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Implementation of Business Competition Violation Norms in the Decision of the Business Competition Supervision Commission

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ABSTRACT

This paper analyzes the application of norms concerning violations of business competition in KPPU decisions. The case study in this paper is in the case of violations of business competition conducted by PT Forisa Nusapersada in Case Decision Number 14/KPPU-L/2015. As a comparison, this study also compares the application of norms in cases that are almost similar, namely the Decision of the Case KPPU Number 14/ KPPU-L/ 2015 with the Decision of the Case KPPU Number: 06/KPPU-L/2004. The results of the research show that in addition to Article 19 and Article 25 above, KPPU should also apply Article 52 paragraph (2) letter a and Article 15 paragraph (3) of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition in the case of PT Forisa Nusapersada.

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1. INTRODUCTION

The problems in increasing national economic growth cannot be separated from monopolistic practices and unfair business competition. Therefore, it is necessary to take concrete action to fair market competition and fair business competition. Thus it will create effective and efficient national economic growth. According to Thee Kian Wie, a competitive atmosphere is a prerequisite for developing countries to encourage economic growth, including industrialization. (Adillah, S.U., et. al. 2020)

A competitive market company will compete to attract more consumers by selling their products at the lowest possible price, improving product quality, and improving its service to consumers. The establishment of the Business Competition Supervisory Commission (KPPU) is one of the government's strategies to ensure that Indonesia's business competition is carried out healthily and according to the existing laws and regulations. (Yuniyanti, S.S. 2020)

KPPU's role is significant because business actors have violated many legal norms. Apart from establishing KPPU as a supervisory

agency, the government also covers business competition to remain healthy by issuing Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. These policy tools are intended so that business activities carried out by business actors do not harm other business actors and boost the national economy. In principle, the birth of law and policy is a means of regulating people's life in all its aspects, including in the business world. (Nuryanto, A. D. 2019).

The case decision number 14/KPPU-L/2015 is one of the legal items released by KPPU. The case emerged following the publication on 29 December 2014 of PT Forisa Nusapersada's Internal Office Memo No. 15/IOM/MKT-DB /XII/2014 concerning the Pop-Ice Real Ice Blender Software. The Marketing and Sales Dept. issued the memo. The Pop-Ice The Real Ice Blender p was issued by PT Forisa Nusapersada and addressed to the Area Sales Promotion Manager (ASPM) and copied to the Area Sales Promotion Supervisor (ASPS) Internal Office Memo No. 15 / IOM / MKT-DB /XII/2014 to retain the role of Pop Ice as a market leader and maintain the loyalty of Pop-Ice sellers both at the market level and at the level of the beverage kiosk. (Ahsany, F., et. al 2020).

Based on the existence of the Pop Ice The Real Ice Blender program, it became a problem and led to unfair business competition. This paper will attempt to define cases relating to infringements of the Business Competition Law committed by PT Forisa Nusapersada by describing how the nature of the Business Competition Market is addressed and how the legal suitability of infringements of Article 19(a) and (b) and Article 25(1)(a) and (c) of Law No 5 of 1999 is addressed in the Decision on Case No 14/KPPU-L/2015. In the PT Forisa Nusapersada case, this paper also aims to equate the market competition infringement case with the business competition violation in the PT Arta Boga Cemerlang (ABC) case, which is then analyzed in the two KPPU decisions on the use of legal laws. (Budiman, H. et. al. 2020).

2. RESULTS AND DISCUSSION

Approaching the Structure of the Market in Industry Rivalry

There are, of course, different problems with the growth of the economic sector in Indonesia. An economic downturn in Indonesia has been shown to trigger monopolistic practices and unfair market competition. It is also important to have laws that explicitly control monopoly practices and unfair competition between companies. Equal business competition and unfair competition would be created by the creation of appropriate rules relating to business competition. (Siregar. H. 2020).

