

The Regulations Development of Objection Against the Indonesia Competition Commission (KPPU) Decision

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Abstract

This research aims to analyze the regulation development of objection against the KPPU's decision after the issuance of the Supreme Court Regulation (PERMA) No. 3/2021 and its implementation. The research is descriptive with normative juridical type, using primary data through interviews and secondary data through library research, using qualitative analysis and logical deduction reasoning. There are differences in absolute competence, timeframe, and case examination between PERMA No.3/2021 with previous arrangements. This PERMA has been implemented at the Commercial Courts of Central Jakarta, Surabaya, and Medan. In addition, the transfer of absolute competence to the Commercial Court makes the performance of the KPPU's litigation team more efficient because it no longer needs to travel to many cities to face objections, considering the Commercial Court is only domiciled in 5 regions throughout Indonesia. Commercial Court judges should also understand business law better and be expected to produce quality decisions.

A. INTRODUCTION

Business competition is a common thing in the business world. Business actors will compete with their competitors in the quality of goods, marketing, and service sector.¹ However, business competition does not always run well. Business actors often carry out the business competition in ways detrimental to competing business

actors to get the maximum profit, creating unfair business competition.

Indonesia is no exception; unfair business competition is also typical. Especially during the New Order era, unhealthy private businesses emerged due to government policies that made it easier for private business actors close to power.² Small and medium-sized enterprises have

¹ Rumadi Ahmad, *et al.*, *Fikih Persaingan Usaha* (Jakarta: Lakpesdam PBNU, 2019), p. 13.

² *Ibid*, p. 14.

been excluded because they cannot compete with business actors benefitting from this policy.

One of the government's efforts to create fair business competition is clearly stated in the General Explanation of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, hereinafter referred to as Law Number 5 of 1999, which states that this law was drafted to enforce the rule of law and provide equal protection for every business actor so that Law Number 5 of 1999 was made to regulate fair business competition for entrepreneurs/business actors.³

Furthermore, Law Number 5 of 1999 also regulates law enforcement and mandates the establishment of an independent institution to oversee the implementation of this law, known as the Indonesia Competition Commission (KPPU).⁴ KPPU is directly responsible to the president, and its commission members are

selected by the president with the approval of the House of Representatives (DPR).

Based on Article 1 Number 18 Law Number 5 of 1999, KPPU is a commission established to supervise business actors in their business activities so they do not carry out monopolies and unfair business competition.⁵ KPPU has an enormous task and authority covering the executive, legislative and judicial branches. Legislative authority is the authority to create regulations internally and externally binding to the public. It has executive authority because it functions as an institution that implements Law Number 5 of 1999. Then, KPPU serves as a judicial institution when conducting investigations, examinations, and providing assessments, as well as an institution to take legal action against business actors who carry out monopolies and unfair business competition.⁶

In the law enforcement sector, KPPU has too much authority because it is multifunctional, including investigative,

³ Mireza Fitriadi, M. Yudha Prawira, and Zil Aidi, "Economic Policy Package: How Policy Delivery Affects Business Competition," in *Proceeding International Seminar on Competition Policy and Law* (2017): 1-163, p. 19.

⁴ Zil Aidi and Hasna Farida, "Regulatory Development of Objection Legal Efforts to the Indonesia Competition Commission (KPPU) Decision After the Enactment of Law No . 11 of 2020 Concerning Job Creation", [Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021](https://doi.org/10.4108/eai.29-6-2021.2312663) (2021), <https://doi.org/10.4108/eai.29-6-2021.2312663>, p. 346.

⁵ Indonesia, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, Article 1 point 18.

⁶ Abdul Hakim G. Nusantara, et al., *Litigasi Persaingan Usaha Tidak Sehat: Competition Litigation* (Tangerang: Telaga Ilmu Indonesia, 2010), p. 175.

prosecuting, and adjudication functions.⁷ This great authority certainly requires limitations. Therefore, the KPPU's decision can be submitted for legal action, namely an objection to the District Court of the domicile of the business actor.

Further arrangements related to procedures for filing objections to the KPPU's decision are regulated in a Supreme Court Regulation (PERMA). The current regulations can be found in Supreme Court Regulation (PERMA) Number 3 of 2021 concerning Procedures for Submission and Examination of Objections to the Decision of the Indonesia Competition Commission / KPPU in the Commercial Court. PERMA Number 3 of 2021 is the response of the Supreme Court to the promulgation of Law Number 11 of 2020 concerning Job Creation, from now on referred to as Number 11 of 2020, which revises several parts of Law Number 5 of 1999, one of which is related to the objections to the KPPU's decision. Initially, the legal action to object the KPPU's decision was the absolute authority of the District Court. Still, this authority was transferred to the Commercial Court as Law Number 11 of 2020.

