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Enforcement of The Principle and Objective of Law Number 5 of Year 1999 on The Prohibition of Monopolistic and Unhealthy Business Competition Practices in Handling Business Competition Cases

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Abstract

One of the cases that the KPPU had ruled on is the case of the suspected violation by PT. Indomarco Prismatama (KPPU Ruling Number 03/KPPU-L-I/2000). In the legal considerations, the KPPU used the principle and objective (Article 2 and Article 3 of Law No. 5 of Year 1999) as the juridical foundation. This situation appears to be special in the history of rulings made by a Council in Indonesia. Usually, violations are only considered to occur upon the execution of forbidden acts for which the elements of the acts have been stated clearly according to the article formulations of a certain Law. This research used the normative juridical approach. This research is a case study of KPPU Ruling Number 03/KPPU-L-I/2000 on the Suspected Violation of the Prohibition of Monopolistic and Unhealthy Business Competition Practices by PT. Indomarco Prismatama. From the research results, it can be concluded that there is a discrepancy with what is idealized (das sollen) by Law No. 5 of Year 1999, and thus the enforcement process for Law No. 5 of Year 1999 returns to the basic function of the formation of the Law, which is to unite ideal and real factors. Although textually the articles that are suspected to be committed by the Respondent cannot be proven, to achieve the ideals of Law No. 5 of Year 1999, the substance of Article 2 and Article 3 may become the foundation to evaluate whether the business activities conducted by the Respondent can be declared to violate Law No. 5 of Year 1999, whether by the concrete legal regulation or the principle and objective of formation of Law No. 5 of Year 1999. As the sanctions that are imposed by the KPPU must agree with the objective of the creation of Law No. 5 of Year 1999, in relation to the Indomaret case, the KPPU ruling is expected to be able to alter the behavior of the Respondent who did not pay sufficient attention to competitive balance, which is realized in the form of several kinds of sanctions as specified in the KPPU Ruling.

INTRODUCTION

The Business competition law may be understood as law that regulates all matters that are related to business competition. Law is necessary to regulate societal life in all aspects and plays a role in economic development, particularly in the effort of achieving economic efficiency to realize social welfare.

Business competition law is a part of economic law. For this, its regulation and execution must be in agreement with the foundation of the state constitution as the 1945 Constitution, specifically Article 33 Paragraph (4). Here, the objectives of economic development that are to be achieved must be based on democracy that is populist in nature, which involves the existence of social justice for all the people of Indonesia. Business competition law is created in order to support the formation of a market economy system in order that competition among business actors can continue to exist and take place in a healthy manner, and thus the people (consumers) can be protected from business exploitation.

Competition law in Indonesia is regulated through Law Number 5 of Year 1999 on the Prohibition of Monopolistic and Unhealthy Business Competition Practices (Government of the Republic of Indonesia, 1999). This law is a reflection of the spirit to develop a market economy system that is efficient, open, and healthy. This is as affirmed in the stipulations of Article 2 regarding Principle and Article 3 regarding Objective of Law Number 5 of Year 1999 (Government of the Republic of Indonesia, 1999). Next, this law contains the regulation of several matters that may not be conducted by business actors, examples being forbidden agreements, illegal activities, and dominant positions. A commission was also formed that possesses the authority to examine and rule on cases in the field of competition, which is the Business Competition Supervisory Commission (KPPU, Komisi Pengawas Persaingan Usaha).

Based on the above authority, since 2000 to the present, the KPPU examined and ruled on many cases of suspected violations of Law Number 5 of Year 1999. An interesting case related to the principle and objective Law Number 5 of Year 1999 is the case of suspected violations by PT. Indomarco Prismatama at the address of Jl. Ancol I No. 9, Ancol Barat Jakarta 14430 (on the matter of establishing Indomaret Supermarkets in the Jabotabek area), which had been ruled by the KPPU in KPPU Ruling Number 03/KPPU-L-I/2000.

