

Annual Report 2019

Indonesia
Competition
Commission
(ICC)

EXECUTIVE SUMMARY

The effectiveness of role and performance of the Indonesia Competition Commission (ICC), as well as the regulatory framework which embodies it, affects the quantity and quality of investment in Indonesia. Ineffective prevention and enforcement of competition law can lead to industrial concentrations which are detrimental not only to business actors, but also to the detriment of consumers or public from the consequences. This will certainly reduce Indonesia's competitiveness compared to neighbouring countries in the Asian region in obtaining foreign investment to support the Government's development program.

For this reason, ICC continues to strive to improve its work effectiveness, by continuing to improve regulations which related to business competition in order to create a fair and highly competitive business environment. 2019 is an important year for efforts to create such business environment. In that year, ICC focused on reforming regulations that are directly related to business actors, such as improving procedural law, ease of notification of merger and acquisition transactions, and legal protection for micro, small and medium enterprises (MSMEs). We believe that these various regulations can make a positive contribution in supporting the Government's programs in the following years.

Efforts to prevent and enforce competition law continue to be increased in strategic sectors, especially the food sector. In the past year, ICC succeeded in completing the handling of 33 (thirty-three) competition cases with a total imposition of fines through a decision which reached Rp 165.6 billion. Furthermore, ICC's contribution to Non-Tax State Revenues (PNBP) paid from violations of competition violations reached Rp 38.6 billion in 2019. There are still 45% of the total receivables from fines or around Rp 335 billion as potential unpaid state revenues by violators. Most of the cases handled are mostly related to conspiracy in the procurement of public goods and services.

In terms of the oversight of merger and acquisition transactions, there are 124 (one hundred and twenty four) transaction notifications submitted to ICC, with a total transaction of approximately Rp 154 trillion. The number of notifications increased 70% from the previous year. Most of them are transactions conducted by national companies, especially in the processing sector.

As part of the oversight of large business partnerships with micro, small and medium enterprises (MSMEs) as Law No. 20 of 2008 concerning SMEs, the Commission began to enforce law on violations of business partnerships. In the first year of implementation in 2019 focused on the plantation sector, ICC was handling 7 (seven) cases related to violations of the business partnership. It is hoped that this role will be further enhanced in order to improve the competitiveness of MSMEs and oversee the implementation of Government policies in upgrading the Indonesian MSME classes.

On the competition policy side, ICC as a partner of the National Interest Team, has issued 8 (eight) suggestions and considerations on national product protection policies, which have been implemented in the form of Anti-Dumping Import Duty and Safeguard Duty Import Duty on various products. The imposition of import duties is in

line with efforts to protect national competition, especially to anticipate the entry of products from other countries at very low prices (which can be caused by subsidies in the country of origin) which can have a negative impact on domestic competition. This problem is also in line with the interests of Indonesia which are guarded by ICC in the ongoing economic cooperation negotiations between Indonesia and the European Union.

Related to competition in the region, as one of the most advanced competition authority in ASEAN, ICC has consistently increased south-south cooperation in helping to increase the capacity of competition authorities in ASEAN, while preparing a procedure for handling cross-border competition cases to anticipate various impacts of global competition which can inhibit the flow of investment into the country.

Existing developments indicate that competition policies and laws need to be one of the main instruments in protecting domestic competition, overcoming competition barriers that reduce incentives for investment, and increasing the ability of MSMEs to grow and reach global markets. For this reason, we look forward to coordinating and harmonizing with the Government to jointly achieve the targets in line with the National Medium-Term Development Plan/RPJMN for 2020-2024.

For the year 2020 on-wards, in the Commission's program will be aligned with the President's direction contained in RPJMN 2020-2024, in particular on defined prioritized sectors. The achievement of Competition Index Perception as an indicator for the increased of value added, employment, investment, exports and national competitiveness we will speed up in order to strengthen the economy's resilience for a quality growth.

