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Optimization of the Role and Function of the Business Competition Supervisory Commission in Unfair and Monopolistic Business Competition

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Abstract

Healthy business competition is an important basic element to drive economic growth. With these conditions, it encourages business actors to improve product quality, innovate, and offer competitive prices to meet consumer needs, which ultimately can provide benefits for the business actors themselves. In practice, business competition often experiences distortion due to several unhealthy business behaviors, such as the formation of cartels, unilateral pricing, and unfair market control. This monopolistic action not only harms consumers, MSMEs, and society in general, but also contributes to the slowdown in national economic growth, widens market inequality, and has the potential to damage the natural ecosystem. The problems that will be analyzed are: 1). Has the authority of the Business Competition Supervisory Commission (KPPU) provided justice and balance between the interests of business actors and the public interest? 2). What are the characteristics of violations of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition? And 3). What is the concept of future legal arrangements for the KPPU Institution in the supervision and enforcement of unfair business competition law in Indonesia? This study uses a normative research method. The type of research in this journal is normative juridical. This research uses a statutory approach, conceptual approach and case approach. Conclusion the KPPU's authority has a strategic role in maintaining a balance between the interests of business actors and the public interest. Through fair and consistent enforcement of competition law, the KPPU seeks to create a healthy business climate, encourage innovation, and protect consumers from unfair practices such as monopolies and unfair competition. Thus, the KPPU becomes an important pillar in realizing a just and sustainable economic system.

Keywords: Optimization of Roles and Functions, KPPU, Business Competition

Introduction

Healthy business competition is an important basic element to drive economic growth. With these conditions, it encourages business actors to improve product quality, innovate, and offer competitive prices to meet consumer needs, which ultimately can provide benefits for the business actors themselves. In practice, business competition often experiences distortion due to several unhealthy business behaviors, such as the formation of cartels, unilateral pricing, and unfair market control. This monopolistic action not only harms consumers, MSMEs, and society in general, but also contributes to the slowdown in national economic growth, widens market inequality, and has the potential to damage the natural ecosystem. According to the Non-Governmental Organization Riau Forest Rescue Network (hereinafter referred to as Jikalahari), based on findings, it shows that the large monopoly of "Forest Areas" given by the government to monoculture entrepreneurs (HTI and Palm Oil) has an impact on:

1. Deforestation-degradation of Riau Forest.
2. Conflict with local communities and environmental pollution/damage, have occurred since industrial forest plantation corporations and oil palm plantations began operating.
3. Forest damage in Riau results in flooding every rainy season, forest fires every dry season.
4. Corruption practices are the initial gateway to monopoly practices and lead to ecological damage.[1]

[1] Supartinah, Woro, *14 Tahun Melawan Monopoli Penguasa Htan dan Lahan,* (Riau, Jikalahari, 2016), h. 144.

European countries strictly regulated foreign trade. Monopoly rights to trade were granted to certain trading companies, such as the French State granting monopoly rights to the Compagnie Des Indes Orientales (CIO) in 1664 to trade in the East, namely India and West Africa, in 1600 the British State granted monopoly rights to the British East India Company (EIC) to trade in India and Southeast Asia by controlling textiles, tea, and spices, and conducting political intervention in India, in 1602 the Netherlands granted monopoly rights to the Vereenigde Oostindische Compagnie (VOC) to trade in East Asia including Indonesia which not only controlled the spice trade, but also had the authority to make agreements, print money, and even go to war.

For the next 2 centuries, the VOC Company became the most important trading company (corporation) in Europe. It created a monopoly in the spice trade, especially pepper, cinnamon, and cloves. During its first 90 years, the VOC Company earned dividends of 18.7% annually. After Indonesia's independence, monopolistic practices and unfair business competition continued. During the Old Order, the government of President Soekarno, the ideology of socialism and economic nationalism encouraged the state to take over Dutch-owned companies through the nationalization of companies such as PLN, Banking, Permina. The guided economic system was implemented to control economic activities, the private sector was limited which resulted in minimal competition and widespread market distortion, direct appointment of companies for state projects without transparency, determining the price of strategic goods (price control) without considering the market, so that private producers could not compete because they were prohibited from raising prices, while state companies operated with subsidies.

The challenge began when the Unitary State of the Republic of Indonesia (NKRI) experienced the New Order regime as a development regime state, where the government/state's concentration at that time was on laying the foundations for development based on efforts to create economic stability such as controlling inflation and economic growth targets with adequate infrastructure development, but it remained vulnerable to forms of abuse of authority.[2] Monopolistic practices and unfair business competition are very prominent, becoming part of the national economy. The existence of monopolies by President Soeharto's family companies that control strategic sectors such as PT. Humpuss in the Oil and Gas sector, Transportation, PT. Bimantara Group in the media, automotive, and telecommunications sectors, PT. Citra Lamtoro Gung in the infrastructure sector, and toll roads. The shaky political and economic situation that caused the collapse of the Soeharto government. Especially in the economic sector which is very directly felt by the common people. Marked by the increase in the price of basic necessities, experiencing a high increase, and even people have to queue to buy basic necessities, this is what is very much felt by the common people at that time.[3]

After the economic crisis in 1998, the government deregulated various fields. Because various factors of economic failure were considered to originate from the unclear competition policy implemented by the government, thus encouraging the need for the birth of the Anti-Monopoly Law. There were 2 MPR decrees that indicated that so far there had been economic distortions that resulted in the economy in Indonesia not running competitively. Therefore, the MPR issued two decrees on more competitive economic policies, namely: MPR RI Decree No. X/MPR/1998 and MPR RI Decree No. XVI/MPR/1998. That the MPR RI Decree No. X/MPR/1998 regulates the Main Points of Development Reform in the Framework of Saving and Normalizing National Life as the State Policy, in Chapter II General Conditions, Section A. Economy which states: "The development success achieved during the 32 years of the New Order has experienced a worrying decline, due to the monetary crisis in mid-1997, and continued into a broader economic crisis. The economic foundation that was considered strong, turned out to be powerless in the face of external financial turmoil and macro and micro economic difficulties. [4]

This incident is certainly not in accordance with the noble ideals of the Indonesian nation as stated in the introduction to the 1945 Constitution of the Republic of Indonesia, namely ".... The Government of the State of Indonesia which protects all the Indonesian people and all of Indonesia's territory and to advance public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice..."[5] The state has a central role as the main container in running the economic process and determining the direction of economic policy, without being bound by political, cultural, or traditional backgrounds. The debate on the ideal and appropriate economic system has been going on since before independence and has developed along with the history of the national economy.