Suspicions of existing indicated violations of Law Number 5 of Year 1999 by PT. Indomarco Prismatama, hereinafter mentioned as the Respondent, was based on a report from a non-government organization that is hereinafter mentioned as the Claimant. Here the Claimant had conducted direct interviews with 429 small business or corner store owners who are considered representative of all corner store owners in the areas of Jakarta, Bogor, Tangerang, and Bekasi (Jabotabek). Most of the 129 small business owners who were interviewed stated that the establishment of Indomaret Supermarkets in the Jabotabek area had negative impacts on their businesses, as the following (KPPU, 2000):

1. Revenue or income from sales drastically decreased;
2. Many small businesses closed or were no longer in business because they could not compete with the prices and services of Indomaret Supermarkets;

3. The economies of their households became threatened, because the corner stores had previously served as their livelihoods to pay for their daily needs.

Therefore, the Claimant made the conclusion that existence of Indomaret had a detrimental effect on the small business owners in the surrounding areas. The small businesses were threatened to close, as they could not compete with the prices and convenience that are furnished by Indomaret. If this is ignored, it is estimated that 20,000 small businesses (that are in proximity to Indomaret) in the Jabotabek area will close or at least 80,000 impoverished people will suffer further, troubled at the loss of their livelihoods.

By the KPPU, the report of the Claimant was recorded and entered into the Monitoring List, which was then followed by the execution of a Preliminary Investigation and further followed by a Continued Investigation. In the end, the KPPU ruled that (KPPU, 2000):

1. PT. Indomarco Prismatama (the Respondent) in the development of its business did not pay sufficient attention to the principle of balance according to the principle of economic democracy in fostering healthy competition between the interests of business actors and general interests;
2. The Respondent is hereby ordered to terminate its expansion in traditional markets that directly face small-scale retailers in order to realize a competitive balance among large-scale, medium-scale, and small-scale businesses;
3. The government is hereby given the recommendation to carry out immediately development and empowerment of small- and medium-scale businesses or retailers in order to possess greater competitiveness and to be able to do business alongside medium-scale and large-scale businesses.

In its ruling, the Council of the KPPU made the conclusion that the Respondent did not in earnest carry out what has been stipulated in Article 2 and Article 3 of Law Number 5 of Year 1999, because the situation so far has caused distress and disrupted the presence of small stores in its proximity.

The Ruling of the KPPU Council that based the violation of the Respondent according to the principle and objective Law Number 5 of Year 1999 has an apparent special quality in the history of rulings made by a Council in Indonesia. Usually, a violation is only considered to occur the moment that forbidden acts are committed, of which the elements of the acts have been stated clearly according to the formulated articles of a certain Law. In this case, this would be the stipulations of Article 4 through Article 28 of Law Number 5 of Year 1999.

In the ruling, the KPPU ordered the Respondent to cease its expansion in traditional markets directly facing small retailers in order to realize balanced competition among large-scale, medium-scale, and small-scale business actors. Regarding sanctions, according to Law Number 5 of Year 1999, there are three types of sanctions, as outlined in Article 47 on Administrative Sanctions, Article 48 on Criminal Sanctions, and Article 49 on Additional Criminal Sanctions.

In the substance of Law Number 5 of Year 1999, the imposition of each of the types of sanctions above has been determined for specific kinds of violations, while the sanctions for violating principle and objective are not explicitly regulated in form and type. As such, based on the chronology above, this journal article addresses the theme of enforcing the principle and

objective of Law Number 5 of Year 1999 on the prohibition of monopolistic and unhealthy business competition practices.

RESEARCH METHODS

This research is a normative juridical research that utilized the statute approach that references primary legal sources (Ibrahim, 2007: 302), among others Law Number 5 of Year 1996 on the Prohibition of Monopolistic and Unhealthy Business Competition Practices; KPPU Regulation Number 5 of Year 2011 on the Guideline of Article 15 (Tying Agreements); KPPU Regulation Number 1 of Year 2019 on the Protocol for Handling Cases of Monopolistic and Unhealthy Business Competition Practices; and Supreme Court of the Republic of Indonesia Regulation Number 3 of Year 2019 on the Protocol for Filing Objections toward Rulings of the Business Competition Supervisory Commission. This research also used the case approach with KPPU Ruling Number 03/KPPU-L-I/2000 on the Suspected Violations toward the Prohibition of Monopolistic and Unhealthy Business Competition Practices by PT. Indomarco Prismatama.