INDONESIA COMPETITION COMMISSION (ICC) IN 2019

1. Introduction

The Vision and Mission of the Indonesia's President 2020-2024 under the leadership of Mr. President Joko Widodo and Mr. Vice President KH Ma'ruf Amin is "Realization of Developed Indonesia: Sovereign, Independent and Personality Based on the Mutual Cooperation". The vision was then realized through 9 (nine) Missions known as the Second Nawacita. The main directives are explained further in the RPJMN 2020-2024 as a strategy in the implementation of the Nawacita mission and the achievement of the 2045 Indonesia Vision goals. The five directives cover human resource development, infrastructure development, simplification of regulations, simplification of bureaucracy, and economic transformation.

ICC has the objective to create fair competition and partnership in order to foster a just and sustainable national economy so that people's welfare will improve. Specifically in realizing the vision and mission of the President and Vice President. In achieving these objectives, ICC carries out 4 (four) main functions, namely (i) enforcement of competition law, (ii) harmonization of policies through the provision of policy recommendations to the government, (iii) supervision and evaluation of merger and acquisition transactions, and (iv) supervision and law enforcement on partnerships between large business actors and micro, small and medium business (MSME).

The Commission's function is associated with one mission in the Second Nawacita, which is an economic structures that productive, independent, and competitive. One of the challenges facing Indonesia in achieving the mission is improving investment quality. This is manifested in the level of competition as the 2019 Global Competitiveness Index data shows that the level of industrial concentration in Indonesia is still quite high. This can show that the industry is only dominated by a few business actors. Therefore, increasing new investment, both from within and outside the country, as well as ease of business, is needed. In that case, ICC's functions are highly needed.

The function of supervision and law enforcement in ICC is very much needed in guaranteeing legal certainty in doing business, and the existence of a business environment that is free from discriminatory business behaviour, arbitrary to other business actors, and colluding to harm consumers and other business actors. Investors will grow in Indonesia if they are given facility of entering or leaving the industry, and feel safe in doing business, because they believe that adverse actions by competitors can be overcome by the existing supervisory and enforcement functions of competition law.

The guarantee of security in doing business is the priority of ICC in carrying out its duties. Every activity in ICC is always directed to support for security in doing business. Changes to the regulations issued by ICC in 2019 are part of this effort, particularly through simplifying the rules and increasing efforts to prevent violations by business actors. Transparency in the implementation of regulations was also enhanced last year to improve the predictability of existing legal processes. Thus law enforcement can still be carried out effectively without disrupting investment.

2. Regulatory Reform for Legal Certainty

One of the demands of business actors to ICC is transparency and accountability in law enforcement. Both of these are important factors to support increasing national competitiveness and investment. In realizing it, one of the focus of ICC in 2019 is the improvement of regulations related to competition issued by ICC. These regulations include:

- a. Regulation of the Indonesia Competition Commission Number 1 of 2019 concerning Procedures for Handling Cases;
- b. Regulation of the Indonesia Competition Commission Number 3 of 2019 concerning the Assessment of Merger or Consolidation of Business Entities, or Acquisition of Company Shares that Can Lead to Monopolistic Practices and/or Unfair Business Competition; and
- c. Regulation of the Indonesia Competition Commission Number 4 of 2019 concerning Procedures for Supervision and Handling of Partnership Cases

Regulation of the Indonesia Competition Commission Number 1 of 2019 concerning Procedures for Handling Cases is aimed at increasing transparency, fairness and legal certainty in the process of handling cases in accordance with the principles of good procedural law. Some of the main points of amendment to regulations concerning the procedure for handling cases include improvement of the *due process of law*, improvement of the procedure for handling cases, and the addition of behaviour change norms (*consent decree*). The behaviour change norm is an opportunity given by ICC to conduct a change in behaviour in the case handling process, that is, after the alleged violation has been read and/or submitted to the violator. The change of behaviour is carried out in the form of the commitment of business actors and/or other parties listed in the Behaviour Change Integrity Pact, which then becomes the object of supervision by ICC.

Regulation of the Indonesia Competition Commission Number 3 of 2019 concerning the Assessment of Merger or Consolidation of Business Entities, or Acquisition of Company Shares that Can Result in Monopolistic Practices and/or Unfair Competition is intended to provide ease and certainty for business actors in reporting merger and acquisition transactions, while increasing the scope of supervision by ICC to the transfer of productive assets to prevent the transfer of control over national strategic assets. The new regulation also provides clarity on the information needs in the notification as well as introducing a simpler notification process. Therefore, ICC's determination of the notification can be given sooner than the previous procedure.