In previous research, the article entitled "Authorities of the Commercial Court Regarding Examination of Objections to Decisions of the Indonesia Competition Commission" discussed arrangements for examining objections to KPPU's decisions after the enactment of Law Number 11 of 2020 concerning Job Creation and the authority of the Commercial Court after the passage of Law Number 11 of 2020 concerning Job Creation. The results of the study show that the arrangements for examining objections to the KPPU's decision after the entry into force of Law Number 11 of 2020 are contained in Article 118, which includes amendments to Articles 44, 45, 47, 48, and 49 of Law No. 5 of 1999. That research also states that the authority of the Commercial Court after the enactment of Law Number 11 of 2020 in regulating the submission of objections and examination of KPPU decisions to the Commercial Court up to cassation at the Supreme Court is held in Article 19-20 of Government Regulation Number 44 of 2021 concerning the Implementation of the Prohibition of

⁷ Law Office Lubis, Santosa, Maulana, *Kumpulan Dokumen Publik* (Jakarta: Law Office Lubis, Santosa, Maulana, 2002), p. 2.

Monopolistic Practices and Unfair Business Competition.⁸

The difference between previous research and this research is this research discusses more comprehensively the procedures for filing objections to KPPU decisions after the issuance of PERMA Number 3 of 2021, its implementation, and comparison with previous regulations, while previous research was limited to discussing arrangements for examining objections after Law Number 11 of 2020.

Based on the explanation above, this research will discuss the procedure for filing objections against the KPPU's decision after the PERMA Number 3 of 2021 issuance and its comparison with the previous regulations. Furthermore, this study also tries to see the implementation of PERMA Number 3 of 2021.

B. RESEARCH METHODS

The research conducted is normative juridical research. The specification of this research is analytical descriptive, which aims to describe a problem in specific conditions by revealing existing facts. The research was conducted in two ways: library research and field research. Library

research was carried out to obtain secondary data types, while field research was in the form of interviews to get primary data types. The data obtained were analyzed qualitatively. In compiling and analyzing the existing data, logical deductive reasoning is used, a process of thinking that starts from general statements to specific (specific) statements using acceptable, logical rules.

C. RESULTS AND DISCUSSIONS

1. Objection to KPPU's Decision After the Supreme Court Regulation (PERMA) No. 3 of 2021 and its Comparison with the Previous Rules

The basic arrangements related to objections against the KPPU's decision can be found in Article 44 of Law Number 5 of 1999. After 4 (four) years of promulgation, the Supreme Court issued Supreme Court Regulation (PERMA) Number 1 of 2003 concerning Procedures for Filing Objections to the Indonesia Competition Commission / KPPU Decision as a solution to the legal vacuum that occurred due to the absence of further regulation on how to examine objections to the KPPU's decision.

⁸ A. A Gede Angga Putra Suardana and I Gusti Ayu Agung Ari Krisnawati, "Kewenangan Pengadilan Niaga Terkait Pemeriksaan Keberatan Putusan Komisi Pengawasan Persaingan Usaha," *Kertha Desa* 9, No. 10 (2020): 39-51, p. 42.

Furthermore, PERMA Number 1 of 2003 became invalid with the issuance of Supreme Court Regulation (PERMA) Number 3 of 2005 concerning Procedures for Filing Objections to the Indonesia Competition Commission / KPPU Decision, which was later amended again by Supreme Court Regulation (PERMA) Number 3 of 2019 concerning Procedure for Submitting Objections to the Indonesian Competition Commission / KPPU Decision.

On 2 November 2020, the president passed Law Number 11 of 2020, based on Article 118 of Law Number 11 of 2020 amends several provisions in Law Number 5 of 1999. Significant changes that occurred with the issuance of Law Number 11 of 2020 are related to the absolute competence of the court, which has the authority to accept objections to the KPPU's decision. Thus, to carry out the law's mandate, the government issues Government Regulation of the Republic of Indonesia Number 44 of 2021 concerning the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition.