Hikmahanto Juwana stated that scholars, political parties, non-governmental organisations, and government agencies have long taken into account the birth of the Anti-Monopoly Law and unfair market competition. This can be seen when the Indonesian Democratic Party released an idea about the concept of the Anti-Monopoly Draft Law in 1995. However, since there is no determination and political will from the political elites to control market competitiveness problems, these ideas and initiatives have not received a constructive response. (Suartha, I.D.M. 2020).

Law was born in all its facets, including in the business world, to govern people's lives. The Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Market Competition was born in 1999 because of the different encouragement of different parties to pass anti-monopoly regulations. The birth of this Act is an important tool in fostering economic productivity and establishing an environment of fair business opportunities for all business actors. (Handayani. O. 2020).

Therefore, it is important to allow the presence of this law to establish a law as a tool to promote economic efficiency. In addition to creating a law as a tool to promote economic efficiency, another aim of the birth of this law is to reduce the monopolistic practices and unfair market competition that have been prevalent in Indonesia, especially in the era of the

government of the New Order. (Wijaya. M.M.S. 2020).

Many government policies were developed during the New Order period, which also helped those business players. The establishment of Law No.5 of 1999 has four objectives: first, to safeguard the public interest and to increase the productivity of the national economy in order to enhance the welfare of people; second, to develop a favourable business environment to be guaranteed by regulating healthy business competition. For large business actors, medium-sized business actors, and small business actors, certainty exists in the same organization. Thirdly, to avoid monopoly practices and unfair market competition induced by business actors, fourthly, to create productivity and effectiveness in business operations. (Leonard. T, 2020).

It is also anticipated that the birth of Law No. 5 of 1999 would be a solution to unfair market competition that has been prevalent in Indonesia so far. According to Hikmahanto Juwana, in order to ensure that freedom to compete in the market will take place without obstacles, legislation concerning the prohibition of monopoly and unfair business competition are important because negative business competition would result in:

The aim of UU No. 5 of 1999 is to enforce the rule of law and provide equal protection for all business actors, thus providing legal certainty to further stimulate the death or decreased rivalry among business actors. The rise of monopolistic practices in which only business actors dominate the market and the tendency of business actors to manipulate customers without sufficient quality by selling costly products. Economic growth in order to enhance general welfare and to incorporate the spirit and spirit of the Constitution of 1945. The aim of competition policy is to strike a balance between the fulfillment of the justice principle and the direction of decency. One of the values which should be followed in governing regulations and enforcement is the focus of justice and fairness. (Sarjiyati. S., et. al 2020).

The method used in the development of Law no. 5 of 1999, apart from the above goals, is a business approach and a behavioral approach. These two techniques are used to determine whether or not a breach of business rivalry has occurred. First, if the corporation has a market share of more than the metrics provided for by statute, namely 50 percent for one business actor or 75 percent for two or more business actors, or as provided for in the Monopoly Article, the Market Structure is. Second, behavior, namely through agreements made with business rivals by the said business actor or not, for example, predatory pricing and boycotts. (Iswantoroo. I. (2020).

Any discrepancies and barriers are absolute and do not become critical determinants because the definition of the Law of Reason and Per Se Illegal are determined to see the implementation of the above method. It is not only seen, therefore, in the market structure. The second method is also discussed by Law No. 5 of 1999. This is often used to issue a decision as a basis for KPPU. Next, the Rule of Reason is an act claimed to have broken the law of competition. In order to decide if the act inappropriately limits competition, fact-finders must consider the circumstances surrounding the case. It is suggested that anticompetitive effects or actual losses may be seen by the investigating authority. Because of rivalry. Not by explaining whether the action is unjust or against the rule. (Handayani. O. 2020).

It is important to know the meaning associated with the market when approaching the Law of Reason for the purpose of evaluating a systemic market. According to Stephen, Business (Market). F Ross said, as quoted by Susanti Adi Nugroho, "Market definition is the process of identifying those sellers who are in the position to keep their price down, expand their output, and maintain their quality of their products so as to prevent the defendant from successfully raising its price, lowering its output, or reducing the quality of their product". (Sulistya. E, 2020).

