

Economic Policy Package: How Policy Delivery Affects Business Competition

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Abstract

In the middle of 2015, Government of Indonesia has issued Economic Policy Package XII aimed to create better investment climate in the region/provincial. This policy was taken to improve business climate pursuant to the Indonesia's economic condition which are decreasing continuously and complicated investment climate for investors. In order to deliver the policy, local governments shall apply this deregulation packages into regulations as directed by central government. This paper brings facts that some of local government did not apply the Economic Policy Package XII. This condition has potential to create unfairness in business competition between regions. Therefore, KPPU as one of the committee to control business competition should take a part to provide advice to local government and central government in order to deliver their policy. Recommendations by KPPU are required to create better competition between regions.

Keywords: *Deregulation, Economic Policy Package, Local Government, Business Competition*

Background

In September 2015 to April 2016, Government of Indonesia (“GoI”) has issued a dozen economic policy packages as response to the weakening Indonesia’s economic condition. Based on World Economic database, formerly economic growth of Indonesia in general had slowed down in 2013 (5,6%), 2014 (5,0%) and 2015 (4,76%). Even for investment climate, the survey ease of doing business/EoDB) 2016, showed that Indonesia still have a bad investment climate which Indonesia be ranked 106 of 189 countries in the world.

Thus, through economic policy packages, GoI seeks to encourage the economy in the region and creating better business climate. Specifically, with the economic policy package XII, GoI aimed to improve the business climate and EoDB rank in 2017. This policy applied by regulatory reform which is to simplify procedure, time and cost.

As for the policy package sequence still on-going today¹, now economic policy packages has shown some positive impacts in 2016. The improvement of economic growth in 2016 already experiencing an economic downturn trend changes by being increased to 5.02 percent. In fact, after the economic package XII Indonesia position according to the results of the EoDB 2017, rose to 91 and Indonesia as well established as the country's top reformers². However, these positive impacts still not enough, considering the main objective of government policy package is the creation of the general welfare.

Variated act from local government to implement the economic policy package XII potentially create some economic disparities between regions. As in the study of Komite Pemantauan Pelaksaaan Otonomi Daerah (KPPOD), the economic policy package XII is not fully implemented in the regions. Only Jakarta and Surabaya who had implemented the policy better than the others. It was because the central government focus on socialization and monitoring intensively only for both regions. Meanwhile, the other regions tend to slower the follow up of policy package³.

Policy disparities between regions may cause unfair business competition between them as well. Entrepreneurs in Jakarta-Surabaya tending to get ease on the licensing and the cost for local taxation, while entrepreneurs in other regions potentially not having the same benefits. Burden on overlapping licensing and burden of tax cost is potentially creating barriers for entrepreneurs in other region. As unitary state, Indonesia should be able to create fairness on business competition in all regions. In advance, the various implementation on economic policy package between regions

¹ There are 15 Economic Policy Packages that has been issued by Government of Indonesia and still on going today.

² Earlier Indonesia was on rank 106 of 189 countries. World Bank. (2017). *Doing Business 2017: Equal Opportunity for All*. Washington DC, USA: World Bank.

³ KPPOD. (2016). *Evaluasi Pelaksanaan Paket Kebijakan Investasi di Daerah*. Jakarta, Indonesia: Komite Pemantauan Pelaksanaan Otonomi Daerah

could create a larger economic gap between regions in Indonesia.

Therefore, this writing arranged in order to describe the potential problems related to unfair business competition that may occur when policy delivery of economic policy package XII being not implemented properly by local governments. By approaching on the concept of anti-competition policy making, regulation, economic impact disparities and the economic policy XII in the regions, this writing is going to discuss these problems.

