

Technium.

49/2023



The 7th International Conference on Social Sciences
Organized by Faculty of Social Science
and Law Manado State University

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Legal Study of Anti-Monopoly Activities and Fair Business Competition in the Business World

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Abstract

The goal of this study is The purpose of this writing is to learn about the law of fair business competition, as well as to understand the legal rules against monopoly activities and unfair business competition in the business world, while the benefits that can be obtained from the results of this research are beneficial for practitioners of law, particularly in the legal regulation of business competition in companies, and can be used as study material for legal arrangements in the event of monopoly activities and unfair business competition. The author defines the issue as follows: What is the objective of fair business competition legislation, and what are the legal regulations in the business sector against monopolistic activities and unfair business competition? The study's findings indicate that in the business world, business rivalry is unavoidable; in order for products and businesses to exist, organizations must fight to gain the market. Business rivalry is an unavoidable need at this time, owing to the rising number of firms that have been founded and the more aggressive management of corporations in marketing their products to the market in order to increase profits. The goal of business competition law is to ensure that an economy is based on business competition, with the assumption that through fair business competition, producers will strive to achieve consumer satisfaction through quality products, low prices, and the use of the fewest production resources possible.

Keywords: Anti Monopoly, Competition, Business World

I. Introduction

The implementation of Indonesia's development cannot be separated from the role of the business world [1], both private companies and government-owned companies, foreign and mixed companies. In the market in Indonesia, sometimes some economic actors monopolize a field that concerns the interests of many people, such as the form of monopoly that exists in the midst of society which is still tolerated by the community because it cannot be separated from government interference, such as electricity by PT. PLN (Persero), telephone by PT. Telkom (Persero), as well as basic necessities by BULOG.

In the business world many play a role, especially in determining prices, say like Pertamina [2] which has a major role in determining fuel prices in Indonesia, through changes in oil prices made by PT. Pertamina (Persero) [3] will create a chain effect of increasing or decreasing prices for other activities such as transportation rates, prices of basic commodities such as rice which will also be corrected as a result of these price changes because entrepreneurs will also take into account transportation costs related to the use oil that has been changed by PT. Pertamina (Persero) [4]. Likewise with other products [5] such as wheat flour which is controlled by PT. Indofood Sukses Makmur Tbk. in production, this will certainly experience price changes imposed by these large companies, will be very influential for other companies both in pricing and in marketing. These changes will affect the market [6] which will have an impact on the wider community.

In the business world [2], business competition is something that cannot be avoided, to make products and companies exist, like it or not, like it or not, companies have to compete to seize a narrower and more selective market due to the increasing level of education and consumer awareness [7]. better. Through fair business competition, it is hoped that producers will strive to achieve consumer satisfaction through quality products, creating low prices by using the smallest possible production resources [8]. Also, through fair business competition among producers, it is possible for consumers to obtain the best goods and services according to their wishes and abilities, because economically, fair business competition will maximize consumer welfare by increasing two things: first, by making goods or services that are desired by society, which is indicated by the willingness of consumers to pay for it; secondly, to produce goods or services at the lowest possible production price, which uses the minimum possible

resources through efficiency in the production process or through automation of the production process in the company [9].

In order to create a conducive climate for fair business competition, business competition law depends entirely on the market operational system, for this reason it is interesting to study what is the objective of fair business competition law and how are the legal rules for anti-monopoly activities and fair business competition in business world.

2. Research Method

This study is a type of legal research known as normative legal research. The normative legal approach is used to investigate fundamental legal material, namely Law No. 5 of 1999, which prohibits monopolistic acts and unfair commercial competition. Secondary legal approach, which contains a large amount of supporting literature [10], as well as tertiary legal materials in the form of legal dictionaries and Indonesian language dictionaries. This strategy is used to execute legal norms defined in laws, regulations, and court judgements. Positive law identification and inventory methods were employed as a preliminary activity to collect legal materials, which were then assessed using normative descriptive analysis by describing and explaining in detail [11].

3. RESULTS AND DISCUSSION

3.1. Monopolistic Activities in the Business World

Many company activities have an influence because they are directly related to the wider community [12]. In practice, there are business activities in the business world that follow the principles of free business competition (free market) [13], meaning that the price of buying and selling is set through the forces of demand and supply from the market, but not infrequently certain economic actors carry out monopolies with the aim of being able to freely they fix the price and get the maximum profit from the transaction because there are no more business [14] competitors in their business activities [15].

