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Effect of Monopoly Practice in Relation to Merger

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ABSTRACT

This research is included in the category of normative research, namely research conducted using a library research approach, namely by taking material from legal literature, laws and regulations and other written sources. In an effort to grant permits and supervise the implementation of mergers, as well as prohibit the implementation of a merger if it is considered that the merger may result in restrictions on freedom/fair competition and create a monopoly situation.

The research objectives to be achieved are (1) to obtain clear data regarding monopoly practices in relation to mergers. (2) To find out and reveal the things that cause monopolistic practices. The type of research that will be used in writing this law is normative juridical research.

Keywords: *Monopoly Practice, Merge*

1. INTRODUCTION

As we enter the present era of globalization, corporate rivalry is becoming more intense, and huge corporations are looking for methods to raise their efficiency and, if feasible, improve their performance [1]. One of the many ways a company can optimize existing resources such as capital, management technology, and others in order to obtain new synergies in conducting business activities that refer to efficiency and productivity is through a merger or merger of two or more businesses. The merging of commercial entities has the potential for monopolistic behaviors and/or unfair business competition, according to Law Number 5 of 1999, which is controlled under Articles 28 and 29 of the Anti-Monopoly Law [2].

The development of the economic sector today [3] is increasing rapidly along with the increasing pattern of people's lives which are so diverse, starting from the lowest economic society, middle to the very top.

The economic community [4], especially the business world, has given a bad impression of the notion of monopoly. Besides that, there is also a growing perception among the wider community of the meaning of monopoly which is detrimental to the interests of many people. The word monopoly [5] often haunts the human mind with a situation where a person or group of people exercises control over a certain field of activity absolutely without giving other people the opportunity to take part. By monopolizing a field, it means the

opportunity to dredge or take the maximum profit for individual interests [6].

This is regulated in Article 28 of Law Number 5 of 1999 [7] concerning Anti-monopoly, which states that business actors are prohibited from merging or consolidating entities if the action results in monopolistic practices and/or unfair business competition. commercial or acquisition of shares in other firms that may result in monopolistic activities or unfair commercial competition. Merger actions can help business actors since they can be used to provide funds for business players to develop their firms or enterprises, and this strategy is frequently used by business actors. Market concentration may emerge as a result of mergers and acquisitions, which is forbidden by the Anti-Monopoly Law [8]. That is why the mergers and acquisitions legislation and the anti-monopoly law issue strong warnings to ensure that a merger or acquisition does not breach anti-monopoly provisions or fair competition.

In monopoly there is a power to determine not only the price, but also the quality and quantity of an activity or product offered to the public [9]. In a monopoly, the community does not have the opportunity to make choices regarding price, quality or quantity. The foregoing can directly or indirectly create social jealousy and inequality as well as harm the interests of the general public and the country [10].

As a form of control over a particular market or product, monopoly can not only reap the maximum profit but can also disrupt the current economic system and mechanism, in line with the increasing control over the marketing of certain products [11]. A company or several companies that have a monopoly on a particular product can determine the price of a product as they please, because the market mechanism is no longer working as expected by society [12]. Moreover, the monopolized product is a primary need that is very important for the life of many people and it is certain that they can reap the maximum profit for their individual interests that they get from the community and it can be said that the community has no other choice but to buy the monopoly product/goods [13].

According to Legowo [14] in general, monopolies are very feared, especially in countries that are just starting to try to enter the free world trade arena, because:

1. It is feared that monopoly will raise prices and limit the amount of production (output) compared to market competition;

2. A monopoly is considered to have the ability to produce at a level of quantity with the greatest profit, and this means that the monopoly's income is obtained by taking the purchasing power of consumers (the public);

3. Monopolies can prevent optimal allocation of economic resources, because monopolies will not produce at a level where the average cost is the lowest (inefficient), in contrast to a perfectly competitive market;

4. Monopolistic practices determine selling prices unilaterally, hinder technological improvements, limit companies from entering the industry and because they dominate the market, monopolies can manipulate the market. [15].

In discussing monopoly [16], it cannot be separated from the development of symptoms of wanting to enrich oneself based on the desire to maintain interests, namely the positions and positions obtained. In Law Number 5 of 1999 Article 1 paragraph (1) monopoly is formulated as follows: "Control over the production and or marketing of certain goods and or services by 1 (one) business actor or 1 (one) group of business actors". The process of self-enrichment can arise from a variety of reasons, one of which is carried out through consolidation, acquisition and merger. Through the process of consolidation, acquisition and merger, business entities try to increase their competitiveness, which is thus expected to create efficiency in production to produce quality products at relatively low prices [17].

With this consolidation, acquisition and merger method, a business group does not need to grow a

company from a small one so that it becomes large, but only buys a company that is already large or is currently running [18].