Economic Policy Package XII

Economic Policy Package XII has been issued by GoI based on crummy investment climate in Indonesia which earlier, Indonesia was on the 106 of 189 countries on EoDB 2016. EoDB Measurement is used for viewing regulations and procedures to be complied by someone who wants to start business in Indonesia. The target business from EoDB measurement is the small medium enterprises (SME's) in trade and services sector. There are three indicators of EoDB measurement that must be followed by local government in Economic Policy Package XII: starting the business, construction permit and registering property. Therefore at least local government should change their regulation and implement the new policy. This policy is part of deregulation where the GoI change the regulation at ministry level to simplify the procedure, time and cost (specially for licensing). The differences between before (ex ante) and after (ex post) policy are exposed in following table:

Table 1 Regulation of Economic Policy Package XII

Before (Ex Ante)	After (Ex Post)
<p>Trade Minister Regulation Number 77/MDAG/PER/12/2013 concerning Publishing Trading License (Surat Izin Usaha Perdagangan/ SIUP) and Company Register (Tanda Daftar Perusahaan/TDP) Simultaneously for Trade Company</p> <p>Publishing SIUP and TDP simultaneously for trade company in three days.</p> <p>(Burden of time)</p>	<p>Trade Minister Regulation Number 14/MDAG/PER/3/2016 concerning revision of the Trade Minister Regulation Number 77/MDAG/PER/12/2013 concerning Publishing Trading License (Surat Izin Usaha Perdagangan/SIUP) and Company Register (Tanda Daftar Perusahaan/TDP) Simultaneously for Trade Company⁴</p> <ul style="list-style-type: none"> • Publishing SIUP and TDP simultaneously for trade company in two days. • Online System <p>(Simplify the procedure, time and cost)</p>

⁴ By 2017, GoI also issued new regulation to support this regulation which are Trade Minister Regulation Number 7 of 2017 and Trade Minister Regulation Number 8 of 2017. The regulation stated that to abolished the re-registration process for SIUP and cost to re-registration process for TDP.

<p>Publics Works and Public Housing Minister Regulation Number 24/PRT/M/2007 concerning construction permit (Izin Mendirikan Bangunan/IMB)</p> <ul style="list-style-type: none"> • Publishing construction permit for all construction in 60 days. • Guidelines for publishing construction permit in the region <p>(Burden of time)</p>	<p>Publics Works and Public Housing Minister Regulation Number 05.PRT/M/2016 concerning construction permit (Izin Mendirikan Bangunan/IMB)</p> <ul style="list-style-type: none"> • Publishing construction permit for simple construction (one floor) in three days • Publishing construction permit for simple construction (two floor-four floor) in three days • Guidelines for publishing construction permit
<p>No specific regulations for guidance to publishing construction permit and certificate for SME's</p>	<p>Publics Works and Public Housing Minister Letter Number 10/ SE/M/2016 concerning Publishing Construction Permit and Certificate for SME's</p> <p>Guidance for local government to publishing construction permit and certificate for SME's (Simplify the procedure, time and cost)</p>
<p>Regulation Number 90/M-DAG/PER/12/2014 concerning the guidance warehouse</p> <p>Guidance for local government to publish warehouse register (Tanda Daftar Gudang/TDG) and certificate separately</p>	<p>Trade Minister Regulation Number 16/MDAG/PER/3/2016 concerning revision of Trade Minister Regulation Number 90/M-DAG/PER/12/2014 concerning the guidance warehouse</p> <p>Guidance for local government to publish warehouse register (Tanda Daftar Gudang/TDG) and certificate simultaneously</p> <p>(simultaneous procedure accelerating time and cutting burden of cost)</p>
<p>Minister of Home Affairs Regulation Number 27 of 2009 concerning nuisance permit</p> <p>nuisance permit is one of basic permit to starting business</p> <p>(overlapping with environment permit/environment document and burden of cost and time)</p>	<p>Minister of Home Affairs Regulation Number 19 of 2017 concerning abolish nuisance permit</p> <p>Abolished nuisance permit</p>

In order to deliver this policy into beneficiaries (SME's), Local Government should revise their regulations as well. The new policy is just a guidance for Local Government. Therefore, Local Government should deliver the policy by change their policy (deregulation at local level) and implement the new policy.

But in fact, there are some policy disparities that happened as the result of policy delivery process of Economic Policy Package XII did not going well in all regions.

