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National Security Considerations in Competition Enforcement – Note by Indonesia

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The Perspective of Indonesian and ASEAN Competition Law

1. Competition Law and National Security Consideration

1. In recent years, the relationship between competition law and national security has undergone a significant transformation. Whereas national security was once narrowly understood as a matter of defense and military threats, evolving global geopolitics, trade wars, supply chain disruptions, digital transformation, and increasing dependence on strategic technologies have expanded the concept into the economic and industrial domains. The resilience of supply chains for food, energy, semiconductors, data, digital infrastructure, ports, telecommunications, and even artificial intelligence is now regarded as part of a state's strategic interests. This paradigm shift has had a direct impact on the formulation and enforcement of competition policy across jurisdictions, including Indonesia and ASEAN member states.

2. At the global level, the United States and the European Union have begun incorporating considerations of strategic autonomy, economic security, and supply chain resilience into economic policymaking. Foreign direct investment screening mechanisms have been expanded. Mergers in the technology and critical infrastructure sectors are no longer assessed solely on their effects on prices or market concentration, but also on their implications for technological control, data security, and national industrial resilience. In this context, competition law faces a conceptual challenge: how to maintain competitive markets without disregarding the state's interest in preserving national strategic capacity.

2. The Indonesian Practice

3. Indonesia faces similar dynamics. As a developing country whose economy still relies on natural resources and strategic infrastructure, and which is undergoing rapid digitalization, Indonesia is increasingly confronted with the need to balance market efficiency with the imperatives of national resilience. However, unlike several advanced jurisdictions that have an explicit "national security exception" within merger control or investment review regimes, Indonesian competition law does not yet recognize an independent and comprehensive national security exception under Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

4. Indonesia's competition law framework remains grounded in the paradigm that healthy competition serves as an instrument to achieve economic efficiency, consumer welfare, and economic democracy. This principle is rooted in Article 33 of the 1945 Constitution, which mandates a balance between market mechanisms and state control over sectors that are vital to the state and that affect the livelihoods of the people. Thus, from the outset, Indonesia's economic system has never embraced absolute laissez-faire. The state retains room to intervene in strategic sectors. Such intervention, however, does not imply disregard for the principles of healthy competition.

5. In practice, national security considerations in Indonesia are more often addressed through sectoral regulations rather than directly through competition law instruments. In sectors such as energy, telecommunications, food, logistics, transportation, and defense,

the government has broad authority to regulate industry structure to ensure the continuity of public services and national resilience. Nevertheless, when such actions risk creating monopolies, entry barriers, discrimination, or excessive market concentration, the Indonesia Competition Commission (KPPU) retains the authority to exercise oversight under Law No. 5 of 1999.

3. The Position of KPPU

6. The Position of KPPU in this context is unique. On the one hand, the KPPU is not a national security agency and has no mandate to determine whether a transaction or business conduct poses a threat to national defense. On the other hand, the KPPU performs policy advocacy and competition oversight functions in strategic sectors that often directly intersect with national interests. Therefore, the KPPU occupies a critical position as a guardian to ensure that the national security narrative is not used excessively to justify competition restrictions that are, in fact, disproportionate.

7. Normatively, Law No. 5 of 1999 does recognize several exemptions through Articles 50 and 51. Article 50 exempts certain actions such as the implementation of laws and regulations, intellectual property rights, and specific forms of cooperation. Meanwhile, Article 51 provides scope for monopolies or the concentration of activities related to branches of production that are vital to the state and affect the livelihoods of the people, provided that such activities are regulated by law and carried out by State-Owned Enterprises (SOEs) or bodies appointed by the government. This provision is often regarded as a "constitutional gateway" for state intervention in strategic sectors.

8. However, it is important to understand that Article 51 does not constitute a blanket exemption. Both the Constitutional Court and KPPU's practice indicate that the existence of a state-owned enterprise or a government policy does not automatically negate the principle of competition. In various cases, the KPPU has continued to examine the conduct of business actors that receive state-granted privileges where such conduct exceeds the regulatory mandate or is used to unduly restrain competition.