While waiting for the amendment rules to PERMA Number 3 of 2019, the Supreme

Court issued a Circular Letter of the Supreme Court (SEMA) Number 1 of 2021 concerning the Transfer of the Examination of Objections to the Indonesia Competition Commission / KPPU Decision to the Commercial Court. Finally, the regulation regarding the procedure for filing an objection can be found in the Regulation of the Supreme Court (PERMA) Number 3 of 2021 concerning Procedures for Submission and Examination of Objections to the Decision of the Indonesia Competition Commission / KPPU in the Commercial Court.

There are several essential differences between the procedures for filing objections to the KPPU's decision in PERMA No. 3 of 2021 with the previous rules, as follows:

a. Absolute Competence

Business actors who have been examined and received the decision from the KPPU have the right to file an objection. Based on Article 44, paragraph (2) of Law Number 5 of 1999, business actors can file an objection to the District Court.⁹ So based on the article, the absolute competence in filing an objection to the KPPU's decision is the District Court.

⁹ Indonesia, Law Number 5 of 1999 *concerning the Prohibition of Monopolistic Practices and Unfair Business*, Article 44 paragraph (2).

PERMA Number 1 of 2003, PERMA Number 3 of 2005, and PERMA Number 3 of 2019, as an implementing rule of Law Number 5 of 1999, confirmed that business actors submitted the objection to the District Court. However, Article 2 paragraph (1) PERMA Number 3 of 2005 and Article 1 point 2 of PERMA Number 3 of 2019 stipulate that objections are submitted to the District Court at the legal domicile of the business actor.

Furthermore, in 2020, President Joko Widodo views that regulations in Indonesia are too complex and many conflicts with each other. It has become a significant obstacle in the business world, resulting in increased unemployment and low community productivity. Departing from that, the government made steps to resolve the problem by ratifying Law Number 11 of 2020.

Law Number 11 of 2020 is also known as the *omnibus law*. *Omnibus law* is a method or concept of making rules that combine several regulations with different

substances to become a regulation that functions as an umbrella law.¹⁰ *Omnibus law* is widely applied in common law countries with the Anglo-Saxon legal system, such as England, Belgium, the United States, and Australia.¹¹ However, countries with civil law systems, such as Indonesia, have adopted this method. Law Number 11 of 2020 revised around 80 laws and more than 1,200 articles to 174 articles contained in only one law. The *Omnibus Law* concept can be a solution to simplify too many regulations to achieve legal certainty as a form of protection for the search for justice.¹²

One of the laws amended by Law Number 11 of 2020 is Law Number 5 of 1999. Article 118 of Law Number 11 of 2020 amends the provisions from Article 44 to Article 49 of Law Number 5 of 1999. Article 44, paragraph (2) of Law Number 5 of 1999 underwent a significant change regarding the absolute competence of filing an objection to the KPPU's decision, originally

¹⁰ Sodikin, "Paradigma Undang-Undang Dengan Konsep Omnibus Law Berkaitan Dengan Norma Hukum Yang Berlaku Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, No. 1 (2020): 143-160, <https://doi.org/10.33331/rechtsvinding.v9i1.393>, p. 148.

¹¹ Firman Freaddy Busroh, "Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan," *Arena Hukum* 10, No. 2 (2017): 227-250, <https://doi.org/10.21776/ub.arenahukum.2017.01002.4>, p. 227.

¹² Rahmadi Tektona, "Quo Vadis: Kepastian Hukum Aturan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Pada Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Jurnal Persaingan Usaha* 2, No. 1 (2022): 43-54, <https://doi.org/10.55869/kppu.v3i-.51>, p. 45.

submitted to the District Court to the Commercial Court.

Law Number 11 of 2020 mandates the establishment of implementing regulations no later than 3 (three) months after this law is promulgated. Therefore, on 2 February 2021, the government issued the Government Regulation of the Republic of Indonesia Number 44 of 2021 concerning the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition. Article 19, paragraph (1) of that Government Regulation states that business actors may file an objection to the Commercial Court according to the domicile of the business actor no later than 14 (fourteen) working days after receiving the KPPU's notification.¹³

Subsequently, the Supreme Court issued a Supreme Court Circular Letter Number (SEMA) Number 1 of 2021 concerning the Transition of the Examination of Objections to the Decision of the Indonesian Competition Commission / KPPU to the Commercial Court. The SEMA principally ordered the District Court to accept objections no longer and called the

Commercial Court to receive, examine and adjudicate cases of objection to the KPPU's decision following the authority granted by Law Number 11 of 2020.¹⁴

Currently, the regulation regarding the objection to the KPPU's decision is regulated in PERMA Number 3 of 2021. PERMA Number 3 of 2021 reaffirms that objections by business actors are submitted to the Commercial Court. This regulation also revokes PERMA Number 3 of 2019, previously the basis for filing objections.