There was only Jakarta and Surabaya who have followed up the policy by regulation and the implementation, while other regions have not done it yet. Other regions such as Bandung, Palembang, Pontianak and Manado did not implement Economic Policy Package XII comprehensively. Although in fact, those regions have an in-line policy with the Economic Policy Package XII, but this is not enough to accomplish all of the target of GoI policy. Only Jakarta and Surabaya had comprehensively implemented specific regulation regarding the policy as table below.

Table 2 Jakarta-Surabaya Implementation on Economic Policy Package XII

Regions	Regulation
Jakarta	<ol style="list-style-type: none"> 1. Governor Instruction DKI Jakarta Number 42 of 2016 concerning The Acceleration of Ease of Doing Business Target. 2. Decision of One Stop Service DKI Jakarta Number 31 of 2016 concerning The Target of Ease of Doing Business Licensing and Non-Licensing Services.
Surabaya	<ol style="list-style-type: none"> 1. Mayor Surabaya Regulation Number 6 of 2016 revision on Mayor Surabaya Regulation Number 1 of 2015 concerning business type that should have environment license. 2. Mayor Surabaya Instruction Number 3 of 2016 concerning the dismissal of nuisance permit in Surabaya

The other regions still not comprehensively follow up the GoI policy. Even in the Manado for example, there are local units that did not even know about policy packages that have been issued by GoI. Based on KPPOD study, these are a few regions who are not implement the Economic Policy Package XII regulation⁵:

1. Trade Minister Regulation Number 14/MDAG/PER/3/2016:

Bandung, Denpasar and Palembang.

2. Minister of Public Affairs Regulation Number 22 of 2016:

Pontianak, Palembang, Manado and Bandung

This condition happened because of several problems, especially from central and Local Government at the policy delivery process⁶. **First**, the packages information carried out in different ways to regional by central government. Distinction delivery of policy information has caused the diversity of knowledge in delivering deregulation in the region. The early package XII related to the effort to increased

⁵ KPPOD. (2016). *Evaluasi Pelaksanaan Paket Kebijakan Investasi di Daerah*. Jakarta, Indonesia: Komite Pemantauan Pelaksanaan Otonomi Daerah.

⁶ KPPOD. (2016). *Evaluasi Pelaksanaan Paket Kebijakan Investasi di Daerah*. Jakarta, Indonesia: Komite Pemantauan Pelaksanaan Otonomi Daerah.



EoDB by 2017 has been delivered only for Surabaya and Jakarta. Socialization to the leader of the regions brought a strong commitment to apply the policy. While socialization to other region still delivered in partial ways to local units by ministry and provincial government.

Second, the low integrity of employee in the regions still part of the problems that the package XII did not delivered well in regions. Some of the employee in the local units (especially planning units) did not have an initiative to search the new regulation that has been issued by GoI. Not all of the local units have the same initiative, therefore the implementation of policy delivered partially in the regions.

Third, the difference goals and agendas between central and local governments are the main obstacles upon the region. By issuing the policy package regulations, every region expected were able to deliver it. But it is turns out that local government just focus only on their planning document (RPJMD and RKPD). This have the big impact where the government didn't have the same perspective with new regulation and plodding to implement the policy package. Only Jakarta and Surabaya were actually had the responsibilities on policy package XII because both regions are the sample for EoDB 2017 measurement.

This disparities policy between region may create a problem for economy in Indonesia, especially in competition issue. Unfairness in business competition could be generated by the gap policy between one region and another. Jakarta and Surabaya could make a better investment climate while others still have problems on it.

Law Number 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Practices: Who Bound Who?