There are two key elements in the sector, namely the commodity component and the regional component. The commodity aspect describes the products or services being traded,

while the producer or seller's position is represented by the regional market. According to the buyer's viewpoint, the regional market can also be viewed in terms of the availability of alternative goods produced or sold in different countries. In practice, regional market boundaries are also defined by transport variables, length of transport, tariffs, and regulations. If the situation, taxation, laws or other external obstacles have been decided, the regional market does not have to be the same as the prevailing political or administrative boundary. (Sakti, M., 2020)

For a continuous non-transition period, suppose a hypothetical monopolist increases the commodity price by a small but significant amount. In that case, the reaction of several consumers to turn to other goods can be seen, such that the rise in demand for the hypothetical monopolist is not profitable. If a replacement product is available, the replacement product is included in the market for the product. If the alternative product is located in other countries but is not available to customers, the regional market is applied to other markets. (Karjoko. L., Handayani. I.G.A.K., Jaelani.A.K., 2020)

Second, Per Se Illegal, the term "per se" comes from Latin, which means "by itself, in itself, taken alone, by itself, by itself, by itself, inherently, in isolation, unconnected, simply as such, with other matters. In its essence, without reference to its relationship. This principle is also referred to as the "Per Se Doctrine." Per Se, illegal in competition law means that certain types of agreements are illegal in competition law." In this regard, Susanti Adi Nugroho claims that if an action has specific motives and has negative effects, it is not appropriate to challenge whether the same occurrence (with the case being tried) is a breach of competition law in order to decide the event in question. A market rivalry infringement case committed by PT Forisa Nusapersada is the KPPU Decision Case Number 14/KPPU-L/2015. The case of PT Forisa Nusapersada began when the Mentioned Party released an Internal Office Memo Number: 105/IOM/MKT-DB/XII/2014 on Pop-Ice. (Siregar. H., 2020)

The Real Blender Program on 29 December 2014. The issuance of the memo was motivated by the emergence of more and more new competitors in the same business sector and also in the light of market conditions, in particular beverage outlets and kiosks, which PT Forisa Nusapersada felt required strict brand attention so that Pop-Ice would remain awake with special and serious brand attention. (Pujiningsih. S., 2020)

The goal of publishing the memo is to keep Pop-Ice as the leader of the business. As a move to retain the role as outlined above, PT. Formosa Nusapersada conducted an operation called "Pop-Ice" The Real Ice Blender" via Internal Office Memo Number: 105 / IOM / MKT-DB / XII / 2014. The tasks of "Pop-Ice The Real Ice Blender" are as follows: First, the Beverage Kiosk Exchange Assistance Program (BATU) assists the beverage kiosk by exchanging the beverage kiosk with unsold S 'Cafe items. Second, Beverage Kiosk Display Program: For three months, rent a display at a beverage kiosk. The prizes are awarded monthly with the following reward levels: Month 1: 1 Pop-Ice chocolate bales, Month 2: 2 Pop-Ice shirts, Month 3: Phillips blender. Third, Market Shop Display Scheme, Rent displays for three months at market stores, Rent shows with a gift given in advance of 2 bales of Chocolate Pop-Ice. (Sarjiyati. S, Nugrogo., S.S., Pratiwi., A.E., 2020)

In the case of PT Forisa Nusapersada, the Market Competition Supervisory Commission / KPPU considered two sections to be in violation, including Article 19(a) and (b) and Article 25(1)(a) and (c) of Law No. 5 of 1999. Article 19 letters a and b 'Business actors are forbidden from participating in one or more activities, either alone or with other business actors, which may give rise to monopoly practices and/or unfair competition in the form of: a. refusing and/or prohibiting such business actors from engaging in the same business activity in the relevant market; or b. preventing consumers or customers from engaging in the same business activity in the relevant market. (Leonard. T,2020)