b. Examination Procedures and Period

The procedure for examination and the period of settlement of objection cases to the KPPU's decision has changed after the enactment of Law Number 11 of 2020. Previously, Law Number 5 of 1999, PERMA Number 1 of 2003, PERMA Number 3 of 2005, and PERMA Number 3 of 2019 give the judges a maximum period of 30 (thirty) days from the time the objection examination begins. However, examining objections within 30 (thirty) days is considered too fast because the business competition case is complex and requires

¹³ Indonesia, Government Regulation of the Republic of Indonesia Number 44 of 2021 *concerning the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition*, Article 19 paragraph (1).

¹⁴ Indonesia, Supreme Court Circular Number (SEMA) Number 1 of 2021 *concerning the Transition of the Examination of Objections to the Decision of the Indonesian Competition Commission / KPPU to the Commercial Court*

deeper consideration and understanding, especially in the economic aspect.¹⁵

After Law Number 11 of 2020 was enacted, the period for examining objections also changed. Article 19 paragraph (3) Government Regulation of the Republic of Indonesia Number 44 of 2021 and Article 14 of PERMA Number 3 of 2021 stipulates that the examination is carried out at the latest 3 (three) months and no later than 12 (twelve) months. However, if the examination of the objection is deemed sufficient, the panel of judges can complete and give a decision on the objection submitted in less than 3 (three) months.

Changes also occur concerning the application to submit witnesses and experts in examining objections. The panel of judges often rejects the request of witnesses and experts from the Petitioners of Objection with the consideration that Article 5 paragraph (4) PERMA Number 3 of 2005 and Article 12 PERMA Number 3 of 2019 states that the examination of objections is carried out only based on a copy of the KPPU's decision and its case file. This action is considered to have violated one of the

essential principles in civil procedural law, namely the *audi et alteram partem* principle.

It means that both parties must be heard equally, and the judge may not accept information from one party as correct without first hearing the other.¹⁶

Examining objections to the KPPU's decision has allowed for the submission of witnesses and/or experts. This is due to the latest regulation, which extends the period of case examination up to a maximum of 12 (twelve) months. So that the examination and summons of witnesses and/or experts can be carried out. Article 13, paragraph (3) and (4) PERMA Number 3 of 2021 reads that:¹⁷

(3) Based on the approval of the panel of judges, the Petitioner for Objection may present witnesses and/or experts who have been submitted for examination at KPPU but whose statements are not included or are not considered in the KPPU's Decision or their presence is refused to provide testimony, to be heard at trial.

(4) In the event that the Petitioners object to submitting witnesses and/or experts as referred to in paragraph (3), KPPU may present witnesses and/or experts who have been submitted for examination at KPPU to strengthen their arguments.

¹⁵ Susanti Adi Nugroho, *Hukum Persaingan Usaha di Indonesia* (Jakarta: Kencana, 2012), p. 624.

¹⁶ Elisabeth Nurhaini Butarbutar, "Konsep Keadilan Dalam Sistem Peradilan Perdata," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 21, No. 2 (2009): 355-369, <https://doi.org/10.22146/jmh.16262>, p 367.

¹⁷ Indonesia, Supreme Court Regulation (PERMA) Number 3 of 2021 concerning Procedures for Submission and Examination of Objections to Decisions of the Indonesia Competition Commission / KPPU in the Commercial Court, Article 13 paragraph (3) and (4).

However, up to now, the objection examination is still unable to submit new letters or document evidence. Article 13 paragraph (5) PERMA Number 3 of 2021 states that the objection applicant cannot submit evidence of letters and/or documents, both those that have been presented in the examination at KPPU and proof of new letters and/or documents.¹⁸

2. Implementation of Supreme Court Regulation (PERMA) Number 3 of 2021 in the Commercial Court

Supreme Court Circular Letter (SEMA) Number 1 of 2021 concerning the Transition of the Examination of Objections to the Decision of the Indonesian Competition Commission / KPPU to the Commercial Court is the first technical arrangement issued by the Supreme Court to transfer the authority to adjudicate objections to the KPPU's decision from District Court to Commercial Court.

As of 10 September 2022, based on a search conducted through the Case Tracing Information System (SIPP) of the Supreme Court of the Republic of Indonesia, there have been eight submissions for objections to the KPPU's decision submitted to the

Commercial Courts of Medan, Surabaya and Central Jakarta. Until this research was conducted, the Semarang Commercial Court and the Makassar Commercial Court had not received any objections to the KPPU's decision.