ANALYSIS AND DISCUSSION

1. The Position of Legal Principle based on Legal Perspective and Legal Science

The concept of principle can be found in a book by The Liang Gie, who stated that principle is a general argument that is stated in general terms without suggesting specific methods regarding its execution, which is applied to a series of actions to become an appropriate indication for the actions. Conceptually, principle may be understood as an abstract basic framework of thinking, because it has not provided a specific or concrete method in its execution. Principle explicitly has a close relationship with law: the words “principle” and “law” may be understood as normative symptoms that demand the existence of a concrete form of law, such as a legal regulation.

Next, the understanding of legal principle may be examined from several definitions stated by experts in law, among others the following:

a. Paul Scholten defined legal principles as “tendencies that are stipulated by condition toward law by our moral understanding”. It is understood that legal principles are the basic ideas that are found within and behind the legal system, each being formulated in legal regulations and rulings by judges, for which in relation to them, individual stipulations and rulings may be regarded as their explanations (Atmaja, 2018: 146).
b. Karl Larenz, in the book “Methodenlehre der Rechtswissenschaft”, in line with the views of Paul Scholten, stated that legal principles are “measures of law and ethics that provide direction to the formation of laws” (Atmaja, 2018: 146) . It is easily understood that legal principles are requisite with ethical-moral values in provisions or norms/standards of law in both the formation of legal regulations and rulings by judges as the formation of impromptu (inconcito) laws.
c. P. Belefroid, in the book “Beschowingen over Rechtsbeginselen”, stated that general legal principles are basic standards that are formulated from positive law and that by legal

science are not derived from more general regulations" (Bruggink, 1996: 119). Legal principles are values that condense in positive law.

d. H.J. Homes, in the book "Betekenis van de Algemene Rechtsbeginsselen voor d praktijk", stated that legal principles "cannot be regarded as concrete legal norms, but need to be regarded as general bases or guidelines for applicable laws" (Bruggink, 1996: 119).. As such, H.J. Homes takes the view that legal principles are the basic standards of behavior.
e. A.R. Lacey stated, "principles may resemble scientific laws in being descriptions of ideal world, set up to govern actions as scientific laws are to govern expectation". This indicates that legal principles have a broad scope in the sense that they may become the scientific basis of various legal regulations/standards to control human behavior that generates expected legal consequences (Atmaja, 2018: 147).
f. G.W. Paton provided a brief definition: "a principle is the broad reason, which lies at the base of rule of law" (Atmaja, 2018: 147) . Therefore, principle is abstract in nature, while legal regulations/standards are concrete in nature regarding certain behaviors or legal actions.
g. According to Sudikno Mertokusumo, legal principles are not concrete legal regulations, but basic ideas that are general in nature or that comprise the background of concrete regulations found within and behind every legal system. They are manifested in legal regulations and rulings by judges that comprise positive law and may be united by seeking general properties in those concrete regulations (Mertokusumo, 2001: 8).
h. According to Satjipto Rahardjo (2009: 160), legal principle is the "heart" of legal regulations. It represents the broadest foundation for the creation of legal regulations. These legal regulations in the end can be traced back to those legal principles. Unless stated as a foundation, legal principle may appropriately be considered as the reason for the creation of legal regulations, or to comprise the ratio legis of legal regulations. As such, with the presence of legal principle, the law is not merely a collection of regulations, because principle contains ethical values and demands, becoming a bridge between legal regulations and the social ideals and ethical views of the people.

Based on the understanding of legal principle as in several ways above, they emphasize that legal principle is not a concrete legal regulation. Legal principle is a basic idea that has a general nature. Legal principle forms the background of concrete regulations that are found within and behind every legal system, taking the manifestation of legal regulations and rulings by judges that comprise positive law; it may be brought together with the discovery of general characteristics in concrete regulations.

Based on the viewpoints of law and legal science, the function of legal principle may be considered from the following explanation by Klandermann (Sidharta, 2006: 204):

a. From the viewpoint of legal science, legal principle only serves to stipulate and clarify (explain); its objective is only to provide an outline and it is not normative. As such, it is not included in positive law and certainly cannot be applied directly to resolve conflicts, and must go through interpretation by judges.

b. From the viewpoint of positive law, the existence or position of legal principles is with lawmakers and judges (to lend legitimacy and) to provide normative influence, and as such, those legal principles bind the parties in their application by a judge. The view of Klandermann is a bridging view.

