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The Interaction between Competition and Democracy – Note by Indonesia

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Economic Democracy and Competition in Indonesia: From The 1945 Constitution to Application of Competition Law

1. Economic Democracy and Competition

1. Concentrated power in the hands of the few can lead to inequality. Monopoly of essential resources typically creates artificial scarcity, resulting in imbalances that restrict citizens from access to economic opportunity and diminish consumer purchasing power. Fueled with mis and disinformation, it is not uncommon for business actors to carry out activities that can harm their consumers, to achieve maximum profits in doing business. Because competition is uncomfortable, individual business participants will try to evade it by using strategies that limit competition. Over time, these strategies will eliminate more and more independent market participants and thus eventually cause the economy to dissolve on its own. The following restrictive strategies are used by companies such as cartel, vertical agreement, abuse of market power, and others.

2. The democratization of market power through competition law is manifested in the form of transferring the roles of consumers and other stakeholders so that they are no longer the target of abuse of dominant power by business actors. This is the goal of restoring the role of stakeholders (stakeholder remedies). Consumers are no longer passive recipients of market results, where there is only one choice, that is "not buying products" or "buying other products". Consumers and other stakeholders can be empowered as active participants in democratic market governance. Breaking up the dominant company (trust busting) is not the right solution and is actually excessive effort.

3. Market strength can be improved by providing access to consumers, workers, and other stakeholders into corporate governance so that they can interact collectively and cooperatively in keeping up with dominant business actors. And this is the essence of economic democracy, to open market access to anyone, and to guarantee the freedom of choice to participant in the market. Market economy including competition among suppliers and demanders guarantee the best possible outcome for the economy. Economic democracy can be achieved with competition in the market.

4. As the result of competition, capital and resources are employed in such field where they turn out to be most productive. Competition also urges producer to be more flexible in making use of new technologies and to adapt continuously changing preference of consumers. Under competition and with free choice of consumption, it is not the supplier but the consumer who determines what products shall be produced at what price. Competition pursues important social objectives to decentralized decision process and shift them to several participant in the economy, counteracts excessive economic concentration and safeguards freedom for the citizens by subjecting economic power position to legal provisions.

5. Initially democracy in the economy has been proposed to solve inequalities issues by decentralizing ownership and decision-making power to a larger group of stakeholders, that includes workers, consumers, suppliers, communities and the broader public. This is close to the issue of competition which aims to break the concentration of the market of business actors. Global current landscape of economic democracy also focus on three key spheres: democratic initiatives around public spending, economic democracy in

workplaces, and democratization initiatives in local and municipal public services and urban planning. Democracy in public spending is important for engaging diverse publics, both groups and individuals, in decisions about finance allocation and investment spending. Economic democracy at the workplace remains significant to extending individual economic rights and creating more collective and democratically controlled forms of economy. The local and municipal democratization initiatives are important to organized the basic public needs. The implementation of economic democracy extends not only related to competition, but also enters the realm of corporate and state resource management.

2. Pancasila Economic Democracy and Indonesian Competition Law

6. The national development goals sought to achieve the well-being of the people, were set out in the 1945 Constitution by Indonesia's founders. The economic system used is, of course, an economic system that supports these goals. Furthermore, in the 1945 Constitution, the term Pancasila Democracy was also introduced. The Pancasila's values listed here are people's sovereignty, diversity, tolerance, active community participation, protection of human rights, and national unity. The 1945 Constitution, including the principles contained in it, is the basic value in all regulations made. Indonesia's economic system must be developed in relation to human rights which also include economic rights, as well as with provisions for people's welfare.

7. Economic democracy in Indonesia, namely Pancasila Economic Democracy, is stated in the Indonesian Constitution Article 33 of the 1945 Constitution (The 1945 Constitution) which contains a moral and cultural message for the Indonesian people regarding economic life in Indonesia. The characteristics of Pancasila Economic Democracy as stated in Article 33 of the 1945 Constitution are that the economy is organized based on the principles of togetherness, efficiency, justice, sustainability, environmental insight, and independence. In Pancasila Economic Democracy, the economy is arranged as a joint effort based on the principle of kinship, prioritizing the prosperity of the community over the prosperity of individuals, the government controls important resources for the prosperity of the people, as well as the recognition of individual ownership, the right to work, and the survival of life. The constitutional message that seems clear, towards one goal of a particular economic system, is not a capitalistic economy (based on individualism) and communism economy (based on socialism), but an economic system based on togetherness and the principle of kinship.

8. The 1945 constitution is an economic reference both by the state, civil society, and the market. The national economic system is developed related to human rights which also includes economic rights, and by paying attention to the welfare of the people. In this case, economic law is prepared by showing the nature of being accommodating to the realization prosperous society, proportional justice in society, no discrimination against economic actors, and healthy competition. The government as a regulator mandate to achieve the goal of Pancasila economic Democracy, one of which is through Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Indonesia Competition law) and Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises (SME Law) whose implementation is also supervised by Indonesia Competition Commission (ICC or KPPU). In addition to these two laws, there are other related laws that regulate banking, state-owned enterprises, government procurement policies and others.