Monopoly is defined literally in Chapter I Article 1 Provisions of Law No. 5 of 1999 as "control over the production and or marketing of goods and or the use of certain services by one business actor or one group of business actors [16]. Meanwhile, in the, Monopoly is defined as the exclusive right (or authority) to carry on a certain business or trade, create a specific product, or control the sale of the whole supply of a given commodity entrusted to one or more beneficial persons or companies. Unlike the legal term, which clearly refers to market dominance, Black's Law Dictionary emphasizes the presence of a "privilege" that prevents open competition, which, of course, will eventually lead to market domination [17].

Natural monopoly can occur through a variety of methods, including the following:

1. Monopoly develops as a consequence of a "superior skill," one of which can be implemented through the state's exclusive award of patents, based on rules and regulations that apply to select business actors based on the results of research and development on certain technologies.
2. A monopoly known as a "trade secret," which, although not receiving exclusive "recognition" from the state, is able to produce a superior product using its "secret" technology.
3. Monopoly is caused by state handouts. This is evident in the application of the provisions of Article 33 paragraph in Indonesia (2) and Article 33 paragraph (3) of the 1945 Constitution.
4. Monopoly is defined as a "historical accident." It is referred regarded as a "historical accident" since the monopoly developed by chance and as a result of a natural process, which is determined by numerous circumstances connected to the location of the monopoly. The assessment of the relevant market that allows for the development of monopoly is extremely important in this scenario.

Monopolistic practices, on the other hand, are defined by Law No. 5 of 1999 as the concentration of economic power by one or more commercial actors, which results in control over the production and/or marketing of certain goods and/or services, creates unhealthy commercial competition, and may harm the public interest.

To assess the progress of a monopolization process, so that a prohibited form of monopoly can occur, there are several things that need to be considered, namely:

1. Determination of the relevant market;
2. Evaluation of market conditions and the number of business actors;
3. Whether there is a "will" to monopolize by the particular business actor.

There is no prohibition for individuals or legal entities running a business to grow their business to a large extent, however, this business development must be followed in appropriate and correct ways. Basically, the business world instinct has a "general intent" to become big and tend to be monopolistic. The reality is that there are

many markets that want to be big, sometimes it is carried out in unfair and unhealthy ways. This is clearly not desired by the business world in general. If we return to the meaning contained in Section 2 of the Sherman Act, where emphasis is placed on the process of creating a monopoly, it is clear that the use of methods that can cause unfair business competition is clearly a violation of the monopoly provisions.

3.2. Unfair Business Competition

Monopoly practice is defined as the termination of economic power by one or more business actors, resulting in control of the production and or marketing of particular products and or services, resulting in unfair business competition that can be damaging to the public interest [18]. This definition demonstrates that there are four significant things we can state about corporate competitiveness, notably [19]:

1. There is an economic power concentration;
2. The power concentration is in one or more economic business players;
3. The economic power concentration generates unfair business competition; and
4. The economic power concentration is adverse to the public interest.

According to Article 1 number 6 of Law No. 5 of 1999, unfair business competition is defined as competition between business actors in carrying out production and or marketing activities of goods and or services that are dishonest, illegal, or obstruct business competition.

As long as a concentration of economic power does not result in unfair business competition, a monopolistic practice that violates or is contrary to this law cannot be said to have occurred, even if the monopoly itself has occurred (in the form of production control). and/or marketing of certain goods and/or services). So it is evident that monopoly is not illegal in and of itself; what is prohibited are monopolistic activities and unfair competition. rivalry legislation is entirely dependent on the market operating system to establish a favorable environment for fair commercial rivalry:

- a. Determine the type of goods or services to be produced;
- b. How can the existing resources be properly allocated in a production process; And
- c. To whom will the production be distributed.

Although it is said at the macro level that fair business competition aims to maximize consumer welfare, the existence of fair business competition itself does not automatically create maximum income distribution. So, even though fair business competition seeks to create business justice, it does not necessarily or does not produce justice in the distribution of income.

3.3. Definition of the Business World

The definition of "business world" [20] can vary depending on the point of view and emphasis given by economists and business. Here are some definitions of the business world according to experts:

1. Adam Smith, a classical economist, described the business world as an economic system based on free markets and fair competition. According to him, the business world is a place where individuals and companies aim to gain profits by selling goods and services.
2. Joseph Schumpeter, an economist and social scientist, describes the business world as a place where innovation and economic change occur. He propounded the concept of "creative destruction" in which new businesses replace old ones through technological innovation and new ideas.
3. Peter Drucker, a management and business expert, defines the business world as the environment in which organizations and companies operate to achieve their goals. For Drucker, the business world includes various activities such as management, marketing, production, and human resources.
4. Michael Porter, a business strategist, views the business world as an arena of competition between companies. According to him, companies compete in creating added value and achieve competitive advantage through different strategies.
5. John Maynard Keynes, a macro economist, views the business world as an important component in the economy. For Keynes, the business world influences the level of employment, spending, and overall economic growth.