Next, Notohamidjoyo takes the view that the function of principle in relation to the workings of law are the following (Atmaja, 2018: 148):

a. For lawmakers (legislators), legal principle becomes the foundation or basis for the formation of a law. Legislators need to research the basic idea of legal principle while being able to formulate it in the formation of a law. In legal science, this is recognized as principles for the formation of good legal regulations.
b. For judges:
    1) when applying laws, legal principles function as the foundation in interpreting clauses or articles that are unclear;
    2) principles provide legal consideration for the justification of the disposition;
    3) in legal discovery (rechtsvinding), a judge may put legal principles to the function of constructing the legal analogy.

In the development of prevailing views in the application of legal regulations, legal principle is given the understanding of having the function of being the "ratio legis" of legal regulations. This means that every person, primarily law enforcement officials, must understand the basic ideas that form laws. In this way, those legal regulations possess "nutrition" in law enforcement, for which legal principles become its basic spirit.

2. Principle and Objective of Law Number 5 of Year 1999

Economically, the creation of Law Number 5 of Year 1999 was founded by the expectation that regulations regarding competition will assist in realizing economic democracy as stated in Article 33 Paragraph (3) of the 1945 Constitution, ensuring a free and fair business competition system to improve the welfare of the people, and creating an efficient economic system. The ratio legis of the substance of Law Number 5 of Year 1999 is regulated in the stipulations of Article 2, stating that "Business actors in Indonesia in the execution of their business activities are to be based on economic democracy with attention to the balance between the interests of business actors and general interests".

Next, the objective of Law Number 5 of Year 1999 is regulated in the stipulations of Article 3, as the following:

a. to maintain general interests and to improve the efficiency of the national economy as one of the efforts to improve the welfare of the people;
b. to realize a conducive business climate through the same regulation of business competition for large-scale business actors, medium-scale business actors, and small-scale business actors;
c. to prevent monopolistic and/or unhealthy business competition practices that are caused by business actors; and
d. to create effectiveness and efficiency in business activities.

In the case of the application and interpretation of each clause in Law Number 5 of Year 1999, both of these articles regarding principle and objective must be used, for which in the execution of each activity, business actors need to pay attention to the balance between the interests of business actors and general interests, and to improve the welfare of the people.

3. Usage of Principle and Objective as The Basis of The Primary Consideration of The Commission Council in KPPU/ Ruling No. 03/KPPU-L-I/2000

In ruling No. 03/KPPU-L-I/2000, the KPPU used the principle and objective of Law No. 5 of Year 1999 as the juridical foundation for making a ruling. As previously discussed, legal principle does not comprise a concrete legal regulation, and it is instead a general idea. Legal principle only serves as a background influence for the concrete regulations that are a part of and forms legal systems, which take the form of legal regulations and judge verdicts as positive law and may be established by determining the general characteristics of the concrete regulations.

There is an ideal behind the creation of Law No. 5 of Year 1999, in that with the enactment of this law, it is expected that healthy business competition can be created in order to achieve an efficient market economy. In this condition, consumers can freely select goods and services with competitive prices and optimal quality according to their capabilities, and possess freedom to plan the usage of goods and services in the future. With the creation of a conducive climate for business through regulation of healthy business competition, the guarantee of equal opportunity of doing business for all business actors will be ensured. Further, this will create a healthy competitive environment among national business actors in order for them to be able to compete in international markets, and will realize an efficient national economy in order to improve the welfare of the people (Hansen, 2002).

Based on the results of preliminary and continued investigation as well as monitoring results, the Respondent was not proven to have committed:

a. Dominant position according to Article 1 Paragraph 4 and Article 25 of Law No. 5 of Year 1999;
b. Collusion according to Article 1 Paragraph 8 and Article 22 of Law No. 5 of Year 1999;
c. Tying Agreements according to Article 15 of Law No. 5 of Year 1999.