The concentration of economic power by several business actors has a negative impact on the public interest, weakens the spirit of competition, and inhibits new business actors from entering the market. This condition is contrary to the personality and values of justice in the economic life of the Indonesian nation. During the reform era in the government of President B.J. Habibie, important steps were taken to eliminate monopolistic practices and unfair business competition that were very dominant during the New Order. The main policy was the ratification of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The Business Competition Law generally regulates the definition of monopoly and unfair business competition, prohibited agreements, prohibited activities, dominant positions, the business competition supervisory commission (KPPU), law enforcement and others.[6]

This aims to create a healthy competitive climate, by disbanding and evaluating agencies that have monopoly rights. The Post-Monetary Crisis market recovery policy has

[2] Rusli, Tami, *Hukum Persaingan Usaha di Indonesia*, (Universitas Bandar Lampung UBL Press, 2021), h. 17.

[3] Hilm, Muhammad Zoher, Dominasi Soeharto, Monopoli Usaha Oleh Birokrat Dan Pengusaha, *JUPE: Jurnal Pendidikan Mandala*, Volume 4 No. 5 (2019), h. 372.

[4] Rusli, Tami, *Hukum Persaingan Usaha di Indonesia*, (Universitas Bandar Lampung UBL Press, 2021), h. 109.

[5] Lihat *Pembukaan Undang-undang Dasar Republik Indonesia tahun 1945.*

[6] Malian, Sobirin. *Pengantar Hukum Bisnis,* (Kreasi Total Media: Yofyakarta, 2016), h. 13.

made Indonesia work with the International Monetary Fund and the World Bank to open markets, eliminate excessive protection, and eliminate exclusive rights for certain large companies, and forced to restructure debt. This law provides a guarantee of legal certainty to further encourage the acceleration of economic development in an effort to improve public welfare. In order for the implementation of this law and its implementing regulations to run effectively according to its principles and objectives, it is necessary to form a Business Competition Supervisory Commission (KPPU), namely an independent institution that is free from the influence of the government and other parties, which has the authority to supervise business competition and impose sanctions. These sanctions are in the form of administrative actions, while criminal sanctions are the authority of the courts.[7]

In addition to trying to create a healthy business, it can respond to future economic challenges and changes and is expected to be able to resolve cases of business competition violations more quickly, effectively in accordance with the principles of its objectives. As a supervisory authority established based on the Business Competition Law, KPPU must implement the Principles and Objectives stipulated in Article 2 and Article 3 of the Law in carrying out its duties and authorities.[8] The KPPU's legal and institutional system in enforcing healthy business competition has progressed, but forms of monopolistic practices and unhealthy business competition in Indonesia still occur and are increasingly diverse, such as the SMS cartel case, consumers were harmed by Rp. 2.8 trillion[9], 7 airlines guilty of airline ticket cartel case [10], Shopee's case in controlling the courier market which prioritizes the Shopee Express courier service [11].

The KPPU has the status of an independent institution, free from government influence, tasked with supervising the implementation of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition and is directly responsible to the President.[12] KPPU as a state auxiliary organ plays a role as a quasi-judicial institution to hear business competition cases and quasi-executive in implementing its decisions, formed as a response to the declining public trust in executive and judicial institutions in handling business competition issues fairly and effectively. KPPU still has several obstacles, including:

1. Obstacles to enforcing anti-monopoly and unfair business competition laws in the national territory, namely: limited authority in law enforcement, slow legal processes, independence and political intervention, general legal regulations, differences in interpretation in interpreting the law, the role of the KPPU in preventing cartels that are difficult to prove, the application of sanctions that are not firm enough, the difficulty of finding the characteristics of violations of monopoly and unfair business competition and implementation in the digital and E-commerce sectors.
2. Obstacles to enforcing anti-monopoly and unfair business competition laws in the global territory, namely: overlapping, differences and adjustments between national laws and international laws, limited authority, coordination of supervisory institutions in other countries such as the Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) in America in enforcing the law against multinational companies, legal protection of industry, domestic business actors, the influence of Free Trade Agreements (FTA) on the stability of the Indonesian economy, supervision of global e-commerce and digital business competition such as control of algorithms, platform business models, the influence of domestic companies on international business actors such as cross subsidies, market dominance, international cartels.

Based on the background of the existing problems, it is necessary to study and examine the function and role of the KPPU Institution in business competition practices. The problems that will be analyzed are: 1). Has the authority of the Business Competition Supervisory Commission (KPPU) provided justice and balance between the interests of business actors and the public interest?, 2). What are the characteristics of violations of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition? And 3). What is the concept of future legal arrangements for the KPPU Institution in the supervision and enforcement of unfair business competition law in Indonesia?

Methodology

This study uses a normative research method. The type of research in this journal is normative juridical, which is qualitative in nature and is a study that refers to legal norms contained in laws and court decisions as well as norms that live and develop in society.[13] This research uses a statutory approach. This is done by reviewing all laws and regulations relating to the legal issue being handled. [14] The conceptual approach starts from the views and doctrines that have developed in legal science.[15] The case approach is carried out by reviewing cases related to the issues being faced which have become court decisions which have permanent legal force.[16]

[7] *Lihat penjelasan umum paragraf 8-9 Undang-undang nomor 5 tahun 1999 tentang Larangan Praktik Monopoli Pan Persaingan Usaha Tidak Sehat*.