In order to create fair business competition, Law Number 5 of 1999 was designed to rectifies erroneous conduct by several economic actors who control the market.⁷ The entrepreneurs who have been close to the ruling elite acquired excessive privileges that created a social gap, which leading to centralization of economic power against individual or certain groups. This condition was embodied in the form of, among others, monopolistic practices and unfair business competition which

⁷ Sutrisno Iwantono. (2004). Status, Wewenang dan Tugas KPPU, presented at Worskhop of Business and Competition Law, Jakarta, 2004.

cause damage to the public and which are in contradiction with the goals of social justice.⁸

The decision was made due to change of national economic policy paradigm from centralistic approach where the government primary role is acting as agent of economic development to reasonable economic system where entrepreneurs act as sole player in the market.⁹ Consequently, the two role of government that had long as businesses and regulator, turns into regulator only. Clear role separation between government as regulator and entrepreneur as economic player shall provoke better economic growth. Government as regulator is mandated to develop business climate to create fair and high competitive business environment in all economic sectors. One of government effort to create a fair business competition is clearly written in elucidation of Law Number 5 of 1999 stated that the law is promulgated to establish legal procedure and provide equal protection to all entrepreneurs, so it come to an end that Law Number 5 of 1999 was crafted to regulate fair business behaviour only between entrepreneurs/business actors.

Although focused on business actors but there are other factors outside business actors that play a role in creating a competitive market. One of the significant factors comes from government by their law which is accommodated on article 50 point a of Law Number 5 of 1999. This becomes logical because it is not uncommon government policy is contrary to the principle of fair business competition.

Business actors are the main subject of Law Number 5 of 1999. For instance, article 17 -24 prohibits a number of activities that should not be done by a business actor. Another example can be found on articles 25-28 that regulate some prohibition related to dominant position. All of those articles clearly regulate activities that can be done by an individual business actor. Furthermore, article 4 through 16 which are classified as prohibited agreements prohibit activities that done by two or more business actors since an agreement only possible occurs if there is more than one party.

The definition of business actor can be found on article 1 section e of Law Num-

⁸ General Elucidation of Law Number 5 of 1999.

⁹ Hermansyah. (2008). *Pokok-pokok Hukum Persaingan Usaha di Indonesia*. Jakarta, Prenada Media Group.



ber 5 of 1999 that define business actor as an individual person or a company, in the form of legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities in economic sector through contracts, both individually or collectively.

Unfair Competition as Result of Government Policies

On the other hand, unfair competition is not only affected by and between entrepreneurs, but also government policy by creating barrier on investment decisions for economic actor. The following paragraphs elucidate the components of a competition policy that have bearing on investment decisions:¹⁰

1. Trade policy

A country's trade policy can play an important part in shaping competition in its economy. The volume of goods available in the market depends on the extent to which the economy is open to the outside world. Having a tight trade policy restricts competition in the market, and can result in the manipulation of the market by dominant domestic firms. On the other hand, trade liberalization results in an influx of goods into the economy, which could also have a huge impact on the nature and extent of competition in the market, and encourages domestic competition as well. In order to achieve an optimal level of competition in an economy the trade policy of a country should be formulated to stimulate private participation in the economy (both in terms of attracting new firms and also in strengthening the position of existing ones).

2. Industrial openness

The level of competition in an economy reflects the country's attitude towards entry and growth of firms. Regulations focusing on entry and establishment of business in a country are important in shaping up competition. If a country has a restrictive industrial policy regime in which entry and growth of firms is subjected to stringent licensing conditions and monitoring, a low

¹⁰ Centre for Competition, Investment & Economic Regulation (CCIER). (2008). Competition Policy Enforcement Experiences from Developing Countries and Implications for Investment, presented at OECD Global Forum on International Investment VII 'Best practices in promoting investment for development', Paris, France, 2008.

level of investment is guaranteed and the resulting level of competition is also low. An effective competition policy advocates for the removal of obstacles and facilitates investment flows by providing a predictable legal and regulatory environment that reduces the scope of arbitrary decision-making, thereby instilling transparency in the system.

3. Attitude towards privatization

Privatization enhances the potential for competition by providing conditions conducive for entry of new players. Government involvement in the economy, particularly in direct competition with private companies, deters private participation and stifles competition. The intention of a country to improve competition in the market through privatization can be handicapped if proper care is not taken in planning its privatization program.

4. Other critical policy considerations

There are certain other policy considerations that can have an impact on competition by affecting the firms' decision to enter an industry. The formulation of competition policy should take into consideration implications of such policies as well:

a. Labour policy;

Labour regulations impact production cost and convenience adversely and result in entry into the informal sector being preferred to significant investment in the formal sector.

b. Exit Rules;

Certain regulations like bankruptcy laws, insolvency laws might make it difficult for companies to exit their business in a country, and thus negatively affect investment decisions by prospective investors.

c. Consumer protection policy.