However, the Commission Council discovered important facts that represent real conditions that occur in society (that comprise the explanation of juristic facts, as included in the KPPU Ruling), in that the presence of Indomaret Supermarkets in the areas of Jakarta, Bogor, Tangerang, and Bekasi caused disruption of small retailers within their area. This occurred because:

a. The establishment of Indomaret supermarkets did not pay sufficient attention to the presence of small stores in their areas;
b. The supermarkets did not pay sufficient attention to the location and usage zoning of buildings, thus causing distress to owners of small stores in their areas;
c. The supermarkets applied a modern management strategy that cannot be followed by small stores small stores as retailers in their areas. Therefore, the Respondent is considered to

have not paid sufficient attention to the business presence and development of small stores in their areas. For this, the Commission Council took the view that the Respondent in developing its business activities ignored the principle of economic democracy and did not pay attention to the balance between the interests of the Respondent and the interests of the surrounding people;

d. Aside from the matters above, the Respondent in the execution of its retail business through Indomaret Supermarkets conducted a practice of marketing certain products with "Super Hemat" discount prices for 40 product items each month within timespans of two weeks, opened for service at an earlier time, and established permits for businesses and zoning in inappropriate places, which was affirmed based on the testimonies that were revealed in the Investigations from the Claimant, the Respondent, and Witnesses as well as documents, for which:
    1) The Respondent according to DKI Jakarta Regional Regulation No. 8 of Year 1992 and Implementation Guidelines in the form of Governor Decree No. 50 of Year 1999 on the Implementation Guidelines for the Engagement of Private Markets in the Jakarta Special Capital Region (DKI Jakarta), supermarkets with areas less than 200 m2 must obtain principal permission from the Regional Secretary. In fact, the Respondent had not obtained permission from the Regional Secretary because of the following:
        a) Indomaret was established before the issuance of Governor Decree Number 50 of Year 1999 as above;
        b) Thus far, the Regional Government has not issued permits for supermarkets whose areas are less than 200 m2, including for Indomaret Supermarkets.
    2) According to the explanation of the Government of DKI Jakarta as Witness through the Chief of the Department of Supervision of City Development (P2K), warnings had been given to 44 Indomaret Supermarkets that had violated zoning permits for residential areas, becoming commercial areas;
    3) In Governor Decree No. 50 of Year 1999 on the Implementation Guidelines for the Engagement of Private Markets in the Jakarta Special Capital Region in Article 11 letter g, it is mentioned that "supermarkets (with an area greater than 200 m2) must have a certain minimum distance from traditional markets, as:
        a) 500 m from markets of developing environments, or
        b) 1 Km from markets of emerging environments".

Therefore, from the legal facts above, several matters need to be emphasized, including among others:

a. Ill will from the party of the Respondent: although Indomaret had been established before the issuance of Governor Decree Number 50 of Year 1999 above, with the warning from the Chief of the Department of Supervision of City Development (P2K), Indomaret then immediately should:
    1) arrange for permits related to the establishment of Indomaret as a supermarket with an area greater than 200 m2;

2) manage the abuse of permits of residential areas becoming commercial areas.

Up to the moment that the case was handled by the KPPU, Indomaret still had not conducted the above actions.

b. Disparity between what is idealized (das sollen) by Law No. 5 of Year 1999 and the reality that occurs in society (das sein): each business actor in the execution of activities need to pay attention to general balance by giving opportunity to other business actors to run their businesses as competitors or potential competitors in order to be able to develop reasonably, and need to maintain public interests and ensure a business opportunity for large-, medium-, and small-scale business actors. With what occurred in reality, the Respondent in the execution of business activities had caused distress and disrupted the presence of small stores in the surrounding areas.

From the conditions above, the enforcement process for Law No. 5 of Year 1999 returns to the basic function of the formation of this Law, which is to function to unite the ideal factor (das sollen) and the real condition (das sein). For this, fundamentally, legal principles are rooted in the reality of society, becoming ideals that are rooted in values that are selected as a guide for shared living (Mertokusumo, 2002).