[8] Anggraini, Anna Maria, *Persaingan Usaha dalam Rangakaian Kata:Kompilasi Pemikiran Konstruktif untuk Nafigasi Kebijakan Persaingan pada Era Eknomi Modern* Tri, (Komisi Pengawas Persaingan Usaha (KPPU): Jakarta, 2024), h. 15.

[9] https://news.detik.com/berita/d-3154608/kasus-kartel-tarif-sms-konsumen-dirugikan-rp-2-8-triliun

[10] https://www.cnnindonesia.com/ekonomi/20200623215457-92-516690/kppu-putuskan-7-maskapai-bersalah-kasus-kartel-tiket-pesawat

[11] https://www.tempo.co/ekonomi/hari-ini-kppu-akan-menyidang-kembali-shopee-buntut-dugaan-pelanggaran--50464

[12] Idayanti, Soesi, *Hukum Bisnis,* (Tanah Air Beta, Yogyakarta:2020), h. 56.

[13] Gunardi, *Buku Ajar Metode Penelitian Hukum* (Damera Press, Jakarta: 2022) h. 44.

[14] Gozali, Sumardi Djoni, *Ilmu Hukum dan Penelitian Ilmu Hukum,* (UII Press, Yogyakarta: 2020), h. 127.

[15] Ibid. h. 127.

[16] Widiarty, Wiwik Sri, *Buku Ajar Metode Penelitian Hukum*, (Publika Global Media, Yogyakarta; 2024), h. 119.

Discussion

1. Authority of the Business Competition Supervisory Commission in Providing Justice and Balance Between the Interests of Business Actors and the Public Interest.

The teaching of the separation of powers from Montequieu by Immanuel Kant is termed trias politica. The teaching of trias politica requires that in every state government there must be three types of power that cannot be held by one hand alone, but rather each power must be separate.[17] The concept of trias politica that is adopted is the existence of legislative power as the maker of laws, executive power which implements them, and judicial power or the power to judge.[18] Over time, the Indonesian government system has undergone changes to follow social, political, economic and cultural dynamics.

After the amendment to the 1945 Constitution, there are levels of institutions in the central government, namely: first, institutions that are formed and further determined in or by Law, Government Regulation, Presidential Regulation, and Presidential Decree; second, institutions that are formed based on laws that are regulated or further determined in or by government regulations, presidential regulations and presidential decrees; third, institutions that are formed based on government regulations or presidential regulations that are further determined by presidential decrees; and fourth, institutions that are formed based on ministerial regulations that are further determined by ministerial decrees or decrees of officials under ministers.[19]

The establishment of new institutions after the reformation in a constitutional legal manner began with the amendments to the 1945 Constitution which were carried out four times and brought substantial changes to the Indonesian state system. These changes adjusted the structure of state power to the principles of the trias politica theory and encouraged the birth of independent institutions such as the Business Competition Supervisory Commission (KPPU). Although not explicitly mentioned in the 1945 Constitution, the KPPU emerged as a response to the pressures of reform and the need for a check and balances mechanism in the economic system to ensure fairness and healthy business competition.

KPPU is a commission formed to supervise business actors in carrying out their business activities so that they do not engage in monopolies and/or unfair business competition.[20] Regulations regarding the prohibition of monopolistic practices and unfair business competition are contained in the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition. KPPU is tasked with supervising business actors so that they do not violate these provisions, while ensuring that the implementation of the law is in accordance with the principles of economic democracy, and providing justice and maintaining a balance between the interests of business actors and the public interest. KPPU has broad jurisdiction and has four main functions, namely:

1. Legal function as the only institution that oversees the implementation of legislation;
2. Administrative function responsible for adopting and implementing legislation;
3. Mediator function where KPPU receives complaints from private parties, conducts independent investigations, questions and answers with all parties involved, and makes decisions and Investigative function.[21]

In order to carry out its functions, the KPPU has the task of assessing agreements that result in monopolistic practices and/or unfair business competition.

The authority of the KPPU is regulated in Article 36 relating to investigations or examinations of alleged monopolistic practices and/or unfair business competition reported by the public, business actors, or found by the KPPU from its investigations. The KPPU can decide whether or not there is a loss and impose administrative sanctions. The comprehensive function of the KPU has been criticized because it is not in accordance with the principle of the "Integrated Criminal Justice System (ICJS) or Integrated Criminal Justice System (SPPT) which separates the functions of investigation, prosecution and decision-making.[22] The trial process at the KPPU is considered not to meet the requirements of due process of law. The multifunctional position of the KPPU, as an investigator, prosecutor, and decision maker, is considered to be a superbody institution, this makes business actors complain about being treated unfairly in the examination and trial process at the KPPU, even though the KPPU has broad authority, the KPPU should still uphold the principle of the presumption of innocence audi et alteram partem to provide balanced justice.

Based on the Decision of the Constitutional Court of the Republic of Indonesia No. 85/PUUXIV/2016, the phrase "investigation" in Article 36 is interpreted as "collecting evidence as material for examination". Referring to Article 39 to Article 45 of Law No. 5 of 1999, when connected to KPPU Regulation No. 1 of 2019 concerning Procedures for Handling Monopolistic Practices and Unfair Business Competition Cases, it is interpreted as the activities of the KPPU panel assisted by the Registrar. The process includes: preliminary examination (examination) of reports, determining changes in behavior, making decisions or concluding whether or not further examinations are necessary. Further examinations are activities of the KPPU Panel to prove violations.

Based on the Decision of the Constitutional Court, Article 39 to Article 45 of the KPPU Law, and KPPU Regulation No. 1 of 2019, it is interpreted as activities to obtain sufficient evidence as material for examination within the scope of administrative law enforcement. KPPU is an administrative institution with the authority to impose administrative sanctionsBased on the Decision of the Constitutional Court of the Republic of Indonesia No. 85/PUUXIV/2016, the phrase "investigation" in Article 36 is interpreted as "collecting evidence as material for examination". Referring to Article 39 to Article 45 of Law No. 5 of 1999, when connected to KPPU Regulation No. 1

[17] Riewanto Agus, dkk, *Hukum Tata Negara,* (Rajagrafindo Perkasa, Depok:2023), h. 105.

