://www.hukumonline.com/artikel_detail.asp?id=5924) (last visited Oct. 20, 2003).

45. KPPU's extensive role is the power to investigate, prosecute, and convict business actors. See also Law Number 5 of 1999, arts. 35, 36.

competition law, and should not become barrier to the implementation of the competition law in Indonesia. The solution to all of the problems will not be immediately visible. The KPPU and law enforcement authorities must learn from the process by strengthening the knowledge, which, in the long run, could be reflected in their decisions. This may also lead to the improvement of procedural law. An open alternative to amend the law will certainly appear in the future; however, an amendment is not ultimately the best improvement.

In developing and understanding the concept of competition, economic efficiency and consumer welfare must correlate with the improvement of the procedural law and the ability of law enforcers. In the end, it is not always easy to translate the focus of the law because it could lead to future uncertainty, especially for a law that is considered new and vague. Hence, law enforcement authorities must be able to understand and interpret the purposes of the law and find a common vocabulary in order to align the interest of all those affected.