Textually, the prohibiting clauses in Law No. 5 of Year 1999 that are suspected to be committed by the Respondent cannot be proven. However, to achieve the ideals of Law No. 5 of Year 1999, the substances of Article 2 and Article 3 may become the foundation to evaluate whether the business activities conducted by the Respondent may be stated to violate Law No. 5 of Year 1999. This applies whether by the concrete legal regulation or by the principle and objective of formation of Law No. 5 of Year 1999, with the following reasons (KPPU, 2000):

a. The competition of the large-scale business actor with the small-scale (micro-scale) business actor on the field has caused a disruption in balance for public interests because small-scale business actors are threatened, thus having the potential to cause unemployment in greater numbers;
b. Sufficiently widespread social distress has occurred in various areas of Jabotabek because many small retailers lost out in unbalanced competition with the Respondent;
c. This unbalanced competition has a greater potential of causing losses in the form of reduced welfare for small-scale (micro-scale) business actors because they experience business setbacks and losses as they lost out in competition with a large-scale business actor, who possesses better capital support, management, and access to sources of goods;
d. From the investigation, it has been proven that the Respondent did not pay sufficient attention to the balance between the interests of the Respondent (as a large-scale business actor) and the interests and presence of small retailers in the surrounding areas.

Therefore, it may be understood that the Commission Council used the formulations of Article 2 and Article 3 in evaluating the business activities conducted by the Respondent, whether it has been appropriate with the principle and objective of the creation of Law No. 5 of Year 1999 or not. Additionally, one of the long-term goals that is expected from the creation of this Law is to change the behaviors of business actors from those who initially conducted

their business less fairly or unfairly to become those who possess competitive and healthy behaviors.

4. Appropriateness of Imposed Sanctions in The Violation of Principle and Objective in Law No. 5 of Year 1999

Out of the entirety of the ruling issued by the Commission Council, the sanction imposed on the Respondent was "the Respondent is hereby ordered to cease its expansion in traditional markets directly facing small retailers in order to realize a competitive balance among large-scale business actors, medium-scale business actors, and small-scale business actors".

Regarding sanctions according to Law No. 5 of Year 1999, there are three types of sanctions, as outlined in Article 47 on Administrative Sanctions, Article 48 on Criminal Sanctions, and Article 49 on Additional Criminal Sanctions. The imposition of each of these kinds of sanctions have been determined for certain kinds of violations. Regarding violations of the principle and objective of Law No. 5 of Year 1999, the form and type of the sanctions are not explicitly regulated.

After conducting the Preliminary Investigation, the Investigation Team did not find sufficient evidence of existing suspected violations that were committed by the Respondent toward Article 15, Article 22, and Article 25 of Law No. 5 of Year 1999, and thus the types of sanctions that had been established in the stipulations of Article 47, Article 48, and Article 49 could not be applied in this case. Based on the findings on the field, the Respondent was indicated to have ignored the principle and objective of Law No. 5 of Year 1999 on the Prohibition of Monopolistic and Unhealthy Business Competition Practices as stated in Article 2. In addition, the Investigation Team discovered matters related to social distress, as competition that occurs between large-scale business actors and small-scale business actors and causes disruptions in balance with the potential to reduce the welfare of small-scale business actors, as well as business permits, business locations, service hours, and spatial planning that do not agree with public interest principles cohesively in order to realize a balance of interests. Thus, the Commission had to find the form or type of sanctions that is considered appropriate to prevent those legal facts from further development, and to mitigate at the very least or even eliminate if at all possible the negative impacts that are caused by the Respondent due to the execution of the business.

a. Article 2 of Law No. 5 of Year 1999

Law No. 5 of Year 1999 can and must assist in realizing an economic structure as expressed in Article 33 of the 1945 Constitution. The explanation of Article 33 Paragraph (1) of the 1945 Constitution states that "The economy is regulated by cooperation based on the principle of mutual assistance (gotong royong)". The explanation contains the idea of economic democracy, which is included in Article 2 of Law No. 5 of Year 1999 (Hansen, 2002). Economic democracy has a distinct characteristic, in that the democracy is realized by all members of society for the interests of the people, and must serve the interests of all of the people.

It had been agreed upon generally that the state must create a regulation of business competition to be able to achieve the goal of economic democracy. As such, the following three systems are in conflict with that objective (Hansen, 2002):

1) free liberalist competition, which in the past had weakened the position of Indonesia in the international economic system;
2) system of expenditure budgeting, which impedes progress and development; and
3) system of concentration of economic powers, as any form of monopoly will put the people at a disadvantage.