[18] ibid. hal 242.

[19] ibid. h 243.

[20] Pasal 1 angka 18 uu No. 5 tahun 1999.

[21] Mantili, Rai, dkk, *Problematika Penegakan Hukum Persaingan Usaha di Indonesia Dalam Rangka Menciptakan Kepastian Hukum*, (Padjajaran Jurnal Ilmu Hukum, Volume 3 Nomor. 1; 2016), h. 122.

[22] Juma'in, dan Afriantara, Jonsi, *Bunga Rampai Potret Penegakan Etika Dan Hukum Di Masa Pandemi*, (Sekertatis Jenderal Komisi Yudisial Republik Indonesia, Jakarta; 2022),h, 151.

of 2019 concerning Procedures for Handling Monopolistic Practices and Unfair Business Competition Cases, it is interpreted as the activities of the KPPU panel assisted by the Registrar. The process includes: preliminary examination (examination) of reports, determining changes in behavior, making decisions or concluding whether or not further examinations are necessary. Further examinations are activities of the KPPU Panel to prove violations. Based on the Decision of the Constitutional Court, Article 39 to Article 45 of the KPPU Law, and KPPU Regulation No. 1 of 2019, it is interpreted as activities to obtain sufficient evidence as material for examination within the scope of administrative law enforcement. KPPU is an administrative institution with the authority to impose administrative sanctions.[23]

In addition to the Duties and Authorities of the KPPU regulated in the Law, there is KPPU Regulation No. 01 of 2014 concerning the Organization and Work Procedures of the Business Competition Supervisory Commission. The Regulation states that the KPPU is an institution established to supervise business actors in carrying out their business activities so that they do not engage in monopolistic practices and/or unfair business competition. In addition, it is also stated there that the KPPU is directly responsible to the President. The regulation also states that the KPPU has authority over several matters concerning business competition, mergers, and partnerships.[24] In its journey for approximately 25 years, KPPU has had the challenge of overseeing the implementation of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition. One of the biggest challenges faced by the Business Competition Supervisory Commission is in the institutional aspect, the institutional status of KPPU is still questioned by various parties.

The authority of the KPPU in regulating and prosecuting violators of competition law has a direct impact on all economic sectors so that consumers get good prices, choices and services, the KPPU in this case directly provides justice and maintains a balance between the interests of business actors and the public interest both in the macro and micro economy, between large corporations and the wider community. The performance of national business competition is measured through the business competition index developed by the KPPU since 2019 to measure the intensity of business competition in Indonesia, both at the central and regional levels. In addition to being an indicator of the KPPU's performance in carrying out its duties, measuring the competition index is quite important because it can provide an indication of whether the competitiveness and productivity and efficiency of the economic sector in Indonesia are improving or not. The measurement of the business competition index is carried out using perceptions of business actors, taking policies and academics using dimensions and indicators in business competition.[25]

The survey results show that national business competition is heading towards high. There is an increase in the business competition index score in 2023 compared to 2022. In 2023, the business competition index reached 4.91 or increased compared to 2022 (4.87). Economic conditions continue to improve after the Covid-19 pandemic, driving an increase in the business competition climate as reflected in the increase in the index in 2023. Over time, KPPU continues to strive to improve its performance but is still experiencing failure in providing justice and balance between business actors and the public interest, such as due to the limited authority of KPPU, especially for micro business actors / MSMEs.

This shows the absence of justice and balance due to the integrated scale aspect, integrators control the business from upstream to downstream which results in an unbalanced market structure, low selling prices for farmers resulting in losses, and threatened business lines resulting in end consumers being affected, unilateral agreements of small business actors are bound by unfair contracts, due to the dominance of large companies, namely depressed prices, limited access, no recovery or losses incurred by small business actors are not replaced, KPPU's authority to deal with this is: only warning and giving recommendations to large companies without being able to provide sanctions that are not sufficient to change the market structure, so that justice is not realized in this business sector, the KPPU's fine decision was canceled by an appeal decision, and KPPU cannot demand compensation.

The limited authority of the KPPU is that it does not have the authority to investigate and detain like other law enforcement officers, so it cannot confiscate evidence by force, which results in having to cooperate with the police or other agencies. Less effective in strategic sectors such as energy, telecommunications, and food, the KPPU is powerless in dealing with large BUMN or multinational companies that have economic and political power and the support of government policies to implement monopolies with the right of exception. The right of exception to monopoly is permitted to be carried out by BUMN on the condition that the business activities carried out by the BUMN are business activities related to branches of production that are important to the state and control the livelihoods of the people.[26]

Lack of binding policy advocacy, KPPU policy recommendations are not mandatory for the government or technical regulators to implement, so they are often ignored, and many sectoral regulations still conflict with the principles of fair competition. Lack of transparency and internal accountability in several cases, KPPU investigation processes are considered non-transparent or give rise to allegations of bias, and lack of public oversight or internal decision-making processes. Socialization and education are still limited because many business actors and regional officials do not understand the principles of fair business competition, especially in the MSME sector which is still uneven.

Other challenges include limitations in collecting evidence, minimal protection of MSMEs, the KPPU's lack of firmness in taking action against large business actors who cause losses, the lack of transparency and accountability in the

[23] Ibid. h. 152

[24] Hasbullah M. Afif, *Fikih Pengawasan* Kemitraan, (Komisi Pengawas Persaingan Usaha,(KPPU), Jakarta; 2023), h. 50.

[25] Komisi Pengawas Persaingan Usaha, Laporan Tahunan 2023, (Biro Hubungan Masyarakat dan Kerja Sama Komisi Pengawas Persaingan Usaha; Jakarta 2023), h. 36.

