

PREVENTION OF MONOPOLISTIC PRACTICES AND UNFAIR BUSINESS COMPETITION THROUGH BUSINESS COMPETITION SUPERVISION

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ABSTRACT

Intense business competition among business actors and corporations can lead to forms that harm the market itself, consumers and the state. This loss was initially caused by the dominance of one market actor through monopoly, or unhealthy business practices, aimed at undermining a competitor's equivalent business available in similar market. In Indonesia, business competition in the market is overseen by an individual institution, in order to prevent harmful behavior. This regulatory body, called the Business Competition Supervisory Commission, was established to oversee the implementation of the rules on the prohibition of monopolistic practices and unfair business competition. The role of the Commission in the enforcement of Business Competition Law indicates that it is in performing its duties and authority to examine and decide on business competition. The number of case decision from 2012 until 2016 were 80 decisions with various types of violations against the Law concerning Business Competition. Based on the results of research, it is seen from the amount of the payment amount of the fine to be paid by the business actors to the state varies, depending on the Commission's appraisal result for its magnitude and see the impact of the loss for the community. The Commission has a formula to calculate it, and then should impose maximum administrative sanction if it is proven that the business actor has committed a violation. This is to cause deterrent effect to the other business actors in order not to violate the regulation of business competition which has harmful impact to national economy. Since it large effect in regulating the market, the Commission is very beneficial for protecting the interests of the market actors, consumers, the state and guaranteeing equal business opportunity for all actors, and more broadly, protecting the national economy from harmful practices.

Keywords: Role, Business Competition Supervisory Commission, Law Enforcement, Business Competition Law, Business Actor.

INTRODUCTION

Intense business competition among business actors and corporations can lead to forms that harm the market itself, consumers and the state (Wahyuni & Ginting, 2017). Hence, Business Competition Law No. 5 of 1999 is the newly born law after the reform period in Indonesia to prevent the harmful behavior of business actors. Business competition law is a regulation that regulates the behavior of business actors in conducting business activities properly and correctly in accordance with the regulations available so as to create a conducive business climate. If business actors carry out their business activities well, do not mutual monopoly practice with each other then the economic condition of the big country is likely to be conducive and the beneficiary is the business actors themselves, other business actors and of

course the state of Indonesia economy that will increase and competitiveness international will also increase (Wirawan, 2018).

In Indonesia, the Law regulating Business Competition Law is Law No. 5 of 1999 About Prohibition of Monopolistic Practices and Unfair Business Competition. This Law aims to strive for fair business competition in every business activity undertaken by every business actor. The presence of Business Competition Law is welcomed by all Indonesian people and at the same time expect that the regulation can be implemented well by business actors, and in this context, a related governmental body, called the Business Competition Supervisory Commission, can apply its law enforcement and stakeholders can perform the role in accordance with what is known for example there is known a or some business actors to do banned, monopolistic practices, or abuse of dominant position are expected to report immediately to the Commission. Given one of Business Competition Law's goals is to provide prosperity for the community (Simbolon, 2012; Mulyawan, 2018). Backed by the number of violations committed by business actors so that the research intends to examine how law enforcement is done by the Commission with through a decision made in law enforcement business competition. Hence, it will be useful to analyze the Commission's decision in 2012 until 2016. The research makes a problem in this research is how the role of the Commission in the enforcement of business competition law in Indonesia (Simbolon, 2013). In this study, the research is limited by law enforcement conducted by the Commission in the last 5 (six) years from 2012 until 2016.

DUTIES AND POWERS OF THE COMMISSION IN ENFORCING BUSINESS COMPETITION LAW

The Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha/KPPU*) is an independent institution that has the main task of enforcing competition law as stipulated in Law Number 5 of 1999. In carrying out this task, KPPU is authorized to develop guidelines relating to Law Number 5 of 1999, as listed in article 35 letter f. The Commission in performing its duty to enforce business competition law is well regulated in Business Competition Law (Simbolon, 2012). This Law mention about the duty of The Business Competition Supervisory Commission (Article 35 Business Competition Law) mention to conduct an assessment of the agreements as set forth in Article 4 through Article 16, to conduct an assessment of the business activities and or business actors as Article 17 through Article 24, and to conduct an assessment of the presence or absence of abuse of dominant positions as provided for in Article 25 through Article 28) takes action within the competence of the commission in accordance with Article 36 advises and considerations of government policies relating to monopolistic practices and/or unfair business competition Prepares guidelines and/or publications relating to this Law Provides periodic reports on outcomes the Commission's work to the President and Parliament (Prayoga, 1999; Prayogo, 2018).