The definitions above are only part of the various perspectives and emphasis in defining the business world. Every expert has a different approach and perspective on this phenomenon, and understanding can change along with the development of thinking and changes in economic and business conditions.

Theoretically it is said that the market system will work by itself, but in a free and open trading system, where everyone can freely determine (both individually and jointly) the actions to be taken by him, not everything can work. continues without a hitch (eg in price fixing). The main objective of this business competition law is to

reduce the distance between ideal business competition (theoretically) and the reality of the business world which originates from the implementation of individual rights in the practice of business activities.

3.4. Fair Business Competition Law Review

Economically, fair business competition will maximize consumer welfare by increasing two things, namely (1) Allocative efficiency (ie making goods or services desired by society, as indicated by the willingness of consumers to pay for them) and (2) Productive efficiency (ie producing goods or services at the lowest possible production price, using the minimum possible resources) [21].

To prevent unfair commercial competition from emerging and progressing to monopoly, the law restricts certain "actions" by business actors. legislation No. 5 of 1999 prohibiting monopolistic practices and unfair business competition is the current reference legislation. These acts can be broadly divided into two types. The first is an activity conducted within the context of "cooperation" with other economic business operators, as defined in:

1. Article 4 in the form of Oligopoly;
2. Articles 5 to 8 in the form of joint price fixing;
3. Article 9 in the form of joint territorial division;
4. Article 10 in the form of boycott cooperation;
5. Article 11 in the context of forming a cartel;
6. Article 12 for Trusts;
7. Article 13 in the form of oligopsony;
8. Article 14 in the context of vertical integration;
9. Article 15 in the form of a closed agreement;
10. Article 16 in the form of an agreement with a party abroad.

Second, in the form of legal actions or activities undertaken by business actors and/or groups of business actors without the involvement of other business actors or groups of business players, which are classified in this legislation as:

1. Monopoly, as defined in article 17;
2. Monopsony, as defined in article 18;
3. Market control, as defined in articles 19 to 21; and
4. Conspiracy, as defined in paragraphs 22 to 24.

Legislation No. 5 of 1999, as one of the laws and regulations enacted to establish "social engineering" for society, the business world in general, and business actors in particular, is outfitted with numerous restrictions governing the punishments that can be imposed on those who break the requirements of this legislation.

The legal sanctions are basically classified as follows:

1. Administrative measures (article 47 paragraph (2));
2. Principal criminal sanctions (article 48); And
3. Additional criminal sanctions (article 49).

3.4.1. Administrative Actions

The following administrative measures are permissible under this law:

- a. Confirms the termination of legally forbidden agreements, as defined in Articles 13, 15, and 16 of laws and regulations:
 - Agreements to control the production and/or marketing of goods and services, which can lead to monopolistic behavior and/or unfair business competition;
 - Agreements to determine prices for goods and services to be paid or violated by consumers in the same relevant market;
 - Agreements requiring buyers to pay different prices than other buyers for the same goods and/or services;
 - Agreements to set prices below market rates, which can lead to unfair commercial competition;
 - Agreements to set prices below market rates may lead to unfair
 - ;
 - An agreement to compel the recipient of goods or services not to sell or complete the goods or services received at a lower price than the agreed price, resulting in unfair business competition;
 - An agreement to divide marketing areas or markets for goods and/or services in order to create monopolistic behavior and/or unfair business competition;
 - Agreements that prohibit other commercial entities from doing the same business, both in domestic and foreign markets;