Regulation of the Indonesia Competition Commission Number 4 of 2019 concerning Procedures for Supervision and Handling of Partnership Cases governs the procedures for supervision and handling of Partnership cases. For information, ICC has the duty to oversee the implementation of partnerships by MSMEs and large or micro and small business actors with medium business actors. Form partnerships supervised consisting of a core-plasma, sub-contracting, franchising, general trading, distribution and agency, profit sharing, operational cooperation, joint venture, Outsourcing, and other forms of partnership. ICC conducts law enforcement for violations in the implementation of the partnership. The violation can be in the form of the efforts of large business actors in owning and/or controlling MSMEs that are their partners. The law enforcement can lead to the ICC Decision which imposes a fine of up to Rp. 10 billion or the

recommendation to revoke the violator's business license. The decision is final and must be implemented.

The existence of this regulation is in line with the priorities of the Government in developing MSMEs, especially to oversee and ensure that MSMEs have the same opportunity or bargaining position with the large business actors that become their partners. Oversight at the ICC shows that one of the problems in partnership is the fulfilment of the obligation to fulfil the mandatory partnership portion in several sectors, and the lack of awareness of business actors to make partnership agreements. In 2019, ICC began to handle cases related to violations of the partnership. It is targeted that this oversight function will be significantly improved to support the Government's priority programs in raising the MSME class.

3. Law Enforcement Performance

In 2019, ICC issued 33 (*thirty-three*) decisions on competition cases, of which 31 (*thirty-one*) cases were found guilty. In that year, the total fines imposed in the 31 cases reached Rp 165,624,174,188 (*one hundred sixty five billion six hundred twenty four million one hundred seventy four thousand one hundred eighty eight rupiahs*). Most of these decisions (54.5%) constituted bid-rigging cases in the procurement of goods/services. While the rest are cases of delay in notification of mergers and acquisitions (36.5%), cartels (6%), and monopolies (3%).

Most of the violations decided by ICC (39.4%) came from DKI Jakarta Province, followed by East Java Province (15%) and Central Kalimantan (12%). The rest occurred in North Sumatra, South Sulawesi, West Nusa Tenggara, East Kalimantan and West Kalimantan.

The law enforcement process at ICC also has a quantitative impact through receiving non-tax state revenue (PNBP) from violation fines paid by business actors for decisions that have permanent legal powers. Last year, the PNBP reached Rp. 38,612,108,702 (*thirty eight billion six hundred twelve million one hundred eight thousand seven hundred and two rupiah*). This amount if compared, equivalent to 28.2% of the ICC budget in 2019.

In total since 2000 to 2019, the total PNBP that has been received by the state from law enforcement by ICC has reached Rp 406,896,040,697 (*four hundred six billion eight hundred ninety six million forty thousand six hundred ninety seven rupiahs*). This figure shows 55% of the total receivables of fines for violations of competition which reached Rp 742,220,313,815 (*seven hundred forty-two billion two hundred twenty million three hundred thirteen thousand eight hundred fifteen rupiah*). The complete data can be seen in the following table.

Information related to Executable (Affirmed) Decisions As of December 31, 2019

No.	Information	amount
1	Number of Decisions	149 Decisions
2	Reported Party	557 companies
3	Decisions that have not yet been carried out	90 Decisions
4	Reported parties have not yet implemented the Decision	309 companies
5	Total fines that can be collected	IDR 742,220,313,815
6	Total PNBPN receipts (penalties paid)	Rp.406,896,040,697
7	Total receivable penalties (in billing)	Rp. 335,334,275,784

The total state budget to finance ICC's activities cumulatively since the institution was established in 2000, was around Rp 1.7 trillion. With a total amount of these fines receivable, means the Commission through its activities that led to the law enforcement able to restore approximately 43.66% of state funds used to finance the Commission for nearly 20 years.