9. In the energy sector, electricity is a cornerstone of modern statecraft. In policy terms, the power grid is classified as Critical National Infrastructure (CNI) because its failure triggers a domino effect across all other sectors of a nation. In Indonesia, the State-Owned Enterprise (BUMN), PT PLN (Persero), plays a central role as the state's instrument for managing the electricity sector. PT PLN (Persero) ensures the stable and sustainable supply of electricity across Indonesia through the management of generation, transmission, and distribution. The KPPU's involvement in this sector is generally divided into three main areas: bid rigging, sectoral oversight, and policy advocacy. Under the current leadership, the KPPU has designated the energy sector, including electricity, as a priority target in its 100-day program and five-year strategic plan. Although PLN holds a constitutional mandate to control branches of production that are vital to the livelihoods of the people, the KPPU remains responsible for ensuring that procurement processes and cooperation with private parties, such as Independent Power Producers (IPPs), are conducted transparently and competitively. For example, in 2016, the KPPU conducted an investigation into Case Number 07/KPPU-L/2015 Alleged Violations of Article 22 of Law Number 5 of 1999 Regarding the Auction of Forestry, Housing, and Distribution Transformer Work Packages at PT PLN (Persero)'s Electricity Construction Implementation Unit, North Sumatra Rural Electricity Work Unit, in the 2013 State Budget. The focus was on the transparency of the winner selection process.

10. A key example also can be seen in the oversight of the telecommunications and digital sectors. In case No. 08/KPPU-I/2020 concerning Alleged Discriminatory Practices by PT Telekomunikasi Indonesia (Persero) Tbk and PT Telekomunikasi Seluler against Netflix Regarding the Provision of Internet Access Provider Services, the Reported Group was initially accused of discriminatory behavior by blocking its customers' access to a content provide by Netflix, while other similar content services remained accessible. The main issues were analyzed within the framework of competition law and market access discrimination. This blocking behavior was allegedly carried out to benefit content services owned by the Reported Group of companies or its strategic partners, thereby hindering fair competition in the Over-the-Top (OTT) content service market. This was not proven in court, as the Reported Group was proven to have provided equal treatment and taken actions to comply with applicable laws to protect customers from negative Netflix content that violates prevailing social norms. Substantively, these cases demonstrate how digital infrastructure and content distribution have become part of Indonesia's strategic national ecosystem. Issues of access control, interoperability, and market power in the digital sector ultimately affect not only prices or consumers, but also data sovereignty, the structure of the national digital economy, and broader national interests in safeguarding society within the digital ecosystem

11. A similar pattern is evident in the case No. 13/KPPU-I/2019 concerning Alleged Violations of Article 14, Article 15 Paragraph (2), and Article 19 Letter D of Law Number 5 of 1999 by PT Solusi Transportasi Indonesia (TPI) and PT Teknologi Pengangkut Indonesia (Grab) in Relation to Special Chartered Transportation Services. The Reported Parties, TPI and Grab are examined by the KPPU of engaging in vertical integration, closed-door agreements, and discrimination. The KPPU assesses that these vertical integration practices aim to unfairly control the market from upstream to downstream. This discriminatory behavior is considered to hinder micro, small, and medium enterprises (MSMEs) in the online transportation sector. For these violations, the KPPU imposed significant administrative fines on Grab and TPI. This ruling underscores the importance of maintaining equal access for all business actors in the digital economy. Although the case was framed as an alleged act of discrimination and market control within the digital ride-hailing ecosystem, its economic substance touched on broader issues: digital economic dependence on specific platforms, data concentration, and the dominance of technology-based distribution networks. From the perspective of modern competition policy, such issues are increasingly regarded as part of economic resilience.

12. The COVID-19 pandemic also demonstrated the close relationship between competition and national economic security. When supply chains were disrupted, governments in various countries permitted certain forms of cooperation among businesses to maintain the distribution of essential goods. Some jurisdictions granted temporary exemptions for coordination in logistics, pharmaceutical distribution, and food supply. In Indonesia, the approach to managing competition policy mirrored global trends but was structured through specific regulatory mechanisms issued by KPPU. Rather than granting blanket statutory exemptions or formal antitrust immunity like some jurisdictions did via specific legislative acts, Indonesia utilized a system of enforcement relaxation heavily tied to public procurement, national economic recovery programs, and strategic coordination. Specific coordinates and agreements that would normally trigger strict scrutiny under Law No. 5 of 1999 were given flexibility, provided they met rigid public-interest criteria, particularly for procurement of medicines and vaccines, construction of emergency pandemic hospitals, and the procurement of medical equipment and supporting facilities. The KPPU demonstrated a flexible approach through market monitoring and policy advocacy during the pandemic. This approach reflects the view that competition law cannot be separated from the need to maintain national economic stability in times of crisis.