The 8 (eight) cases consist of 1 (one) case at the Medan Commercial Court, 2 (two) at the Surabaya Commercial Court, and 5 (five) at the Central Jakarta Commercial Court.

a. Implementation of Supreme Court Regulation (PERMA) Number 3 of 2021 in the Medan Commercial Court

The case for an objection to the KPPU's decision is recorded with registration number 1/Pdt.Sus-KPPU/2021/PN Mdn between PT. Mina Fajar Abadi is the Petitioner for Objection, and the Indonesia Competition Commission (KPPU) is the Respondent for Objection. This objection request was filed against the KPPU's decision Number 04/KPPU-L/2020 concerning Alleged Violations of Article 22 of Law Number 5 of 1999 Regarding the Tender for the Work Package for the Langsa Regional Referral Hospital, the Aceh Health Service Work Unit Aceh Provincial

¹⁸ Indonesia, Supreme Court Regulation (PERMA) Number 3 of 2021 *concerning Procedures for Submission and Examination of Objections to Decisions of the Indonesia Competition Commission / KPPU in the Commercial Court*, Article 13 paragraph (5).

Government for the 2018 Fiscal Year (Auction Code: 17684106) which was read out on 11 February 2021. An application for objection was filed on 24 February 2021, followed by the first trial on 4 March 2021. The second trial with a proof schedule will be held on 18 March 2021, and the third session on 22 June 2021; the decision was handed down by refusing the Petitioner's objection.

b. Implementation of Supreme Court Regulation (PERMA) Number 3 of 2021 in the Surabaya Commercial Court

1) Decision of the Surabaya Commercial Court Number 1/Pdt.Sus-KPPU/2021/PN Sby

The first objection to the KPPU's decision is case number 1/Pdt.Sus-KPPU/2021/PN Sby between the Working Group of the Procurement Service Unit of the ULP POKJA, Hulu Sungai Selatan Regency as the Petitioner for Objection and KPPU as the Respondent for Objection. This objection request was filed against the KPPU's decision Number 05/KPPU-I/2020 concerning Alleged Violations of Article 22 of Law Number 5 of 1999 Regarding the Procurement of Work for the Construction of the Swimming Pool Building Phase II, Kandangan District, Hulu Sungai Selatan

Regency for the 2017 Fiscal Year which was read out on 28 January 2021.

The filing for an objection to the KPPU's decision was submitted on 25 February 2021. The first trial was held on 8 March 2021, but the trial was postponed due to the Respondent's absence. At the second hearing on 15 March 2021, the trial was held again with the schedule of reading the objection request. The subsequent trial was held again on 22 March 2021, with the agenda of reading the Respondent's response. Furthermore, on 5 April 2021, the panel of judges handed down a decision that granted the Petitioner's petition for objection in part and annulled KPPU's Decision Number: 05/KPPU-I/2020 dated 15 January 2021, in particular, limited to the decision stating that the Petitioner of Objection (Respondent IV in decision Number: 05/KPPU-I/2020) was legally and convincingly proven to have violated Article 22 of Law Number 5 of 1999.

In response to the decision, on 19 April 2021, KPPU submitted a cassation request for that Surabaya Commercial Court decision to the Supreme Court registered in case number 1265 K/Pdt.Sus-KPPU/2021. On 17 November 2021, the Supreme Court granted the Cassation request and canceled the Surabaya Commercial Court Number

1/Pdt.Sus-KPPU/2021/PN Sby Decision. In essence, the Supreme Court stated that the Reported Party I, Reported Party II, Reported Party III, and Reported Party IV (Applicant for Objection & Respondent for Cassation) were legally and convincingly proven to have violated Article 22 of Law Number 5 of 1999.

2) Decision of the Surabaya Commercial Court Number 1/Pdt.Sus-KPPU/2022/PN Sby

The petition for objection to the KPPU's decision is also registered with the Surabaya Commercial Court with case number 1/Pdt.Sus-KPPU/2022/PN Sby between PT. Cipta Karya Multi Teknik, PT. Build Persada Construction, PT. Wahana Eka Sakti and PT. Tiara Multi Teknik as the Petitioner for Objection and KPPU as the Respondent for Objection. This objection request was filed on the KPPU's decision Number 25/KPPU-I/2020 concerning Alleged Violations of Article 22 of Law Number 5 of 1999 regarding the Procurement of Revetment Development Packages and Land Acquisition at the Popoh Fishery Port, Tulungagung Regency, for the 2017 Fiscal Year which was read out on 25 January 2022.