9. The government has basically provided equal space or opportunity to all people to carry out business activities with fair competition. However, in practice, many agreements

or business activities are found that do not reflect justice for business actors and society in general. Indonesian Competition Law is regulated in detail and specifically regarding the forms of agreements prohibited in business competition, namely the agreements prohibited by Indonesian Competition Law are oligopoly, price fixing, zoning, boycotts, cartels, trusts, oligopsony, and vertical integration, closed agreements and agreements with foreign parties, including therein are regulated regarding legal sanctions for those who violate, namely administrative sanctions and criminal sanctions.

10. In The Indonesian Competition Law, there is no exception to this implementation for certain sectors. However, there are exceptions for business actors who are classified as small businesses and cooperatives that serve their members. This is done to strengthen the Indonesian economy and to protect vulnerable small business actors that are very unlikely to have market power that can be used to abuse the market. There also no privileges for SOEs in the application of the Indonesia Competition Law. In this case, the concept of competition neutrality is covered in the Indonesian Competition Law, where all companies are provided a level playing field with respect to a state's ownership, regulation or activity in the market.

11. In the management of government resources and public spending, the principle of competition is also included in government procurement policies, where , there is no intervention between providers of goods and services that can interfere with the mechanism in the market. The procurement of goods and services must be open and can be followed by all providers of goods and services with criteria that have been met. The procurement process of goods and services must also be transparent and widely known, including the legal basis, procedures, specifications of goods and services, and everything related to the procurement process itself. In addition to these principles, the principles of procurement of other government goods and services are efficient, effective, fair or non-discriminatory, accountable. Government procurement of goods and services has an important role in the success of national development by improving public services. During the existence of The KPPU, the cartel case in the field of public procurement of goods and services was the most decisive.

3. Cases of Direct Appointment by SOEs (2023)

12. In 2023, The KPPU found a case of one of the SOEs making a direct appointment to its subsidiary. This case involved a banking SOE that prioritized its subsidiaries engaged in the home ownership credit insurance business, where the banking SOE is a creditor. Customers were required to use insurance services from the creditor's subsidiary as a guarantor for the home ownership credit they were proposing.

13. In this case, the the direct appointment has no legal basis. Meanwhile, the financial services authorities regulate that creditors are obliged to provide three insurance service options to home ownership loan customers. What was done by the SOE was clearly in violation of the applicable rules. The KPPU as an independent institution does not look at the status of the business actor as state-owned or not, because it has violated the applicable provisions, the state-owned company was still sentenced, namely by imposing a fine of 25 billion and an order to change behavior so that it no longer prevented other insurance companies from entering the market concerned. Furthermore, The KPPU also asked the financial services authorities to carry out supervision and regulation in every banking transaction to always consider the principle of fair business competition.

4. Partnerships Case (2019-2024)

14. In addition to supervising the implementation of the Anti-Monopoly Law and unfair business competition, SME Law also mandates The KPPU to supervise the implementation of partnerships between business actors, especially between large business actors and micro, small and medium business actors. Based on SME Law, in principle large enterprises may not own or control the micro, small or medium-scale enterprises which become their partners and medium-scale enterprises may not own or control the micro or small-scale enterprises which become their partners. This supervision is carried out as one of the efforts to protect and support small and medium enterprises to have equality in doing business. For approximately 14 years, The KPPU has supervised the implementation of MSME Partnerships, in the last 5 years, from 2019 to 2024, The KPPU has handled at least 39 partnership cases, with the core-plasma pattern being the most litigated pattern, namely 29 cases.

15. Of the many cases, if the verdict on these partnership cases is observed, the most prominent is the core-plasma partnership pattern, where the crucial issue lies in the question of whether the large business actor (as the core) seeks to own and/or control MSME partners (as plasma). As an example of the Palm Oil Partnership case handled by The KPPU in 2023, this case involved two partners, an oil palm plantation company established in 1995 as the core, and the Farmer Cooperative as the plasma. These case began from the absence of transparency in the calculation of the cost of building the plasma plantation and the lack of transparency in the management of Fresh Fruit Bunches (FFB) yields from the plasma plantation and the purchase of FFB which was not in accordance with the price provisions from the government. In addition, the core carried out other forms of control over the plasma by not raising a clause in the cooperation agreement regarding the obligation to provide an accountability report on the management of plasma plantations to the plasma partner during the partnership cooperation period. Based on the facts in the examination process, the core was proven to have committed a partnership violation. Therefore, The KPPU ordered the core to carry out an addendum to the agreement as it should, and imposed a fine of 1 billion.

5. Conclusion:

16. The regulation of the economic system in a country is inseparable from the national resource and asset ownership system, the resource allocation mechanism, and the mechanism for implementing the national production and distribution process. That economic democracy and business competition are two things that run smoothly and cannot be separated in economic life. In Indonesia, the democratic system, namely Pancasila Economic Democracy, carries the togetherness, efficiency, justice, sustainability, environmental insight, and independence. Governments and public authorities should adapt their processes to ensure more democratic oversight and public participation in key socio-economic areas. The government has basically provided equal space or opportunity to all people to carry out business activities with fair competition. It is recommended that government intervention, for example through regulation should not distort competition in markets, i.e. tip the balance in favour of certain market participants.