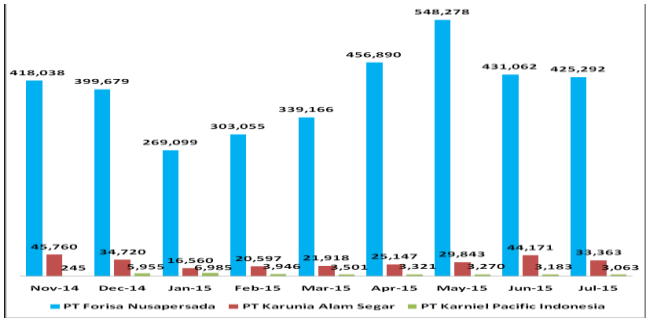
The provisions of this Article deal with the prohibition on business actors from carrying on business activities that cause monopoly and unfair competition, which, on the basis of points a and b of Article 19, are as follows: first, the aspects of business actors, on the basis of the provisions of point 5 of Article 1 of Law Number 5 of the Year 1999, the definition of business actors PT Forisa Nusapersada has fulfilled the elements of a legal entity as a business actor. This is based on the Company Establishment Deed Number 30 dated July 5, 1995 made by Ratna Komala Komar, SH, Notary in Jakarta and most recently amended by deed of amendment Number 05 dated October 16 2015 drawn up by Moelianan Santoso, SH, M.Kn., Notary in Tangerang and has received approval from the Minister of Law and Human Rights of the Republic of Indonesia Number AHU-3566734.AH.01.11.Tahun 2015 dated 16 October 2015.

Second, the aspect of performing one or more tasks, either alone or with other players in the business. This aspect is seen from the actions or programs carried out separately (alone) by PT Forisa Nusapersada issuing Internal Office Memo No. 15 / IOM / MKT-DB / XII / 2014 relating to the Real ICE Blender POP ICE Program and introduced with the POP ICE Show Contract Agreement issuance. Third, monopolistic practices and unfair market competition are caused by it. This third aspect can be found in I Internal Office Memo No. 15 / IOM / MKT-DB / XII / 2014, which allows merchants to be prepared to show POP ICE products exclusively in compliance with accepted objectives and not to sell competitor products such as POP ICE (S 'Cafe, Camelo, MilkJuss and others) and good prizes to merchants. A POP ICE Show Contract Arrangement has been made at the implementation level. It is obvious, on the basis of the above, that the activities carried out by PT Forisa Nusapersada have resulted in unfair competition for business.

Fourth, forms of exclusion and or obstruction of business participants are included in the elements of the activities conducted. On the basis of the elucidation of the letter of Article 19, it is not possible to deny or hinder such business actors in an unfair manner or for non-economic purposes, such as variations in nationality, race and social status. This aspect can be seen and discovered in the Real Ice Blender Pop-Ice program, where the program forbids kiosks from selling products other than Pop-Ice. Activities carried out by PT Forisa Nusapersada through binding shops participating in the scheme, namely on condition that they are not allowed to sell and are unable to view products of competitors, allowing products not available in stores (product availability) of S 'Cafe (PT Karniel Pacific Indonesia) and MilkJuss (PT Karnunia Alam Segar) to be sold, resulting in sales figures of S' Cafe (PT Karniel Pacififi) This can be seen as follows in the graph:

Grafik I.

Sales Volume Development Data November 2014-July 2015



The graph above shows that it is possible to infer the growth of sales volume. PT Foresta Nusapersada has a dominant market share ranging between November 2014 and July 2015 from 90.09 percent (ninety points nine percent) to 94.30 percent (ninety-four point thirty percent). The rejection and obstruction of such business actors was carried out in the relevant market under the same conditions of business operation.

This suggests that market actors may have committed monopolistic acts and have created unfair competition for business. Unfair business rivalry arises when an operation is carried out or generated by a business actor running a company whose type of business product or type of company is the same as that of other

individuals whose aim is to discourage or reject other business actors from running a company, selling goods or business outcomes.