[26] Samawati, Putu, *Monopoli BUMN Dalam Perspektif Hukum Persaingan USaha,* (Tunggal Mandiri, Malang;2018) h. 61.

investigation and decision-making process creates negative perceptions. Political intervention and certain economic interests affect the objectivity of decisions, and the imbalance in treatment between local and foreign business actors, especially in cases of mergers and acquisitions of multinational companies, further weakens the credibility and effectiveness of the KPPU. The balance between the interests of business actors and the public interest is the main focus of the KPPU. However, various structural and implementation obstacles hinder the achievement of this goal. For this reason, institutional reform, strengthening regulations, increasing capacity, cooperation between national and international institutions must be improved and transparency is the key to improving the performance of the KPPU in the future.

2. Characteristics of Violations of Law Number 5 of 1999 concerning the Prohibition of Anti-Monopoly and Unfair Business Competition

The background to whether the birth of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition was caused by pressure from dominant external parties or the occurrence of a monetary crisis and pressure from internal parties because the prices of basic necessities had risen sharply has become a matter of debate. Regardless of the debate about which factor was the most dominant that caused this law to be born, what is clear is that if we refer to the 1945 Constitution, either before or after it was amended, it shows that the prohibition of monopolistic practices and unfair business competition in all its forms has long been prohibited. On the other hand, the Constitution instructs that the goal of economic development is based on democracy that is people-oriented with social justice for all Indonesian people through a welfare approach and market mechanisms.

The Indonesian economy tries to avoid the free fight liberalism system that exploits humans or economic domination by the state and unfair competition in business by concentrating economic power on one particular group only. Usually this practice appears in various forms of monopoly or monopsony that are detrimental and contradictory to article 33 of the 1945 Constitution.[27] The decision to enforce regulations is influenced by various factors such as social interests, politics and the economic conditions of a country. Therefore, the form, purpose, character and scope of these regulations can change according to the conditions at that time. For example, for decades the market in Indonesia has been heavily influenced by the granting of special rights to a certain group of entrepreneurs and at the same time the government has a policy to protect small and medium enterprises based on the interpretation of Article 33 of the 1945 Constitution.

This policy gave birth to conglomerates or on other occasions created a foster father mechanism for cooperatives and SMEs. After the economic crisis in 1998, there was a significant change when the government carried out deregulation in various fields. Various factors of economic failure at that time were considered to have originated from the unclear competition policy implemented by the government, thus encouraging the need for the birth of the Antimonopoly Law and other regulations.[28] Anti-monopoly Law to prevent monopolistic practices and unfair business competition that have the potential to trigger an economic crisis in the future. Healthy business competition as the basis for fair and efficient economic growth. This law regulates various violations with certain characteristics. The main characteristic is the existence of direct or indirect actions that are contrary to the principles of healthy business competition. There are three groups of business competition violations, namely, prohibited agreements, prohibited activities, and dominant positions. as well as the objectives and impacts on the market, consumers, and other business actors.

Even without any open intention, an action can be considered a violation if it has a negative impact on competition. In the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition, there are 2 (two) groups of characteristics, namely:

1. Group of articles that have the characteristics of the rule of reason and
2. Group of articles that have the characteristics of per se illegal[29]

This grouping is often different in its application, so it is difficult to find an article that is one of these characteristic groups. In addition, violations of business competition are recognized through the characteristics contained in the articles violating the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition.

Table 1: Characteristics of Violations of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition

S. No	Article	Article	Characteristics of Violation
1	Article 4	Oligopoly	An agreement to control production/marketing of products of more than 75% resulting in unfair business competition
2	Article 5, 6, 7, 8,	Pricing	Agreements to determine the price/quality of the product to be paid, resulting in one buyer having to pay a different price from other buyers for the same product, setting prices below market prices, making it a requirement that the recipient of the product not sell/re-supply the product received at a price lower than that agreed upon, unfair business competition.
3	Article 9	Division of Regions	Agreements to divide marketing areas/market locations for products that result in monopolistic practices and unfair business competition
4	Article 10	Boycott	Agreements that can prevent or refuse to sell any products of other business actors that can harm other business actors.
5	Article 11	Cartel	Business actors work together to regulate quotas, production, influence prices which results in monopolistic practices and unfair business competition.
6	Article 12	Trust	A formal merger agreement that maintains the business of its member companies, with the aim of controlling and dominating the market

[27] Tarigan, Azhari Akmal, *Praktek Monopoli Dan Persaingan Usaha Tidak Sehat Dalam Perspektif Hukum Ekonomi Dan Hukum Islam,* (Mercatoria, Vol 9 No. 1; 2016)*, h*. 58-59.

[28] Hakim, Dani Amran, *Pengecualian Perjanjian Hak Kekayaan Intelektual Dalam Persaingan* Usaha, (Fiat Justitia Jurnal Ilmu Hukum Volume 9 No. 4; 2015), h. 414.

[29] Rizkia, Amanda Ayu, Rahmawati Suci, *Faktor-faktor Yang Mempengaruhi Anti Monopoli Dan Persaingan Bisnis Tidak SEhat: Globalisasi Ekonomi, Persaingan Usaha, Dan Pelaku* Usaha, (JIMT, Jurnal Ilmu Manajemen Terapan. Volume 2, Issue 5; 2021), h. 640.