The filing for legal action against the KPPU's decision was submitted on 7 February 2022. The first trial was held on 22 February 2022 and continued with several trials with the schedule of *replik*, *duplik*, examination of evidence, and reading of conclusions. After experiencing several trial delays with the agenda for reading the decision, finally, at the hearing on 23 August 2022, the panel of judges handed down a decision in which the objection was partially accepted. The decision states that the Respondent for Objection or KPPU is not authorized to impose administrative sanctions in the form of a ban on the Objection Petitioners from participating in tenders in the field of construction services whose sources of financing are from the *APBN* and *APBD* for 1 (one) year throughout Indonesia since this decision has permanent legal force. Based on the decision of the Surabaya Commercial Court, KPPU filed a cassation on 5 September 2022.

c. Implementation of Supreme Court Regulation (PERMA) Number 3 of 2021 in the Central Jakarta Commercial Court

1) Decision of the Central Jakarta Commercial Court Number 1/Pdt.Sus-KPPU/2021/PN Jkt.Pst

As previously stated, the first objection to the KPPU's decision submitted to the Central Jakarta Commercial Court was case number 1/Pdt.Sus-KPPU/2021/PN Jkt.Pst between PT. Conch South Kalimantan Cement as the Petitioner for Objection against KPPU as the Respondent for Objection. This objection request was filed on the KPPU's decision Number 3/KPPU-L/2020 concerning Alleged Violations of Article 20 of Law Number 5 of 1999 Conducted by PT. Conch South Kalimantan Cement in Cement Sales in the South Kalimantan Region, which was read on 15 January 2021.

An attempt to object to this KPPU's decision was filed on 8 February 2021. The first trial was held on 18 February 2021, while the decision was handed down on 4 March 2021 by refusing the appeal and affirming the KPPU's decision Number 3/KPPU-L/2020. Based on this decision, the Petitioners of Objection filed a cassation application with case number 951 K/Pdt.Sus-KPPU/2021 to the Supreme Court on 17 March 2021. The panel of judges handed down a cassation decision dated 12 August 2021, which rejected the cassation appeal and upheld the decision of the Central Jakarta Commercial Court.

2) Decision of the Central Jakarta Commercial Court Number 2/Pdt.Sus-KPPU/2021/PN

Jkt.Pst

The next submission of legal action against KPPU's decision is registered in case number 2/Pdt.Sus-KPPU/2021/PN Jkt.Pst between PT. PP Persero, Tbk, as the Petitioner for Objection and KPPU as the Respondent for Objection. The application was filed against the decision of KPPU 19/KPPU-M/2021 regarding the Alleged Delay in Notification of the Takeover of PT. Centurion Perkasa Iman shares by PT. Pembangunan Perumahan (Persero) Tbk dated 9 February 2011. The objection was filed on 4 March 2021, followed by the first trial on 15 March 2021. The decision was handed down on 7 April 2021, rejecting the appeal.

Against this decision, the Petitioner for Objection filed a cassation request on 20 April 2021, registered at register number 900 K/Pdt.Sus-KPPU/2021. The cassation decision dated 4 August 2021 rejected the cassation appeal and upheld the decision of the Central Jakarta Commercial Court.

3) Decision of the Central Jakarta Commercial Court Number 3/Pdt.Sus-KPPU/2021/PN Jkt.Pst

The following case was registered with case number 3/Pdt.Sus-KPPU/2021/PN Jkt.Pst between PT Garuda Indonesia Persero Tbk as the Petitioner for Objection and KPPU as the Respondent for Objection. This application was submitted based on the KPPU's decision number 06/KPPU-L/2020 dated 8 July 2021 concerning Alleged Discriminatory Practices of PT Garuda Indonesia (Persero) Tbk regarding the Selection of Umrah Ticket Sales Partners To and From Jeddah and Medina.

The objection was submitted on 29 July 2021, followed by the first hearing on 12 August 2021. On 20 August 2021, the trial was again held with the schedule of submitting additional evidence; on 3 September 2021, the trial continued with the submission of conclusions from the parties. On 10 December 2021, the judges handed down a decision with a decision that ultimately rejected the appeal. The objection applicant then filed a cassation with the registered case number 561 K/Pdt.Sus-KPPU/2022, which was filed on 22 December 2021. The panel of judges made a decision dated 9 March 2022, which rejected the cassation request.