Only a Law regarding monopoly is able to prevent the emergence of the three systems, because it will protect the business competition process, ensure order in business competition, and prevent occurrences of market domination.

The background of the creation of Law No. 5 of Year 1999 is an agreement that was established between the International Monetary Fund (IMF) and the Government of Indonesia on 15 January 1998. In the agreement, the IMF agreed to furnish financial assistance to the State of the Republic of Indonesia with an amount of USD 43 billion, which had the objective to overcome the economic crisis, but with the requirement that Indonesia carries out reforms of the economic system and certain economic laws. This situation causes anti-monopoly law to be required (Hansen, 2002).

However, the above reason is not the sole reason behind the creation of Law No. 5 of Year 1999. Since 1989, intense discussions in Indonesia had occurred regarding the necessity of an anti-monopoly law. Broad economic reforms, and in particular regulatory policies that had been implemented since 1980, within a period of 10 years had caused a situation that is considered critical. There emerges conglomerates of business actors that are controlled by certain families or parties, and those conglomerates can be said to cast out small- and medium-scale business actors through unfriendly business practices. Further, the conglomerates above are given protection by law, such as through the creation of cartels for cement, paper, and wood; price fixing for sugar, rice, and cement; and special licenses for cloves, wheat flour, and credit in the airplane and automotive industry sectors.

Lines of business that are considered to control the life necessities of the multitude and that are controlled by the state instead develop into a practice of "legalized" monopoly that should be managed for the greatest prosperity of the people, and yet they dismiss the true essence and meaning of the people themselves. The management is uneven and inefficient, thereby causing an extremely severe practice of collusion, corruption, and nepotism (Hansen, 2002).

With such a background, it is realized that just the dissolution of the state-controlled economy and monopolistic companies is not sufficient to develop a competitive economy. The necessary demand of the state to ensure the integrity of the business competition process against disruptions from business actors by creating laws that forbid business actors to displace obstacles of state commerce just becomes nullified by obstacles of private commerce (Hansen, 2002).

b. Article 3 of Law No. 5 of Year 1999

The stipulations of Article 3 are not only limited to the primary objective of Law No. 5 of Year 1999 as a system of business competition that is free and fair, which includes a guarantee of the same business opportunity for all business actors. Here, business agreements or mergers that impede competition and abuse economic power are also absent, and thus all business actors in conducting economic activities possess a broad room for movement (Hansen, 2002).

In addition, Article 3 states a secondary objective of Law No. 5 of Year 1999 that is desired to be achieved through a system of business competition that is free and fair, which is the welfare of the people and an efficient economic system. As such, this should be the ultimate consequence of economic policies, which is the optimal provision of goods and services for consumers.

According to the modern theory of business competition, the process of business competition will be able to achieve that objective by way of forcing factor allocation in an economic manner, which would realize the most efficient usage of limited resources and the adjustment of production capacity with production methods and demand structure. This would also realize the adjustment of the supply of goods and services to consumer interests (the business competition regulation function) by ensuring optimal economic growth, technological advances, and stable prices (the business competition encouragement function) and by distributing revenue through market workings based on marginal productivity (the distribution function) (Hansen, 2002).

Considering Article 2 and Article 3 of Law No. 5 of Year 1999, they contain the important substance regarding the meaning of economic democracy, which is the need to pay attention to the balance between the interests of business actors and general interests, as well as the substance to improve economic efficiency and elevate the welfare of the people. Based on legal facts and monitoring results, the KPPU made the conclusion that the element of the behavior of not paying sufficient attention to the balance between the interests of the Respondent and those of small retailers, as well as the element of not paying sufficient attention to general interests and the welfare of the people, have been convincingly fulfilled. Therefore, it also becomes appropriate for the KPPU to make a ruling on the case with the formulation of the ruling as had been mentioned in the previous section.