7	Article 13	Oligopsony	Agreement to control more than 75% of purchasing/receiving supplies in order to control prices
8	Article 14	Vertical Integration	Agreements aimed at controlling the production of a number of products, including in the production series of products resulting from processing or further processing, which results in unfair business competition
9	Article 15	Closed Agreement	An agreement containing conditions that the recipient of the product will supply/not resupply the product to a certain party/place, is willing to buy other products from the supplier, price/discount agreement, not buy similar products from competing suppliers.
10	Article 16	Agreements with foreign parties	Agreements with foreign parties contain provisions that result in monopolistic practices and unfair business competition
11	Article 17	Monopoly Activities	Mastery, marketing of products that have no substitutes, business actors control more than 50% of marketing production without significant competitors
12	Article 18	Monopsony Activities	Mastering the supply of goods or becoming the sole buyer, controlling more than 50% of the market share of a particular product.
13	Article 19, 20, 21	Market Domination Activities	Carrying out one/several activities either alone or together with other business actors in the form of refusing/preventing other business actors from carrying out the same business activities, preventing consumers from carrying out business relations with their competitors, limiting the circulation/sale of goods, monopolistic practices against certain business actors, supplying products by selling at a loss/setting low prices to kill off other business actors, committing fraud in setting production costs and other costs that are part of the product components which result in unfair business competition.
14	Article 22, 23, 24	Collusion, Tender Fraud	Collusion to arrange and/or determine the winner of a tender, obtain confidential information about a competitor's business activities, obstruct the production/marketing of a product so that the product offered is less than the required quantity, quality and timeliness, resulting in unfair business competition
15	Article 25	Dominant Position, Abuse of dominant position	Using a dominant position that controls 50% or more of the market share of one type of goods, or two or three business actors controlling 75% or more of the market share of a particular type of goods, directly or indirectly by setting trading conditions, limiting the market and technology development, inhibiting other business actors who have the potential to become competitors from entering the relevant market. Dominant business actors treat business partners in a discriminatory manner.
16	Article 26	Dominant Position, Dual Position Activities	One person holds office in two companies in the same relevant market, closely related in the same field, together controlling the market for goods which results in monopolistic practices and unfair business competition.
17	Article 27	Dominant Position, Cross-shareholding Activities	Majority share ownership of more than 50%, two/three business actors control more than 75% of the market share of one type of goods, establishing several similar companies in the same business activity, establishing several similar or related companies
18	Article 28, 29	Dominant Position, Mergers, Amalgamations and Acquisitions	Resulting in monopolistic practices and unfair business competition, this results in the value of assets and/or their value exceeding a certain amount, not being reported to the KPPU.

The first group of violations of the law is prohibited agreements that result in unfair business competition, harming business actors and consumers. One of them is Oligopoly, which is an agreement to control the production or marketing of products to exceed 75% of the market share of one type of product. The products traded can be homogeneous or differentiated, such as gasoline, fertilizer, or steel. Although not always against the law, the oligopoly market structure has the potential to cause anti-competitive practices..

Oligopoly practices are generally carried out as an effort to prevent potential companies from entering the market and can also be carried out by companies to enjoy normal profits below the maximum level by setting limited selling prices, thus causing price competition between business actors who carry out oligopoly practices to become non-existent.[30]Such as the oligopoly case of the packaged cooking oil industry, decision no. 15/KPPU/-I/2022 [31] namely the Indonesian packaged cooking oil industry is suspected of being in an oligopoly structure, with the 4 largest groups of players controlling 71.4% of the market share, which is suspected of being caused by 7 related companies limiting the circulation of cooking oil, including reducing production and sales volumes, thus triggering scarcity and increasing prices, even though the supply of raw materials is sufficient.

KPPU suspects that the seven companies involved have limited distribution, reduced production and sales volumes, thus triggering shortages and increasing prices, even though the supply of raw materials is sufficient. The KPPU's decision stated that the companies violated Article 19 letter c of Law No. 5 of 1999 (distribution restrictions), but were not proven to have carried out price fixing, by imposing a fine of Rp. 71.28 billion on the seven companies. The significant impact of the decision is that the KPPU has shown its ability to take action against market structures that hinder competition, can enforce the law concretely against oligopoly practices, can make improvements to supply triggered directly and followed by price stabilization after the decision, and provide a deterrent effect on large business actors who try to control the market by reducing distribution.

The characteristics of this violation are marked by the dominance of several large companies that influence each other in making decisions, such as distribution restrictions, pricing or quality. The three main characteristics are: (price fixing) an agreement to set prices so as not to compete and maintain high profits, Predatory pricing below the market to bring down competitors, then raise prices when the market is controlled; this practice is often known as anti-dumping which is marked by the intention to control the market, price discrimination, namely selling the same product to different buyers at different prices without objective reasons, to benefit certain parties or weaken competitors. However, this provision does not apply to joint ventures, or agreements based on applicable laws.

The characteristics of business competition violations have been explicitly stated in the law, but in practice not all are easily detected by the KPPU, so it requires careful investigation, access to internal business data, and in-depth economic analysis. Therefore, understanding the

[30] Sudiarto, *Pengantar Hukum Persaingan Usaha di Indonesia,* (Kencana, Jakarta, 2021) hal.3.

[31] https://kppu.go.id/blog/2023/05/kppu-jatuhkan-putusan-atas-perkara-minyak-goreng-di-indonesia/

characteristics of violations that are difficult to reveal is very important to support the effectiveness of supervision and enforcement of business competition law in Indonesia. Some violations are difficult for the KPPU to find because they are closed or secret (covert collusion). Prohibited agreements such as price cartels, market divisions are often carried out covertly without official and formal documents, informal meetings, trade cooperation, or agreements that appear legitimate on the surface.

Another violation that is difficult to detect is the subtle Abuse of Dominance, which is the abuse of a dominant position in a subtle way in seemingly reasonable business practices. Such as giving large discounts to major customers, purchasing additional products (tying), exclusive agreements with distributors, delaying supplies, inhibiting interoperability by closing access to technology such as APIs or system protocols, so that only compatible products are given access, In addition, the application of predatory pricing to slowly eliminate competitors. Violations of business competition can also occur in complex vertical relationships, such as between producers and distributors. This practice is often framed in the form of contracts, discounts, or incentives, which appear legal, but actually limit business competition or suppress other parties in the distribution chain.

3. Concept of Future Legal Arrangement of KPPU Institution in Supervision and Enforcement of Unfair Business Competition Law in Indonesia.