The implementation of the authority carried out by the Commission has been running well, for example, has made suggestions and considerations to the government related to oil and gas supervisory body, has made many the Commission regulations related to business activities in Indonesia so that all goes well because business activities are very supportive of the national economy so it needs escort with regulation the good one. The regulation made by the Commission is referred to as the Commission Regulation. The Commission must report all activities to the President and Parliament, so that the Parliament and the President can know the performance results of the Commission in terms of supervision on the implementation of Business Competition Law (Anggara, 2009). Seeing the the Commission's performance in 2012

until 2016 is very much the case as a report to the Commission which is resolved through its verdict. There are 80 verdicts with various types of violations against Business Competition Law.

The Commission in carrying out these duties can be seen from the number of cases reviewed and decided by the Commission from 2012 to 2016. In carrying out these tasks, the Commission, among others, conducts an assessment of prohibited agreements as set forth in Article 4 up to Article 16 Business Competition Law (Simbolon, 2018). All prohibited arrangements set forth in the Business Competition Law shall not be carried out by the business actor and if done then Article 46 of the Law has prepared sanctions against the offenses committed by the business actor (Shenefield & Stelzer, 2001).

THE ROLE OF THE COMMISSION IN THE ENFORCEMENT OF BUSINESS COMPETITION LAW

The result of the research shows that the Commission in carrying out its duties and authority to enforce business competition law by examining and deciding business competition cases from 2012 until 2016 is a number of 80 decisions with various types of violations against Business Competition Law. The following results of research on law enforcement conducted by the Commission are described in table form for every year for every case examined and terminated by the Commission.

The following will be an analysis of one article against the prohibited treaty. Business actors are prohibited from entering into agreements with other business actors to jointly control the production and or marketing of goods and or services which may result in monopolistic practices and or unfair business competition (Article 4 paragraph (1) Business Competition Law). Business actors are suspected or considered to jointly control the production and or marketing of goods and/or services as meant in paragraph (1), if 2 (two) or 3 (three) business actors or business entities dominate more than 75% (seventy-five percent) market share of one particular type of goods or service (Article 4 paragraph (2) Business Competition Law). This Article emphasizes that every business actor either alone or together with other business actors intentionally and clearly planning to control the production and or marketing of a good, this should not be because it will interfere or ultimately hinder other business actors entering the relevant market. Behavior of business actors like this in the end will cause business conditions to be not conducive. Such agreement shall be canceled by the Commission and will be imposed administrative sanction to the business actors, namely cancellation of agreement and fine sanction which must be paid to State treasury as non tax income.

Furthermore, the Commission in the implementation of authority to enforce business competition law is regulated well in Business Competition Law. The Law mentioned the authority of the Commission (Article 36 Business Competition Law) including; receiving reports from the public or business actors regarding alleged monopolistic practices of unfair business competition, conducting research on such allegations, investigating or examining cases of alleged monopolistic practices, summarizing the results of investigations, summoning business actors, presenting witnesses, examining evidence, the presence or absence of any losses on the part of other public business actors, notifying the decision of the commission to business actors suspected of monopolistic practices or unfair business competition, imposing sanctions in the form of administrative measures to business actors violating Business Competition Law provisions.