- Agreement to refuse to purchase and sell other commercial entities' goods and services in order to: ONE. cause or suggest loss to other commercial entities; or b. prevent other commercial entities from purchasing and selling goods and services in the relevant market.
- agreements designed to influence pricing by restricting the production and/or marketing of certain goods and/or services, which may result in monopolistic behaviors and/or unfair commercial competition;
- A partnership agreement to establish a joint venture firm or a bigger corporation while preserving the existence of each company or member companies with the goal of controlling the production and/or marketing of products and/or services, which can result in monopoly and/or unfair commercial competition;
- An agreement to directly control the purchase or receipt of supplies as part of controlling the price of goods and services in the relevant market may result in monopolistic behavior and unfair business competition;
- Agreements that obligate recipients of goods or services not to supply or re-supply said goods or services to certain parties and/or locations; - Agreements that require recipients of certain goods or services to agree to buy other goods or services from the same party; - Agreements that require recipients of certain goods or services:
 - a. Is willing to acquire additional goods and/or services from the supplying business actor; or
 - b. Will not purchase the same or similar goods and/or services from competing business actors.
- International treaties with third parties that include stipulations that might lead to monopolistic behavior and/or unfair economic competition; and/or
 - c. Directing business actors to cease signing or implementing agreements that lead to vertical integration, which can be accomplished by canceling the agreement, transferring a portion of the firm to another corporate entity, or changing the shape of the production chain, among other things. what is prohibited by law under article 14; and/or
 - d. ordering economic actors to stop activities that have been proven to have given rise to monopolistic practices and/or creating unfair trade competition and/or causing harm to the public, in the form of specific actions rather than economic actors' commercial activities in general;
- Orders to business actors to stop abusing their dominating position; and/or
- Determination of cancellation of mergers or consolidations of business organizations and purchase of shares as specified in article 28 of the legislation; and/or
- Compensation for business players and other parties harmed; and/or Fines ranging from IDR 1,000,000,000.00 (one billion rupiah) to IDR 25,000,000,000.00 (twenty-five billion rupiah).

3.4.2. Criminal Sanctions

In addition to special administrative sanctions for certain legal actions that violate the provisions of the law, principal criminal sanctions are also imposed according to the provisions of the law as follows:

- a. Violations of Article 4 addressing production control, Article 9 concerning territory, Article 10 attempts to impede the commercial operations of other enterprises, Article 11 about production regulation, and Article 12 regulating the creation of professional groups. Commercial Syndicate, Article 13 Concerns Cooperation in Controlling Supply of Trading Parties, Article 14 Concerns Vertical Integration, Article 16 Concerns Prohibited International Agreements, Article 17 Concerns Monopoly Cartel, Article 18 Concerns Monopoly, Article 19 Concerns Market Control, Dominant Position, Article 27 Concerns Majority Holding, and Article 28 Concerns Merger, Consolidation, and Maximum Rays.
- b. Violating the prohibitions of Article 5 relating to joint price fixing, Article 6 relating to variances in selling prices, Article 7 relating to setting prices lower than market prices, and Article 8 relating to establishing specific restrictions or rules. reference price, article 15 relating to separate agreements with third parties, article 20 relating to sales loss, article 21 relating to production cost fraud, articles 22 to 24 relating to cartels, and article 26 relating to competitiveness shall be punished with a fine of not less than IDR 5,000,000,000.00 and a maximum of Rp. 25,000,000,000.00 (with a maximum imprisonment of Rp. 25,000,000,000.00).
- c. Violations of Article 14 involving interrogation of perpetrators may result in a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and up to Rp. 5,000,000.00 (five billion rupiah) or imprisonment for a maximum of three (three) months.

3.4.3. Additional Criminal Sanctions

In addition to the main punishment specified in Article 48 paragraphs (1) to (3) of the Criminal Code, the provisions of Article 49 of the Criminal Code, which regulates additional punishment as a result of the revocation of the provisions of Article 10 of the Criminal Code, stipulate that criminal acts governed by Article 48 may be subject to additional punishment in the form of:

- a. Revocation of Business License; or

- b. Participation by commercial organizations banned by law.
- c. Put a halt to certain activities or acts that cause third-party damages.

4. CONCLUSION

The purpose of business competition law is to ensure that the economy is based on business competition, with the assumption that through fair business competition, producers will strive to achieve consumer satisfaction through quality products, creating low prices using the smallest possible production resources, Economically, fair business competition will maximize consumer welfare by increasing two things, namely (1) Allocative efficiency (ie making goods or services desired by society, as indicated by the willingness of consumers to pay for them) and (2) Productive efficiency (ie producing goods or services at the lowest possible production price, using the minimum possible resources). Legal regulations regarding monopoly in the business world in Indonesia refer to Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, and to prevent unfair business competition from occurring which leads to monopoly, the law prohibits certain "actions" by business actors carried out in the framework of "cooperation" with fellow businessmen. economic actors such as oligopolies, joint price fixing, joint regional division, boycott cooperation, cartels, trusts, oligopsony and agreements with parties abroad.

5. ACKNOWLEDGMENT

The author would like to the Dean of Faculty of Social Science and Law, Manado State University in supporting the publication of this article.

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