The concept of law may be said to have an ambiguous meaning, so that it can cause misunderstanding both intellectually and morally, it can be said that there are two types of law, namely descriptive law and prespective law. Descriptive law is a law that shows that something can happen, for example the law of gravity, Archimedes' law or laws related to the science of predictions, besides that we can also think of laws that have been determined or laws that provide instructions (prescriptive laws) for example laws regulated by authorities that regulate what is allowed and what is not allowed to be done, this law is the subject of legal philosophy research while descriptive law becomes the object of scientific research.[32]

The concept of legal perspective is an important basis in enforcing the principle of healthy business competition. KPPU as the implementer to carry out its duties and functions effectively requires the support of adequate facilities, infrastructure, and technical expertise, including an investigation system, infrastructure such as an economic forensic laboratory and market infrastructure. Law enforcement will be more optimal if it is able to prove elements of violations comprehensively. Therefore, strong regulations must be supported by adequate infrastructure and resources, both institutionally and technically operationally.

If the law is a control and can also be used as an agent of social charge, then the law contains principles, concepts or rules, standards of behavior, doctrines, and professional ethics, as well as everything that is done by "individuals" in an effort to satisfy needs and "interests". As a social control and agent of change, the law not only contains principles, rules, and standards of behavior, but also plays a role in forming public awareness of applicable norms. In creating a healthy business competition climate, strict regulations must be supported by the legal awareness of business actors and consumers. Low legal awareness can open up space for hidden cartel and monopoly practices, without consistent law enforcement, legal certainty will weaken and business behavior will become opportunistic. Therefore, the success of healthy business competition depends on the synergy between strong regulations, strict law enforcement, and public compliance with the principles of fair business competition.

Changes in the concept of law confirm that law always develops following the development of society. This also proves Eugen Ehrlich's statement that law lives and develops in accordance with the development of society. An important factor in enforcing healthy competition law is the mentality of law enforcement officers. KPPU as the front guard needs to be strengthened in terms of technical competence and personal integrity. This also applies to lawyers, clerks and judges, considering that competition cases are technical, complex and multidisciplinary. Law enforcers must have moral and social legitimacy to build public trust in the supremacy of law in the economic sector. This becomes increasingly relevant when associated with the role of the state in realizing justice and public welfare

The characteristics of a welfare state or social legal state (sociale rechtstat) are that the state aims to improve the welfare of the people and is required to provide the best and widest possible services to its people. In this context, economic stability is an important part of efforts to improve the welfare of the people. In fact, the prolonged war between Russia and Ukraine, the war between India and Pakistan, and the trade war between China and America have created global economic uncertainty and have also affected the Indonesian economy. Another thing that needs attention is the rapid development of the digital economy. According to data from Price Waterhouse Coopers in 2018 in Rhido Jusmadi's research (2003), digital platforms have revolutionized the global business landscape. In 2009, only one technology company, Microsoft, was listed in the top 10 companies with the largest market capitalization in the world. However, in 2018, digital companies have dominated this list and are predicted to continue in the future.[33]

The current reality is that foreign business actors are increasingly actively marketing products and services to Indonesian consumers through digital platforms. This has been accommodated by Government Regulation No. 80 of 2019 concerning Trading Through Electronic Systems (PMSE), which requires foreign business actors to comply with national laws, including the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition as the basis for supervision of unfair business competition in Indonesia's digital ecosystem. However, this law does not yet regulate the principle of extraterritoriality, namely the legal authority to take action against foreign business actors who harm the domestic market even though they are domiciled abroad. As a result, law enforcement against foreign actors is less effective because there is no explicit jurisdiction that supports KPPU's actions. This condition

[32] Kamarusdiana, *Filsafat* Hukum, (UIN Jakarta press, Jakarta; 2018), h. 2.

[33] Anggraini, Anna Maria Tri, dkk, *Persaingan Usaha dalam Rangkaian Kata: Kompilasi Pemikiran Konstruktif untuk Navigasi Kebijakan Persaingan pada Era Ekonomi* Modern, (Komisi Pengawas Persaingan Usaha (KPPU), Jakrta; 2024), h. 14-15.

emphasizes the urgency of revising the Prohibition of Monopolistic Practices and Unfair Business Competition, by adding provisions on extraterritoriality and digital jurisdiction, in order to strengthen the enforcement of competition law in the global and digital era.

Contents of Article 7 of PP. No. 80 of 2019 foreign business actors who actively make offers and/or conduct PMSE to consumers domiciled in the territory of the Unitary State of the Republic of Indonesia who meet certain criteria are considered to have a physical presence in Indonesia and carry out activities permanently in the jurisdiction of the Unitary State of the Republic of Indonesia. However, the phrase "actively" requires a clearer interpretation so that its implementation is consistent, especially considering the high level of online shopping activity from foreign platforms. The government and KPPU need to pay serious attention to consumer protection and personal data security. E-commerce business actors are required to guarantee consumer rights at every stage of the transaction, including offers, promotions, advertising, to delivery of goods and after-sales services. Consumers have the right to report to the Minister of Trade if they are harmed. Business actors who do not follow up on reports can be included in the priority list for supervision and announced openly to the public.

Monopolistic practices in the digital industry are a violation of the principles of fair business competition. A case in China in 2022 is a notable example, when the anti-monopoly authority in China, namely the State Administration for Market Regulation (SAMR), imposed sanctions on Alibaba Group Holding Ltd. and Tencent Holdings Ltd. for failing to report transactions that had an impact on market structure. SAMR found 28 violations, including 12 unreported transactions by Tencent which resulted in a fine of 6 million yuan (US$896,245) for 12 unreported transactions, as well as a fine of 2.5 million yuan for Alibaba's subsidiary, Youku Tudou. This case shows how large digital companies can exploit regulatory loopholes to strengthen market dominance, while also emphasizing the importance of the role of supervisory authorities in maintaining fair and open competition.