4) Decision of the Central Jakarta Commercial Court Number 4/Pdt.Sus-KPPU/2021/PN Jkt.Pst

The following case was registered with register number 4/Pdt.Sus-KPPU/2021/PN Jkt.Pst between PT. Adhikarya Teknik Perkasa and PT. Kalber Mutual Abadi as the Petitioner for Objection and KPPU as the Respondent for Objection. Case registration was carried out on 7 September 2021, but until now, based on the Case Investigation Information System (SIPP) of the Central Jakarta District Court, there has been no decision. This application was filed against the KPPU's decision number 36 / KPPU-I / 2020 dated 24 August 2021, concerning Alleged Violations of Article 22 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and/or Unfair Business Competition (Law Number 5 of 1999).) Regarding the Procurement of Packages for Rehabilitation and Renovation of School Facilities and Infrastructure in Indragiri Hilir Regency 1 and 2 of the State Budget for the 2019 Fiscal Year.

5) Decision of the Central Jakarta Commercial Court Number 1/Pdt.Sus-KPPU/2022/PN Jkt.Pst

Furthermore, on 16 August 2022, the application for objection to the KPPU's decision number 1/Pdt.Sus-KPPU/2022/PN Jkt.Pst between PT. Sinar Ternak Sejahtera as the Petitioner for Objection, and KPPU as the Respondent for Objection. An objection request was filed against the KPPU's decision number 09/KPPU-K/2020 concerning Alleged Violations of Article 35 Paragraph (1) of Law Number 20 of 2008 concerning the Implementation of the Plasma Core Pattern Partnership in the Chicken Farming Sector Related to the Development and Modernization of Cages by PT Sinar Ternak Sejahtera which was read out on 29 July 2022. This case is currently under trial, with the first trial being held on 15 September 2022.

3. Implementation of Supreme Court Regulation (PERMA) Number 3 Year 2021 from the perspective of the Indonesia Competition Commission / KPPU

The transfer of absolute competence from the District Court to the Commercial Court facilitated the KPPU's Litigation Team, which no longer had to travel to

many District Courts in the region to face objections. Since the Commercial Courts only exist in 5 (five) cities throughout Indonesia.¹⁹ This change can make the performance of the KPPU's Litigation Team in handling objections against KPPU's decisions more efficient, practical, and focused. In addition, the transfer of absolute competence from the District Court to the Commercial Court is also welcomed by the KPPU because competition law is also part of business law that is more appropriate and understood by Commercial Court judges.²⁰ So that by shifting absolute competence from the District Court to the Commercial Court, it is expected to produce better quality decisions.²¹

This is in line with Article 302 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which regulates the requirements to be appointed as judges at the Commercial Court, among others: a. Has experience as a judge in the general court environment; b. Have dedication and mastery of knowledge in issues that are within the scope of authority

¹⁹ Deswin Nur, The Regulations Development of Objections Against the Indonesia Competition Commission (KPPU) Decision interviewed by Zil Aidi, 27 June 2022.

²⁰ A. A Gede Angga Putra Suardana and I Gusti Ayu Agung Ari Krisnawati, *op. cit.* p. 42.

²¹ Deswin Nur, The Regulations Development of Objections Against the Indonesia Competition Commission (KPPU) Decision interviewed by Zil Aidi, 27 June 2022.

of the commercial court; c. Authoritative, honest, fair, and of impeccable behavior; d. Has completed a particular training program as a judge in a commercial court.²²

The competence and capability of judges in deciding objections to KPPU's decisions are significant, considering the high disparity between KPPU's decisions and the decisions of the District Courts. Data shows that from 2002 to 2019, the decision of cases processed in the District Court reached 181 decisions; around 58.5% were won by the KPPU, while 41.5% of KPPU lost in the District Court.²³ In several cases, differences between KPPU and District Court decisions occurred because there was no common understanding regarding competition law between the two institutions.²⁴

Up to now, out of a total of 6 (six) filings for objections to the KPPU's decision that has been submitted and obtained a decision at the Central Jakarta Commercial Court, Medan Commercial Court, and Surabaya Commercial Court, 4 (four) of them have been rejected or can be said to have been

won by KPPU as the Respondent of Objection.

Meanwhile, 2 (two) cases granted the objection to the KPPU's decision, but one of the decisions of the Commercial Court was subsequently annulled by the Supreme Court through an appeal filed by the KPPU.