Although it is generally accepted that there is a convergence between the objectives of consumer protection policy and competition policy, there exists scope for conflict as well which works to the detriment of investment.

Dimension of policy is not only policy making but also policy implementation or

delivery. A policy may good in making but poor in delivery. Policy making does not end with the passage of a regulation by President. Rather, it shifts from President Office to the bureaucracy-to the departments, ministry, agencies, commissions of the executive branch and local governments.¹¹ Failure in delivery means failure in policy itself. This principal shall apply to Economic Policy Packages XII.

Erroneous implementation of those policy could be considered as government policy that creating barriers. Disparities between region in competition is reflected by local government attitude towards entry and growth of firms. As mentioned above, entrepreneurs in Pontianak, Palembang, Manado and Bandung may impeded to establish business than Jakarta and Surabaya due to tangled procedure to obtain nuisance permit.

Unfairness may generally occur in various of business and relevant market, if the local government does not remove the obstacle for licensing condition. This restrictive policy in local government may create obstacle to entry and shall continue when the impediment condition for business licensing still exist.

As previously mentioned, unfair business competition may be generated by government policy. That is why KPPU as the enforcer of Law Number 5 of 1999 as stated on article 35 letter e has a function to provide advice and consideration to the government on policies that are considered contrary to fair business competition.

The advice and consideration by KPPU does not have to wait for the request from the government but it can also come from KPPU's own initiative in observing the government policies that have potential creating unfair business competition. Furthermore, the subject of advice and consideration by KPPU can be addressed to the central government as well as the local government depending on the object of that particular policy.

There are several examples of government policies that considered contrary to fair business competition in Indonesia, as follows:

1. Government policy on airline service industry is one example of government policies that are contrary to fair business competition. At the beginning, aviation service industry is a prohibited sector for a new business actor. Moreo-

¹¹ See Thomas R Dye. (2013). *Understanding Public Policy*, 55-58. United States of America, Pearson Education Inc.

ver, The Government through the Minister of Transportation Decree Number 25 of 1997 intervened the market by appointing Indonesian National Air Carriers Association (INACA) to fix the upper and lower limit price for flights. In July 2001, KPPU advised the government to revoke the authority to INACA and cancel the price fixing made by INACA.¹² The result of that advice can be seen from the current market of airline service which is very competitive and efficient. The airlines compete each other to make an affordable and safe product for customers. As today, we can see that flying by plane is no longer a luxury thing and everyone can enjoy it.

2. In March 2014, KPPU advised the government of Aceh province to revoke The Instructions of the Governor of Aceh Number 01 INSTR / 2007 concerning Enactment of Certificate of Business Entity / Certificate of Registration of Company in Nanggroe Aceh Darussalam Province. This policy requires business entities from outside the Aceh Province to re-register and obtain re-certification for a business entity certificate, or a corporate registration certificate from the Aceh Provincial Chamber of Commerce and Industry. In this policy, KPPU considers that the central government regulation on registration and certification obligation is national, so re-registration in the province will create barriers to entry for business actors outside the province in following the procurement process of goods and services in that area.¹³ This condition also can lead to discrimination among the origin of business actors, as well as incurring new costs for business actors outside the region to compete in the province.
3. In the end of 2016, KPPU gave advice and consideration to the government of DKI Jakarta province related to Electronic Road Pricing (ERP). The policy that stated in the Governor Regulation (Pergub) of DKI Jakarta Number 149 of 2016 concerning Electronic Paid Traffic Control is considered potentially violate Law Number 5/1999 concerning Prohibition of Monopolistic Practic-

¹² Banyak Kebijakan Pemerintah Tidak Pro Persaingan Sehat (2009, February 21). Retrieved from <http://www.hukumonline.com/berita/baca/hol21267/banyak-kebijakan-pemerintah-tidak-pro-persaingan-sehat>