As the pattern of business competition shifts towards the digital economy, the KPPU's challenges in identifying violations are increasingly complex. The diverse digital business models often make anti-competitive practices hidden and difficult to prove. Therefore, the KPPU needs to be strengthened institutionally, its authority expanded, and the effectiveness of its law enforcement increased so that it can respond to the dynamics of the digital market adaptively and optimally in the future. Seeing the development of the digital economy, the KPPU needs to focus law enforcement on the digital economy sector. The challenges are getting bigger because the violations are increasingly complex and hidden in the ever-growing digital ecosystem. For this reason, the KPPU needs to implement strategic steps and adaptive regulations, considering that business practices now not only take place offline, but also through e-commerce with different competitive dynamics.

In carrying out its duties and functions, KPPU receives a budget through the APBN. However, administratively, KPPU is not yet fully independent because its budget management is still under the Ministry of Trade. Although KPPU's function is independent, the KPPU secretariat remains part of the Ministry of Trade's structure. As a result, the submission of the work budget plan (RKA) through the Ministry before being submitted to the Indonesian House of Representatives. After being approved, KPPU's budget allocation is listed in the DIPA (Budget Implementation List) of the Ministry of Trade, not as an independent work unit.

The independence of the KPPU's budget and operations is important to improve the capacity of human resources and technology, especially in investigations, forensic audits, understanding of economics and law. This strengthening is expected to have an impact on the effectiveness of supervision and enforcement of healthy business competition laws. RDP of Commission VI of the Indonesian House of Representatives with KPPU (Chairman of the Business Competition Supervisory Commission) and BPKN (National Commission Protection Agency), namely Discussion on KPPU's Performance in handling cases of prohibition of monopolistic practices and unfair business competition and BPKB's Performance in providing Consumer protection. With the conclusion,namely:

a) Commission VI of the Indonesian House of Representatives (DPR RI) requests the Business Competition Supervisory Commission and the National Consumer Protection Agency to participate in supervising the existence of stocks, distribution and price stability of food and staple foods, especially in facing the holy month of Ramadan and Eid al-Fitr in 2022/1443 H.
b) Commission VI of the Indonesian House of Representatives (DPR RI) requests the Business Competition Supervisory Commission and the National Consumer Protection Agency to monitor the behavior of business actors in the food sector in order to maintain healthy business competition and consumer protection.
c) Commission VI of the Indonesian House of Representatives (DPR RI) supports the strengthening of the Institutions and Budget of the Business Competition Supervisory Commission and the National Consumer Protection Agency which must be balanced with better performance.
d) Commission VI of the Indonesian House of Representatives (DPR RI) proposes that there be a Law that integrates the Law on Healthy Business Competition and Consumer Protection.
e) Commission VI of the Indonesian House of Representatives (DPR RI) requests that the Business Competition Supervisory Commission impose strict sanctions in the form of administrative actions on business actors who violate the provisions of the Law, especially business actors in the food sector.[34]

Strengthening the KPPU institution is urgent so that this institution can carry out its duties independently and effectively, especially in dealing with the complexity of business competition. Currently, its authority is limited to quasi-judicial functions, namely investigations, examinations, and the imposition of administrative sanctions

[34] Lapora Kegiatan Komisi VI DPR RI Dalam Masa Persidangan Iv Tahun Sidang 2021-2022, tanggal 15 Maret - 16 Maret 2022 (Masa Sidang Mulai Tanggal 15 Maret - 14 April 2022 Dan Masa Reses Mulai Tanggal 15 April - 16 Maret 2022) Keputusan Rapat Konsultasi Pengganti Rapat Bamus DPR RI Tanggal 14 Maret 2022. h. 24-25.

against violations of business competition. KPPU decisions can still be tested at the Commercial District Court up to the appeal level. This is different from the KPK which has pro Justitia authority (investigation, prosecution and prosecution), and the OJK has regulatory and supervisory authority in the financial sector, including the imposition of sanctions. To strengthen KPPU's supervision of business competition, it is necessary to consider expanding the authority as possessed by the KPK and OJK.

Weak reporting and limited access to data are the main obstacles to handling business competition violations. Many violations are not revealed due to the lack of public understanding of the principles of healthy business competition or the public is reluctant to report. In addition, limited public access to transaction data, prices, agreements, and internal documents of uncooperative companies hinders the law enforcement process. In this case, the KPPU will have the authority to obtain data access to business actors suspected of carrying out monopolistic activities and unhealthy business competition.

Conclusion

The KPPU's authority has a strategic role in maintaining a balance between the interests of business actors and the public interest. Through fair and consistent enforcement of competition law, the KPPU seeks to create a healthy business climate, encourage innovation, and protect consumers from unfair practices such as monopolies and unfair competition. Thus, the KPPU becomes an important pillar in realizing a just and sustainable economic system.

Violations of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition are generally characterized by actions by business actors that hinder or damage fair competition mechanisms in the market. The characteristics of these violations include dominant market control, cartel-like agreements, price fixing, supply restrictions, and discriminatory and exclusive practices. These violations not only harm other business actors, but also threaten consumer interests and economic stability, thus requiring strict and consistent supervision and law enforcement. Often involving coordination between business actors in the same market, using complex and difficult-to-track patterns, such as tender arrangements, market area divisions, or production quota controls. The impacts usually occur gradually and are not directly felt by consumers or MSMEs. The lack of reporting from internal parties and the limited public understanding of competition law also increase the difficulty in uncovering violations, which ultimately requires the KPPU to develop a more modern law enforcement strategy that is responsive to market dynamics.

In the future, KPPU's legal arrangements need to be directed to strengthen its role and authority in supervising and enforcing healthy competition laws in Indonesia, especially amidst the dynamics of the digital economy and market globalization. Regulatory reforms must include expanding jurisdiction, strengthening aspects of investigation and execution, and increasing synergy between institutions. With an adaptive and responsive legal framework, KPPU can carry out its functions more effectively in preventing monopolistic practices, protecting small business actors, and maintaining a balance between business interests and public interests.

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