In this paper, only mergers will be used as a way to create fair business competition by increasing efficiency and increasing the rate of technological growth [19]. Merger is a business combination of two or more companies that eventually merge into one of the companies that existed before. This merger process can also cause bad things in the business world and result in unfair business competition among entrepreneurs, giving rise to monopolistic practices that are very detrimental to the interests of society [4].

Monopolistic practices [20] are prohibited because they can hinder fair business competition. Healthy business competition is very important because with competition, efficiency in trade and production can be achieved and can encourage increased creativity. Efficiency in trade can be achieved because with competition, consumers will be able to buy their needs at reasonable prices, while production efficiency will be achieved because producers will produce goods or services with costs and resources.

Many people think that improving a country's economy [21] depends on the hard work of business people and other workers, but the regulations and laws issued by the makers, including those regarding the Business Competition Law and regulations regarding monopoly, also have a significant contribution. Economists say that a society whose economy is open to competition will have lower price levels, better products and a wider choice of consumers [22]. To implement and supervise this, the Monopolistic Practices Law is very much needed, because with this law it is hoped that there will be supervision of the actions of business actors, and furthermore it is hoped that economic efficiency will be achieved and a reasonable level of prices for goods and services will be maintained. and high quality.

The Monopolistic Practices Act contains prohibitions on certain types of agreements and acts of business actors. However, this does not mean that this law only applies to business people, this law applies to all parties involved in business, whether companies, trade associations, manufacturers, professional associations, or individuals.

To deal with the problem of monopoly practices, the Indonesian government established a regulation specifically dealing with monopolies, namely Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition which was promulgated on March 5, 1999. And will become effective one year later or September 5, 2000. In line with ongoing political and economic reforms, it is hoped that the Law on the Prohibition of

Monopolistic Practices and Unfair Business Competition can revive the enthusiasm of the business world in Indonesia to restart the Indonesian economic sector. And it is also hoped that it can bring fresh air to the Indonesian business climate, even though it is currently experiencing a sluggish state. This shows that at least there has been a good intention from the government to open up the economic and business system which so far has been full of protection and monopoly practices both from the government through BUMN (State Owned Enterprises) and private monopolies.

2. RESEARCH METHOD

Philosophically legal research seeks to find the ultimate truth of every existing juridical phenomenon and empirical facts that occur. According to Soejono Soekanto that basically the classification of research is not the same, this depends on the point of view and the field of study that is the object of research. From the point of view of its objectives, legal research is divided into: normative legal research which includes research on legal principles, legal systematics, legal synchronization, history and comparative law. And also sociological or empirical legal research which consists of research on legal identification and on legal effectiveness [23].

3. RESULTS AND DISCUSSION

The practice of mergers always creates conflicting attitudes, where on the one hand mergers are recognized as having a positive impact on the economy. But on the other hand, the fear is that mergers could give birth to monopolies which in fact have a negative impact on the economy.

The negative effects of a merger on a market competition are as follows:

- a. The creation or increase of market concentration which can lead to higher product prices;
- b. Market power is getting bigger which can threaten small businesses [24].

A market concentration can be seen from two factors as follows:

- a. How many market participants for the product in question;
- b. How much market share does it control.

Still, this market concentration can be grouped into three categories as follows:

- a. An atomistic market

In this case, there are many market players who control small market shares. It can be said that in this case there is no market concentration.

b. Monopolistic market

Only one market participant is in the market. So these market players control (100%) market share. Thus the market concentration is very high or even if there are other market players, they only control a small market share.

c. A polygolic market

In this market, two or three market players control the largest market share, while other market players, if any, only control a small part of the market share.

So, in examining the effect of monopoly in a merger, according to the law of monopoly practices, the following factors can be seen:

- a. Price colluding;
- b. Exploited economies of scale;
- c. Power for monopoly;
- d. The oligopolistic interdependence.

A monopoly that is destructive or negative to economic life is monopoly power owned by an agency or company that produces or markets goods or services with the sole aim of obtaining the maximum profit through market domination, so that the agency or company can freely set high prices. This situation results in the public or consumers having to pay a much higher price to buy goods or services that are sold in a monopoly manner.

The practice of mergers will give birth to large-scale companies that are very efficient, so they tend to create monopoly power. With this capability these companies can exercise full control over their products and price levels, which causes other companies to be unable to compete with them, and in turn the giant companies resulting from the merger can freely control market conditions.

Mergers and monopolies have a relationship that is closely related to one another, so that it is not an exaggeration considering the negative impact on economic activity in general, many countries in the world are trying to abolish or at least reduce monopoly practices through statutory regulations, which are called the Monopolistic Practices Law.

Monopoly practice laws are laws and regulations created by a country to protect trade and its economy from illegal control measures, price discrimination, setting price levels that are too high and monopolistic practices. With the existence of this monopoly practice law, it is hoped that the following goals will be achieved:

- a. The creation of legal certainty and comparability in economic life;
- b. Small and medium enterprises are protected from threats by large entrepreneurs, so that a fair and equitable distribution of income is created;
- c. Monopoly practices can be abolished, or at least reduced;
- d. The emergence of fair and healthy competition conditions and climate in trading activities;
- e. Increasing efficiency, without being followed by monopoly tendencies;
- f. The creation of effective supervision of the domestic business world [25].