Related to merger in 2019, the Commission has conducted an assessment of 124 (*one hundred and twenty four*) notification of mergers and acquisitions with a total transaction value in the evaluation reaches Rp 154.176.280.302.017 (*one hundred and fifty-four billion one hundred seventy six billion two hundred eighty million three hundred two thousand seventeen rupiah*). The number increased 67.5% from the number of notifications submitted in the previous year. Notifications are generally conducted by companies from the manufacturing industry (31%), energy (16%), and finance (16%). Most of the notifications (69%) were domestic transactions, while foreign transactions were mostly from Singapore (8.9%), Japan (8%) and the Netherlands (5%).

In the supervision of business partnership between large enterprises and SMEs, the Commission in 2019 has started to enforce cases related to business partnership. Of the 10 (*ten*) cases handled, the majority (80%) were alleged violations of the partnership in the palm oil sector. The rest is in the logistics and transportation sectors.

In this regard, ICC will consistently carries out its focus in partnership to sectors that concern the lives of many people, such as in the livestock and retail sectors. Together with the Ministry of Agriculture and Ministry of Cooperatives and SMEs, the Commission is committed to actively coordinate in the supervision of the partnership in order to support the policy of the President agenda to raise the grade of SMEs in Indonesia, as well as encouraging awareness of the rights in the partnership in order to create partnerships with mutual benefit.

4. Contribution to Government Policy Reform

The air transportation sector is one of the main sectors overseen by ICC, because the national aviation industry market structure is highly concentrated. At present, there are four companies that control more than 75% of the market share of scheduled commercial air transportation services for domestic routes, namely Lion Air (33%), Garuda Indonesia (19%), Citilink (14%) and Batik Air (12%). The four companies are joined in two groups namely Lion Group and Garuda Indonesia Group, so that the structure of the market can be said that the domestic scheduled commercial air transport

service industry is controlled by two large groups and all service classes owned are in one relevant market.

This analysis began at the beginning of 2019, when a polemic occurred in the community who felt that flight ticket rates had risen very high, even though they were not in the *peak season* (Eid holidays, Christmas and New Year). The society feel that the fare of direct domestic service is more expensive compared to with tariff route transit through neighbouring countries. In addition to distance, demand and flight period factors, of course there are other factors that influence the amount of flight ticket prices such as jet-fuel prices and so on. From the results of the study, the Commission found potential competition behaviour does not sound associated with the establishment of the domestic air fare economy class service.

In this case, ICC strongly supports the desire of the President to increase competition in the aviation sector through foreign investment on various domestic routes. For this reason, ICC will increase its supervision in order to oversee and ensure that there are no discriminatory or unhealthy behaviours that may be carried out by existing business actors (*incumbent*) of these new players.

Regarding policy reforms, one ICC's authorities based on Article 35 letter "e" is to provide suggestions and recommendations for Government policies that have the potential to monopolistic practices and/or unfair competition. In 2019, the Commission gave priority to its involvement as partner National Interests Team to safeguard the national interests of foreign products at unreasonably prices. In that year, the ICC issued 8 (eight) suggestions and recommendations on national product protection policies in the form of anti-dumping import duty (BAMD). Consideration is given to some products as the following table.

**ICC's Suggestions and Considerations Table
For the Protection of National Products**

No.	Policies and Products	Country of origin
1	Plans for Extension of BMAD Imposition of Imported <i>Hot Rolled Coil</i> (HRC)	People's Republic of China (PRC) , India, Russia, Kazakhstan, Belarus, Taiwan and Thailand
2	Planned Extension of BMAD for Imports of <i>Biaxially Oriented Polypropylene</i> (BOPP) Products	Thailand and Vietnam
3	Planned Extension of Imposing Anti Dumping Import Duty (BMAD) on Imports of Hot Rolled Plate (HRP) Products	People's Republic of China (PRC), Ukraine and Singapore
4	Planned BMAD Extension of Imported Polyester Staple Fiber (PSF) Products	India, China and Taiwan
5	Plans to Impose BMAD on Imports of Spin Drawn Yarn (SDY) Products	The People's Republic of China
6	Plan for Imposing Import Duty on Temporary Safeguard Measures (BMTPS) for Importing Yarn, Fabric and Curtain Products	Imposed on all countries