4 (four) objections to the KPPU's decision with case number 1/Pdt.Sus-KPPU/2021/PN Mdn at the Medan Commercial Court and case number 1/Pdt.Sus-KPPU/2021/PN Jkt.Pst, 2/Pdt.Sus-KPPU/2021/PN Jkt.Pst and 3/Pdt.Sus-KPPU/2021/PN Jkt.Pst at the Central Jakarta Commercial Court were rejected entirely, or it could be said that the decision of the Commercial Court confirmed the KPPU's decision. Likewise, at the cassation stage at the Supreme Court, the KPPU also won the cases mentioned above.

2 (two) decisions of the Surabaya Commercial Court that annul the KPPU's decision, namely in cases 1/Pdt.Sus-KPPU/2021/PN Sby and 1/Pdt.Sus-KPPU/2022/PN Sby, but for case number 1/Pdt.Sus - KPPU/2021/PN, at the level of

²² Indonesia, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, Article 302 paragraph (2).

²³ Deswin Nur, The Regulations Development of Objections Against the Indonesia Competition Commission (KPPU) Decision interviewed by Zil Aidi, 27 June 2022.

²⁴ Gloria Damaiyanti Sidauruk, "Kepastian Hukum Putusan Komisi Pengawas Persaingan Usaha Dalam Penegakan Hukum Persaingan Usaha," *Jurnal Lex Renaissance* 6, No. 1 (2021): 132-151, <https://doi.org/10.20885/jlr.vol6.iss1.art10>, p. 139.

cassation, has handed down a decision that annuls the decision of the Surabaya Commercial Court or wins KPPU as the Petitioner for Cassation.

According to the KPPU, the cases that have filed objections to the Commercial Court are cases that are relatively easy and straightforward to prove, such as in case number 1/Pdt.Sus-KPPU/2021/PN Mdn at the Medan Commercial Court and case number 1/Pdt. Sus-KPPU/2021/PN Sby at the Surabaya Commercial Court related to the tender conspiracy. In addition, there is also case number 2/Pdt.Sus-KPPU/2021/PN Jkt.Pst at the Central Jakarta Commercial Court regarding the delay in notification of the merger, which is also relatively easy to prove. On this basis, it is natural that the percentage of KPPU's winnings in the Commercial Court is relatively high.²⁵

Although so far, almost all of the KPPU's decisions have been upheld by the Commercial Court, it is still too early to conclude whether there has been an increase in the quality of the Commercial Court's decisions and a decrease in the disparity between the Commercial Court's

decisions and the KPPU's decisions. This is based on the fact that the transition of absolute competence from the District Court to the Commercial Court has only lasted for approximately two years, and there have not been too many cases of objections to the KPPU's decision being tried by the Commercial Court.

Changes in the procedures for examining objections to KPPU decisions and the trial period based on PERMA Number 3 of 2021 can be said to have been implemented. This can be seen in almost all cases of objections to KPPU's decisions having a trial agenda in the form of evidence, allowing the submission of evidence and the opportunity to prove it for the parties.²⁶

KPPU welcomed several changes related to the trial process or examination of objections to the KPPU's decision, hoping it will provide opportunities and flexibility for Commercial Court judges to examine cases more comprehensively.²⁷

D. CONCLUSIONS

The development of regulations related

²⁵ Deswin Nur, The Regulations Development of Objections Against the Indonesia Competition Commission (KPPU) Decision interviewed by Zil Aidi, 27 June 2022.

²⁶ Deswin Nur, The Regulations Development of Objections Against the Indonesia Competition Commission (KPPU) Decision interviewed by Zil Aidi, 27 June 2022.

²⁷ Deswin Nur, The Regulations Development of Objections Against the Indonesia Competition Commission \ (KPPU) Decision interviewed by Zil Aidi, 27 June 2022.

to objections to the KPPU's decision after the issuance of PERMA Number 3 of 2021 impacts the absolute competence, timeframe, and case examination process compared to previous arrangements. PERMA Number 3 of 2021 has been implemented in the Commercial Courts, specifically at the Commercial Courts of Central Jakarta, Surabaya, and Medan. From KPPU's point of view, the transfer of absolute competence from the District Court to the Commercial Court is beneficial in terms of case handling because the KPPU's Litigation Team does not have to travel to many areas to face the objections, bearing in mind that the Commercial Court is only based in 5 regions throughout Indonesia. In addition, judges at the Commercial Court are considered more experienced and have a better understanding of business law, so they are expected to produce fair and quality decisions and reduce the disparity between KPPU's and Commercial Court decisions.

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