So, it can be said that there is relevance between mergers and monopolies in the form of a causal relationship, that is, by carrying out a merger or merger process, it can automatically give birth to a very large form of business which results in monopolistic practices and also results in unfair business competition which can harm the public interest.

As it is known that mergers recognize several forms, each of which gives its own color to monopoly, namely as follows:

1. Horizontal Mergers

In this horizontal merger, the merged companies sell the same product. So that if the merger is carried out, the competition between these companies can be eliminated and the market share controlled will certainly be bigger.

In order to find out whether horizontal mergers are considered to violate the principles of monopolistic practices or fair competition, the law must properly consider the following factors:

a. Post Merger Horizontal

In this case, it will be seen how the market concentration after the merger is carried out.

b. Increased market concentration due to mergers.

2. Vertical Mergers

Vertical mergers do not have a direct effect on market competition, unlike horizontal mergers where competitors will be lost due to mergers. However, vertical mergers can also bring bad consequences, because vertical mergers can cause companies to control production from upstream to downstream, hinder new entrants in the business concerned, cause collusion, and so on. Although it must also be admitted that this vertical merger is not without positive factors. Among other things, the most important thing is increasing efficiency, both efficiency in terms of the use of

technology or efficiency in terms of distributing a product.

So, what is really feared by this vertical merger is the restraint of competitors' entry into the market. In anti-monopoly law it is stated that a sentence can be imposed where there has been restraint on the entry of competitors into the market as a result of a vertical merger, it must be against the following factors:

a. The degree of vertical integration between the two markets must be so extensive that entering one market (primary market) means entering another market (secondary market).

b. Entering the secondary market requires entering the primary market, and entering the primary market must be much more difficult than entering the secondary market.

c. The structure and other characteristics of the primary market must be very conducive.

Thus, there is indeed a possibility that this vertical merger will substantially reduce market competition or tend to create a monopoly in the market.

3. Conglomerate Merger

This conglomerate merger can occur in each company whose merger previously did not have a business relationship, so it is not a supplier or not a consumer. Examples of conglomerate mergers that can cause problems for market competition are mergers to expand markets or expand geographic markets. This conglomerate merger can also have a negative effect on market competition because it is also warned by the practice of monopoly law.

These negative influences, for example, impede or make it difficult for newcomer market players, or even a merger is carried out with the newcomer business actor.

For the law of monopoly practices, the negative consequence for market competition that is highly anticipated is that the conglomerate merger results in the loss of potential competitors. Because the parties that join by way of conglomerate mergers, when the merger is carried out are usually not in a state of direct competition which can result in structural changes, concentration or control of market share. There is only the loss of "potential" competitors. Because it is often said that conglomerate mergers only lead to market competition. But by law, even this is considered dangerous for a market. So that a theory emerges in the law of monopoly practice, which according to this theory can be said to be contrary to the law of monopoly practice.

The conglomerate merger must be carried out with a party that is a potential competitor, so that the merger can result in curbing market competition [26].

Mergers of business entities have the potential for monopolistic practices or unfair market competition. Therefore, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition regulates it in Articles 28 and 29 which state as follows:

Article 28

(1) Business actors are prohibited from merging or consolidating business entities which may result in monopolistic practices or unfair competition

(2) Business actors are prohibited from taking over shares of other companies if such action can result in monopolistic practices and or unfair business competition.

(3) Further provisions regarding the prohibited merger or consolidation of business entities as referred to in paragraph 1, and provisions regarding the acquisition of company shares as referred to in paragraph 2, are regulated in a Government Regulation

Article 29

(1) Merger or consolidation of business entities, or acquisition of shares as referred to in Article 28 which results in the value of the assets or sales value exceeding a certain amount, must be notified to the commission no later than 30 days from the date of the merger, consolidation or acquisition.

(2) Provisions regarding the determination of the value of assets and/or sales value and procedures for notification as referred to in paragraph 1 shall be regulated in a government regulation.

Actions of company mergers are prohibited by Law Number 5 of 1999 when such actions may result in monopolistic practices and or unfair competition. All forms of mergers can be subject to this prohibition, be it vertical, horizontal or conglomerate.

4. CONCLUSION

Mergers of business entities have the potential for monopolistic practices or unfair business competition to occur. Thus, merger actions are prohibited by the Monopoly Practices Act where such actions may result in monopolistic practices and unfair competition.

Mergers greatly affect monopoly because mergers are seen as a threat to economic life, which through mergers will form large companies that have the ability to limit freedom and fair competition in the market, as well as create a monopoly situation that is detrimental to society.

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