No.	Policies and Products	Country of origin
7	Plan for Imposing Import Duty on Temporary Safeguard Measures (BMTPS) for Importing Yarn, Fabric and Curtain Products	Imposed on all countries
8	Plan for Imposing Safeguard Measure Import Duty (BMTP) for Importing Evaporator Products	Imposed on all countries

Anti-dumping import duties and import duties on temporary safeguards are government instruments in preventing competitive pressures from imported products that are sold improperly (which can be as a result of the business behaviour or subsidies provided by the home country government). ICC will continue to monitor the progress of the implementation of the import duty policy, in order to avoid misuse of policy in the form of a **rival raising cost strategy**, which is indicated by an increase in product sales prices from the applicant of the import duty policy. This potential is quite large, given the general policy announced that it is the producer who holds a dominant position in the production of the protected product.

On the other hand, subsidies provided by the Government in the country of origin for their export products, can provide the ability of companies that export to sell their products at very cheap prices in other countries. The provision of subsidies in the country of origin can occur, so it needs to be a concern of the Government of Indonesia. This is in line with Indonesia's interests that have been maintained by ICC in negotiations on economic cooperation between Indonesia and the European Union (Indonesia-EU Comprehensive Economic Partnership Agreement) that are currently underway and are targeted by the President to be completed in 2020.

In total, ICC has provided 223 (*two hundred and twenty-three*) suggestions and recommendations to the Government in assisting the process of policy reform or policy making in accordance with the principles of fair competition. Most of the construction, trade and transportation industries. For this reason, in order to increase understanding of the importance of maintaining fair competition in supporting the performance of the Government and the economy in general, ICC is active in providing advocacy to stakeholders. Throughout 2019, the ICC has advocated more than 2,000 (*two thousand*) stakeholders, particularly the Central/Regional Government and higher education.

5. Increasing Coordination among Government Agencies

Cross-agency coordination through the implementation of ICC cooperation is one of the main ways to synergize ICC's tasks and functions with other institutions. At present, 33% of ICC's collaboration is carried out with Ministries/Institutions, specifically those that support the process of law enforcement and regulatory harmonization.

Related to fulfilling the commitment of the Government of Indonesia with other countries, ICC has assisted the Government in promoting national interests in various international negotiation agreements, particularly in the aspect of business competition. In 2019, ICC with the Government has completed negotiations between Indonesia- Australia Comprehensive Economic Partnership Agreement (IA-CEPA) and

Regional Comprehensive Economic Partnership Agreement (RCEP). Together with the Government, the Commission is now negotiating other economic agreements, such as the Indonesia-European Union Comprehensive Economic Partnership Agreement (IEU-CEPA), specifically on areas of subsidy that can affect the competition between the Parties.

In order to achieve the ASEAN 2025 target in the field of competition, as the *lead agency*, ICC has completed 2 (*two*) *outcomes* under the ASEAN Competition Action Plan 2016-2025 (ACAP), namely the *ASEAN Competition Business Perception Index* (as an indicator of perceptions of business actors/investors in ASEAN for business competition), and the *Peer Review Guidance Document* (as a reference for ASEAN in evaluating the performance of competition authorities).

ICC together with the Ministry of the Indonesian National Development Plannin/National Development Planning Agency (Bappenas) helped increase the role of Indonesia in South-South Cooperation. Through third-party funding, namely the Japan-ASEAN Integration Fund (JAIF), ICC has in the past few years assisted ASEAN member countries in reducing capacity gap through various activities such as workshops, training courses, exchange of staff, and secondment of ICC's expert. This role has positioned Indonesia as one of the leading countries in Asia in the field of competition.

6. Human and Financial Resources

The overall performance is certainly supported by reliable human resources in optimizing the existing budget. In 2019, ICC's budget realization reached 99% of the total budget allocation (including PNB revenue) of Rp 136,631,030,000. The use of the budget is certainly carried out in accordance with existing norms, so we should proudly underline that, the ICC has received Qualified Opinion (WTP) from the Indonesia Audit Board every year from 2014 to the present.

Going forward, with 404 (*four hundred and four*) staffs in the head office and 6 (*six*) regional offices, ICC will continue to support and oversee the implementation of Government programs as the Medium-Term National Development Plan (RPJMN) 2020-2024 especially from various unfair competition efforts performed by business actors.