13. In the pandemic, KPPU also intensified monitoring of essential goods like masks, hand sanitizer, and food staples. The goal was to detect hoarding, price gouging, and supply bottlenecks without immediately launching cartel cases. During the mask shortage, KPPU warned against policies that would lock in exclusive distribution rights or create artificial entry barriers. The aim was to keep markets contestable once the emergency passed. This signaled to firms that KPPU was watching, but would differentiate between legitimate supply coordination and opportunistic collusion.

14. In the context of merger control, national security considerations in Indonesia are also beginning to emerge implicitly, even though they are not yet a formal test. In practice, mergers in the telecommunications, energy, infrastructure, and digital sectors almost always involve coordination with technical ministries. The KPPU continues to conduct assessments based on competition parameters, such as market concentration, barriers to entry, unilateral effects, and coordinated effects. However, sectoral regulators often also consider aspects of national industrial resilience, continuity of public services, or other strategic interests.

15. Unlike the United States, which has the Committee on Foreign Investment in the United States (CFIUS), or the European Union, which is strengthening its strategic autonomy review, Indonesia does not yet have a formal mechanism that integrates merger review with national security screening. As a result, Indonesia's approach remains fragmented and dispersed across various sectoral regulations. In the long term, this situation may create legal uncertainty, as businesses lack clear parameters on when national security interests may override competition principles.

4. Institutional Perspective and ASEAN

16. From an institutional perspective, strengthening coordination among authorities is a critical need. The KPPU should establish a more systematic working mechanism with strategic sector ministries, the Investment Coordinating Board (BKPM), digital regulators, telecommunications authorities, the Ministry of Defense, and cybersecurity agencies. Such coordination, however, must preserve the KPPU's independence as the competition law enforcer. In international practice, the best model is not the subordination of the competition authority to the government's security apparatus, but rather structured coordination governed by clear and transparent legal parameters.

17. ASEAN itself has begun moving in this direction. The ASEAN Regional Guidelines on Competition Policy emphasize the importance of cross-regulator coordination, transparency of exemptions, and a proportionality test for any government-imposed restrictions on competition. ASEAN member states also face similar challenges: maintaining market openness while protecting strategic sectors from excessive dependence on foreign actors or from market concentration that could undermine national economic resilience.

18. Singapore, for example, has adopted a relatively mature approach through coordination between the Competition and Consumer Commission of Singapore (CCCS) and sectoral regulators. Although Singapore remains highly pro-market, certain sectors such as telecommunications, media, and infrastructure remain subject to strategic state oversight. Malaysia, through the Malaysia Competition Commission (MyCC), has also begun to emphasize the importance of balancing industrial policy with competition policy in strategic sectors. Vietnam, meanwhile, tends to allow greater scope for state intervention in industries deemed essential to national development.

19. For Indonesia, the main challenge is to ensure that the national security narrative is not used to legitimize anti-competitive protectionism. In many developing countries, the term "national interest" is often invoked to justify exclusive privileges, investment restrictions, or market consolidations that primarily benefit certain incumbents rather than the public interest. Therefore, the appropriate approach is not to broaden exemptions indiscriminately, but to strengthen the mechanism for proportionality testing.

20. In this context, several principles should guide Indonesia's policy direction going forward:

- First, any restriction on competition on grounds of national security must have a clear legal basis and be subject to review. Claims of national security should not serve as an abstract justification that is immune from legal scrutiny.
- Second, such restrictions must satisfy the principles of necessity and proportionality. The state must demonstrate that the anti-competitive measure is necessary and that no less restrictive alternative exists to achieve the same objective.
- Third, an institutional coordination framework should be established between the KPPU and strategic sector regulators to provide procedural clarity in cases that touch upon aspects of national economic security.
- Fourth, Indonesia should begin developing policy guidance on how the KPPU will approach efficiency defenses, state intervention, and cooperation agreements in strategic sectors during crises or supply chain disruptions.
- Fifth, transparency must be a core principle. Without transparency, the concept of national security risks becoming a tool to protect specific economic interests and could ultimately undermine the investment climate and legal certainty.

5. Conclusion

21. Ultimately, the relationship between competition and national security is not one of mutual exclusion. Healthy competition is in fact an integral component of national resilience, as it fosters innovation, supply diversification, efficiency, and the economy's capacity to withstand crises. Conversely, an overly concentrated market structure can create systemic vulnerabilities and excessive dependence on a handful of economic actors.Therefore, Indonesia's policy challenge is not to choose between competition and national security, but to build governance that can uphold both in a balanced manner. In this context, the KPPU holds a strategic position not only as a competition law enforcer, but also as an institution that ensures any state intervention in strategic sectors remains within the framework of economic democracy, accountability, and the long-term public interest.