EFFECTIVENESS OF THE COMMISSION IN ESTABLISHING FAIR BUSINESS BEHAVIOR

In 2012 there are a number of 9 decisions made by the Commission and the research intends to analyze 1 decision namely case No. 09 of 2012. According to the researches that for the year 2012 the Commission only make 9 decisions, this is less than optimal and less effective. If due to inadequate reporting, the Commission can conduct by way of initiative to conduct inspection not based on report but based on initiative. In summary, the case No. 09 of 2012 regarding alleged violation of Article 29 of Law No. 5 of 1999 concerning Delay in Noting of Takeover of Shares of PT Austindo Nusantara Jaya Rent by PT Mitra Pinasthika Mustika (Commission for the Supervision of Business Competition, 2012). The party reported in Case No. 09 of 2012 is reported party, PT. Mitra Pinasthika Mustika, having its address at Jalan Agung Karya IV Blok B Number 19 Sunter Podomoro Jakarta, Indonesia. Results of The Commission's Decision is to Declare that the Reported Party is proven legally and convincingly violating Article 29 of Law No. 5 of 1999. Because at the latest 1 (one) month after the Merger has to report to the Commission. Sanctions imposed on business actors shall be punish the Reported Party to pay a fine of IDR 4,600,000,000. (Four Billion Six Hundred Million Rupiah) to be deposited to the State Treasury as a revenue deposit of fines violation in the business competition field of the Business Competition Supervisory Commission through the bank Government with the code of acceptance 423755 (Income Fines Violation in the Field of Business Competition).

In 2013, the number of the Commission Decisions that can be completed by the Commission is a number of 12 Decisions. A number of 12 decisions are still less than optimal and less effective, in which each year to complete a minimum portion, 24 cases were decided by the Commission if there are cases reported to the Commission so it works optimally. The case to be analyzed is Case No. 01 of 2013 concerning Alleged Violation of Article 22 of Law No. 5 of 1999 on Tender of Procurement of Printed Goods and Props of Education of South Tapanuli Regency of Fiscal Year 2011 (Commission for the Supervision of Business Competition, 2013). Reported parties in this case are Reported Party I, Provincial Procurement Committee of the Provincial/District of Tapanuli Selatan Budget Year 2011 (Tender Committee) Reported Party II, CV. Budi Utomo, Reported Party III, PT. Madju Medan Cipta, Reported Party IV, CV. Padang Mas.

The result of the Commission's decision is to state that Reported Party I, Reported Party II, Reported Party III, and Reported Party IV were proven legally and convincingly violating Article 22 of Law No. 5 of 1999. The sanctions imposed were Banning Reported Party II, Reported Party III and Reported Party IV to follow tender process throughout Indonesia for 2 (two) years. To punish the Reported Party II, to pay a fine of IDR 450,000,000; Punishing Reported Party III, paying a fine of IDR 250,000,000; Punishing Reported Party IV, paying a fine of IDR 50,000,000 to be deposited to the State Treasury as a payment of fines for violation in the field of business competition Working Unit of the Supervisory Commission Business Competition through a Government bank with an acceptance code of 423755 (Fines Income Violation in the Field of Business Competition). Case No. 09 of 2014 has taken Decision of Alleged Violation of Law No. 5 of 1999 relating to Public Auction of Procurement of Construction Service 3 (three) Road Rehabilitation and Maintenance Packages in North Minahasa Regency North Sulawesi Province Budget Year 2011 and 2012 (Commission for the

Supervision of Business Competition, 2014). The parties reported in this case are Reported Party I, PT Sarana Gita Sentosa, Reported Party II, PT Sinar Terang Lestari, Reported III, PT Sinar Karya Mega Persada, Reported Party IV, PT Ericko Grant Dinarto, Reported V, Procurement Committee of Public Works North Minahasa District Fund Source DPPID Fiscal Year 2011 and 2012. Results of the Commission's Decision is To Declare that Reported Party I, Reported Party II, Reported Party III, Reported Party IV, Reported Party V, proven legally and convincingly violated Article 22 of Law No. 5 of 1999. Sanctions imposed by the Commission are Punished Reported Party I, paid a fine of IDR 1,100,000,000,00; Punished Reported Party II, paid a fine of IDR 375,000,000; Punishing Reported Party III paid a fine of IDR 295,000,000; Punishing Reported Party IV, paying a fine of IDR 153,000,000 to be deposited to the State Treasury as income deposit of fines violation in the business competition field of the Business Competition Supervisory Commission through Government bank with the code of acceptance 423755 Income of Fines in the Field of Business Competition); Ordered all reported parties, after making payment of fines, to submit a copy of proof of payment of the fine to the Commission.