¹³ Ini 5 Saran Komisi Pengawas Persaingan Usaha untuk Pemerintah (2014, June 30). Retrieved from <http://www.viva.co.id/berita/bisnis/517413-ini-5-saran-komisi-pengawas-persaingan-usaha-untuk-pemerintah>



es and Unfair Business Competition. The important points of the regulation that must be changed, namely Article 8 of Pergub DKI Jakarta Number 149/2016. The reason of this change is because it is only allowing the use of Dedicated Short-Range Communication (DSRC) technology of 5.8 GHz frequency in the application of ERP on the streets of Jakarta while there another technologies such as Radio Frequency Identification (RFID) or Global Positioning System (GPS). As a result, the inclusion of DSRC technology with a certain frequency prevents vendors with other technologies to follow the procurement.¹⁴ DKI Jakarta

Government accepted the advice from KPPU and revised Article 8 paragraph 1c of Pergub DKI Jakarta Number 149/2016 so that not only business actors with Dedicated Short Range Communication (DSRC) technology can follow the tender of ERP but also all business actors in the sector of information and communication technology with other technologies.

Government policies that mentioned above are the examples of policies that substantially or in policy making dimension contrary to fair business competition. Policies that are substantially inconsistent with fair business competition constitute the majority of the object of KPPU's advices and consideration. Potential problems arise when there is a policy that is not substantially contrary to fair business competition, otherwise aims to provide convenience for business actors but at the level of policy delivery leads to unfair business competition.

This condition seems to be seen in the unevenness of policy delivery of Economic Policy Packages XII between regions. As previously mentioned, this condition has the potential for disparities related to ease of investment between regions and further will be able to cause barriers and unfair business competition. As KPPOD results, Economic Policy Package XII didn't delivered well because both government (Central and Local) didn't delivered it well also. Distinction delivery of policy information, low integrity of officer, and different goals-agendas between central and local governments are the causes of lousy policy delivery.

¹⁴ KPPU Apresiasi Langkah Pemprov DKI Merevisi Pergub ERP (2017, January 4) Retrieved from <http://www.kppu.go.id/id/blog/2017/01/kppu-apresiasi-langkah-pemprov-dki-merevisi-pergub-erp/>

Based on explanation above, there is an urgency of KPPU to supervise and then provide advice and consideration to government policies that are not only substantially contrary to fair business competition but also on its policy delivery potentially lead to unfair business competition.

Conclusion

The purpose of Law No 5 of 1999 is to ensure the certainty of equal business opportunities for large, medium, and small-scale business by regulating fair business behavior only between entrepreneurs/business actors. But it's not necessarily mean unfair competition occurred limited to condition provided by law. It also could be generated by improper policy delivery which creating barrier on investment decisions for economic actor. Regulations focusing on entry and establishment of business in a country are important in shaping up competition. If a country has a restrictive industrial policy regime in which entry and growth of firms is subjected to stringent licensing conditions and monitoring, a low level of investment is guaranteed and the resulting level of competition is also low, which is considered as barrier to entry those business.

Pursuant to the concept of government policy may shape unfairness in competition, improper implementation of deregulation may lead to generating unfair business competition by gap or discrepant policy between one region and another. Different treatment regarding ease on the licensing and the cost for local taxation (Economic Policy Package XII) between Jakarta-Surabaya and other regions, while entrepreneurs in other regions potentially not having the same benefits, may considered as unfair.

As discussed earlier, government policy as one of the things that can lead to unfair business competition can occur at a substantial level and at the level of implementation of the policy. So far, KPPU has given more advises and considerations on policies that are substantially contrary to fair business competition. Meanwhile, there are also government policies that are in implementation contrary to fair business competition as occurred in Economic Policy Packages XII. Therefore, it is important for KPPU to actively supervise government policies in the implementation level in order to realize the fair competition. Role of KPPU as leading institution on promot-

ing competitive market in Indonesia is necessary to provide advice and consideration to the government related to unfair policies or improper policy delivery. KPPU can assist and conducting advocacy to local government to shape better business climate.

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