In researching the characteristics of the ruling by the Commission and the sanctions imposed by the Commission toward the Respondent:

a. The Respondent is hereby ordered to cease its expansion in traditional markets directly facing small retailers, and in the development of its business, the Respondent must involve the local people, one way of which is by increasing the portion of franchising activities. This sanction was imposed based on the findings of facts on the field that the Respondent in the development of its business did not pay sufficient attention to the principle of balance according to the principle of economic democracy in fostering healthy competition

between the interests of business actors and general interests. With the imposition of these sanctions, it is expected that the Respondent in the effort of conducting business expansion must pay attention to the competitive balance among large-scale business actors, medium-scale business actors, and small-scale business actors.

b. The law enforcement process for unhealthy competition cannot be removed from the role of the government as a regulatory agency, and thus the Commission considers that it is necessary to involve the role of the government in the execution of the ruling. This is reflected in the ruling of the Commission:
    1) The Government is hereby recommended immediately to refine and make effective the implementation of regulations and policy measures that cover among others, and are not limited to, policies of location and spatial planning, permits, business hours, and social environments;
    2) The Government is hereby recommended immediately to carry out the development and empowerment of small-scale businesses or retailers in order to possess higher competitiveness and to be able to do business together with medium-scale or large-scale businesses.

It is apt to consider that one objective of the creation of Law No. 5 of Year 1999 is in order to change the behaviors of Indonesian business actors to be able to become more competitive and to encourage the creation of a more healthy climate for business competition. Therefore, the KPPU ruling toward PT. Indomarco Prismatama should not only be binding for the Respondent but also should be able to become a guide and direction for all business actors with massive capital in the effort of conducting business development. This applies for those businesses that belong to PT. Indomarco Prismatama as well as other businesses of similar level as the Respondent, for those in the Jabotabek area as well as in all territories of Indonesia.

CONCLUSION

There is a disparity between what is idealized (das sollen) by Law No. 5 of Year 1999 and what happens in reality (das sein). Ideally, every business actor in the execution of their activities need to pay attention to general balance by giving opportunities to other business actors in the execution of their businesses as competitors or potential competitors in order to be able to develop reasonably. They also need to maintain public interests and ensure the existence of a guarantee of business opportunities for large-scale, medium-scale, and small-scale business actors. In reality, the Respondent in the execution of its business activities had caused distress and disrupted the presence of small stores in surrounding areas.

From such conditions, the law enforcement process for Law No. 5 of Year 1999 will return to the basic function of the formation of this Law, which is to function to unite the ideal and real factors. Thus, although textually the prohibiting clauses in Law No. 5 of Year 1999 that are suspected to be committed by the Respondent cannot be proven, for the achievement of the ideals of Law No. 5 of Year 1999, the substance of Article 2 and Article 3 may become the foundation to evaluate whether the business activities conducted by the Respondent may be stated to violate

Law No. 5 of Year 1999, whether by the concrete legal regulation or by the principle and objective of formation of Law No. 5 of Year 1999.

The stipulations of Article 2 and Article 3 of Law No. 5 of Year 1999 contain important substances regarding the meaning of economic democracy, which is the need to pay attention to the balance between the interests of business actors and general interests, as well as the need to improve economic efficiency and elevate the welfare of the people. Based on legal facts and monitoring results, the KPPU concluded that the element of not paying sufficient attention to the balance between the interests of the Respondent and that of small retailers, and the element of not paying sufficient attention to general interests and the welfare of the people, have been fulfilled convincingly.

The sanctions imposed by the KPPU must agree with the objective of creating Law No. 5 of Year 1999. In relation to the Indomaret case, the KPPU ruling is expected to be able to change the behavior of the Respondent that does not pay sufficient attention to competitive balance, which is manifested into several kinds of sanctions, as stated in the KPPU Ruling.

Regarding Law No. 5 of Year 1999, its objective of creation is to change the behavior of Indonesian business actors in order to be able to become more competitive, and to encourage the creation of a healthier climate for business competition. Thus, the KPPU ruling toward PT. Indomarco Prismatama in Jabodetabek should not only be binding just for the Respondent but also be able to serve as a guide and direction for every business actor with large amounts of capital for the purpose of conducting business development, whether those that belong to PT. Indomarco Prismatama or even other businesses of the same level as the Respondent, both in the Jabotabek area and in all territories of Indonesia.

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