In 2015, it is worthy to examine the case No. 14 of 2015 that has taken decision on Alleged Violation against Article 19 letter (a) and (b) and Article 25 paragraph 1 letter (a) and (c) Law No. 5 of 1999 conducted by Reported Party in a Milk-Containing Milk Powder Remover Product in Sachet Packaging (Commission for the Supervision of Business Competition, 2015). The Reported Party in this case is PT Forisa Nusapersada, which is located at Jalan Bumi Mas (Bhumi Mas) II Number 7 Area Cikupa Mas, Talaga Village, Rukun Tetangga 003, Rukun Warga 003, Cikupa Sub-district, Tangerang Regency, Banten Province, and head office on Jalan Raya Pengangsaan Dua Nomor 12, Kelapa Gading, Jakarta 14250; The outcome of the Commission's decision is to state that the Reported Party: PT Forisa Nusapersada is proven legally and convincingly violating Article 19 letter a and b Business Competition Law, stating that the Reported Party: PT Forisa Nusapersada is proven legally and convincingly violating Article 25 paragraph (1) a and c Business Competition Law.

The sanction imposed by the Commission on Business Competition Law offenders is to Punish reported parties that are PT Forisa Nusapersada paid a fine of IDR 11,467,500,000 to be deposited to the State Treasury as a revenue deposit of fines violation in the business competition of the Business Competition Supervisory Commission through Government bank with the code of acceptance 423755 (Fines Income Violations in the Field of Business Competition); Ordered the Reported Party: PT Forisa Nusapersada to stop the Ice Program of The Real Ice Blender and revoke the Internal Office Memo Number: 15/IOM/MKTDDB/XII/2014 dated December 29, 2014.

In 2016, Case No. 24 of 2016 concerning Alleged Violation of Article 22 of Law No. 5 of 1999 regarding 4 (four) Packages of Procurement of Medical Devices at Abdul Wahab Sjahranie Hospital Samarinda, East Kalimantan Fiscal Year 2012 and 2013 (Commission for the Supervision of Business Competition, 2016). Reported Parties are PT Synergy Dua Kawan Sejati, PT Kembang Turi Healthcare, PT Dwi Putra Unggul Pratama, CV Trimanunggal Mandiri, with the last three being known to have correspondence address at Sekumpul Street Complex Ar Raudah 16 B Martapura, South Kalimantan, Indonesia, and having their address at Sekumpul Street Latansa Alley No. 3, Martapura, South Kalimantan, Indonesia. Result of The Commission Decision stating that all reported parties were proved legally and convincingly violating Article 22 of Law No. 5 of 1999. The sanction imposed by the Commission is to punish and to pay a fine of IDR 2,050,400,000 for Reported Party I, IDR 233,300,000 for Reported Party II, IDR

275,100,000 for Reported Party III, IDR 41,800,000 for Reported Party IV, and IDR 152,100,000 for Reported Party V.

CONCLUSION

The role of the Business Competition Supervisory Commission in the Enforcement of Business Competition Law indicates that the Commission in performing its duties and authority to examine and decide on business competition cases from 2012 until 2016, there are 80 decisions with various types of violations against Business Competition Law. The result of research on law enforcement conducted by the Commission is described in table form for every year every case examined and terminated by the Commission so that for five years is eighty cases of business competition that have been examined and then decided by the Commission. It is seen from the amount of the payment amount of the fine to be paid by the business actors to the state varies, depending on the the Commission's appraisal result for its magnitude and see the impact of the loss for the community. The Commission has a formula to calculate it, and from the researchs themselves suggest that the Commission impose maximum administrative sanction if it is proven that the business actor committed a violation. This research conveyed to cause deterrent effect to the next business actors to not violate Business Competition Law and affect the national economy. Based on the results of research,it is seen from the amount of the payment amount of the fine to be paid by the business actors to the state varies, depending on the Commission's appraisal result for its magnitude and see the impact of the loss for the community. The Commission has a formula to calculate it, and then should impose maximum administrative sanction if it is proven that the business actor has committed a violation. This is to cause deterrent effect to the other business actors in order not to violate the regulation of business competition which has harmful impact to national economy. Since it large effect in regulating the market, the Commission is very beneficial for protecting the interests of the market actors, consumers, the state and guaranteeing equal business opportunity for all actors, and more broadly, protecting the national economy from harmful practices, such as monopoly and unfair behavior.

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