



November 2022 – Issue 1

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## Indonesia's Competition Authority Takes SME Partnership Supervision to a New Level

The year 2022 marks a historic era for Indonesia's Business Competition Authority ("KPPU") as it is the year KPPU ruling on Partnerships involving Small Medium Enterprises ("SME")'s passed. While stakeholders find it undisputed that SME Partnerships are distinct from competition matters, the prevailing laws and regulations provide that the supervision of SME Partnerships is borne by KPPU. Now that KPPU is actively enforcing that authority, business actors need be aware of and observe this issue moving forward.

### Background

KPPU arguably has the authority needed to supervise cooperation between large-scale and small-scale businesses since the enactment of Law No. 20 of 2008 on Micro, Small and Medium-Scale Enterprises ("SME"), as amended by the Omnibus Law ("Law 20/2008"). The KPPU's scope includes the supervision of partnership arrangements between: (i) micro, small and medium-scale enterprises and large-scale enterprises, and between (ii) micro and small-scale enterprises and medium-scale enterprises.

In principle, (i) large enterprises may not own (*memiliki*) or control (*menguasai*) the micro, small or medium-scale enterprises which become their partners; and (ii) medium-scale enterprises may not own or control the micro or small-scale enterprises which become their partners. The KPPU's approach to such cooperation activities had been limited to preventive and soft measures by publicizing the situation and issuing warnings, at least until earlier this year.

## **SME Partnerships are Now Under the Indonesian Competition Authority's Lens**

The case involving PT Pos Indonesia (Persero) (“**PT Pos**”) in February 2022 marks the concentration of the KPPU’s focus on partnerships involving SMEs. That case under register No. 16/KPPU-K/2019 KPPU was the KPPU’s first ruling on an alleged violation leading to an illegal SME partnership. PT Pos was alleged to have violated Article 35 (1) of Law 20/2008 for dominating its small business partner through a unilateral decision on the fee to be received by its partner. KPPU decided that the relationship between these two parties fell within the ambit of a relationship between a principal and an agent thereby justifying the unilateral decision on the agency fee.

However, the fact that KPPU has finally issued a ruling on a partnership with a small business partner should raise the awareness of large-scale companies of the risks of entering into such a cooperation scheme. For the record, the KPPU can impose the administrative sanctions of the business license revocation or an administrative fine of up to IDR 10 billion or both.

According to the KPPU’s official website, the KPPU has since then issued 4 (four) more rulings on partnerships with small businesses in June- September 2022, involving PT Bulungan Citra Agro Persada in its cooperation with Mega Buana Cooperative (*Koperasi*), PT Sinar Ternak Sejahtera in a chicken livestock cooperation scheme, PT Suryabumi Tunggal Perkasa in a plasma plantation cooperation scheme, and PT Gutherie Pecconina Indonesia in a cooperation with a Village Unit Cooperative (*Kooperasi Unit Desa*). In the case involving PT Sinar Ternak Sejahtera, KPPU actually imposed an administrative fine of IDR 10 billion, and an instruction to Indonesia’s investment coordinating board to revoke the relevant business actor’s business license if it fails to adjust the SME cooperation scheme according to the KPPU’s recommendations.

## **Moving Forward, Some Clarity on the Procedures Needed**

Not only that SME partnership matter and competition matters are different in nature, they are also governed by different sets of rules. Therefore, not all approaches used to enforce the competition law, can be applied to enforcing SME partnerships rules.

### **1. Objections to KPPU Rulings on SME Partnerships**

Under Indonesia’s Competition Law (Law No. 5 of 1999 as amended by the Omnibus Law), KPPU rulings can be objected to through commercial courts. For KPPU decisions on SME Partnerships, however, there are no explicit rules providing such a legal action under the SME laws and regulations. KPPU has said that KPPU rulings on SME partnerships should be deemed final rulings, and this has led to debates among stakeholders. While it seems to be undisputed that the nature of SME partnership matters and competition matters are different, many believe that it should not be the case that no legal action is available to object to KPPU rulings on SME partnerships.

Notwithstanding the above, PT Sinar Ternak Sejahtera submitted an objection to Central Jakarta Commercial Court to annul the KPPU ruling which found it guilty of Article 35 (1) of

Law 20/2008 for dominating its small business partner, under Register No. 1/Pdt.Sus-KPPU/2022/PN.Jkt.Pst. The court ruled in favour of PT Sinar Ternak Sejahtera and annulled the KPPU ruling. It is yet to be seen on whether the Supreme Court will uphold the jurisdiction of commercial court to annul KPPU ruling on SME Partnerships.

Moving forward, there are some possibilities for how these debates will be concluded. It might be the case that some of the stakeholders, either business actors, lawyers or even KPPU itself will ask for clarification from the Supreme Court to determine which legal action should be pursued to object to KPPU rulings on SME partnerships. Alternatively, it may also be the case that stakeholders will submit a petition for a judicial review of the current SME partnership rules given the absence of clear provisions allowing appeals or objections to KPPU rulings on SME partnerships.

## 2. Reports or KPPU Initiatives

It is commonly known that when registering competition cases, KPPU uses the code letter "I" for cases initiated by KPPU investigations, and the code letter "L" for cases derived from public reports (*laporan*). It remains to be seen whether KPPU will be able to initiate cases on its own initiative as commercial contracts among parties should be in the private realm and most probably will not be publicly available. So far, in registering partnership cases, KPPU has used the code letter "K", presumably for *Kemitraan* (Partnership).

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