One type of movement that causes unfair market rivalry is behavior to discourage rivals or clients from participating in a business/business partnership with business competitors. These practices are also prohibited by Law No. 5 of 1999. Article 25(1) letters a and c: '(1) Entrepreneurs are forbidden, either directly or indirectly, from using a dominant position to: a. Create terms of exchange with a view to restricting or preventing customers from purchasing competitive products and/or services, whether in terms of price and quality; or c. Inhibiting the entry into the relevant market of other business actors which have the potential to become competitors 'The above provisions control the dominant role of business actors which are prohibited from making or setting trade terms, the object of which is to restrict and prevent buyers and consumers from purchasing goods from other business actors.

In Article 1 point 4 of Law Number 5 the Year 1999, it is explained that what is meant by dominant position is a condition in which the business actor does not have significant competitors in the relevant market about the market share controlled, or the business actor has the highest position among its competitors in the market—concerned in relation to financial capacity, ability to access supply or sales, as well as the ability to adjust the supply or demand for specific goods or services.

The dominant position in PT Forisa Nusapersada, in this case, can be proven from the Graph of the Market Share of Powdered Milk Containing Drinks for the period of November 2014 to July 2015. PT Forisa Nusapersada has a dominant position with a market share of 92% (ninety-two percent). Then the actions of PT Forisa Nusapersada, which set the terms of trade terms as contained in the Internal Office Memo No.15 / IOM / MKT-DB / XII / 2014, have been proven to prevent and or prevent consumers from obtaining competitive goods and or services, both in terms of price and quality. It is also proven to obstruct other business actors who can become competitors from entering the relevant market, as referred to in Article 25 paragraph (1) letters.

Comparative Study: The Case of PT Forisa Nusapersada vs the Case of PT Arta Boga Cemerlang (ABC)

The KPPU's decision in the PT Forisa Nusapersada case, compared to the KPPU's decision in the PT Arta Boga Cemerlang (ABC) case (the maker of the ABC battery), is almost similar. Today, there are variations in the implementation of criteria. The articles suspected of being PT Arta Boga Cemerlang (ABC) were about four, while there were only two articles in the case of PT Forisa Nusapersada.

In the Decision on Case Number: 06 / KPPU-L / 2004 Against PT Arta Boga Cemerlang (ABC) in its capacity as manufacturer of ABC batteries, KPPU referred, in addition to the application of Article 19(a), to Article 25(1)(a). Article 15(3) and Article 25(2)(a) are also used by the KPPU. In this case, the author will only compare the two articles not used in the case of PT Forisa Nusapersada, namely Article 15(3) and Article 25(2)(a)

First, Article 15(3) 'Business actors are forbidden from entering into agreements with regard to individual prices or discounts of products and/or services containing the conditions of the business actor purchasing goods and/or services from the supplying business actor: a. they must be able to buy other goods and/or services from the supplying business actor; or b. they will not consider the goods and/or services from the supplying business actor;' It was proved that PT Arta Boga Cemerlang (ABC) violated this article concerning the alleged report. In this situation, PT Arta Boga Cemerlang (ABC) was generated to agree that ABC would offer a 2 per cent discount if the wholesaler agreed to the Competitor Change Program (PGK) agreement. A further 2% discount if the wholesaler decides not to sell Panasonic (formerly National, Red) batteries manufactured by PT Panasonic Global Indonesia (PGI).

KPPU can also use Article 15 paragraph in the PT Forisa Nusapersada scenario (3). This is in line with the location of the issue at PT Forisa Nusapersada that the beverage kiosk is expected to incorporate 2 Pop-Ice variants from the Pop-Ice variant that is already in the drink kiosk in the product show agreement, so as the beverage kiosk has a display of 5 variants when surveyed. They must then raise the performance to 7 versions. A show search will be performed each week. The show of the beverage kiosk is often multiple committed variants per week within 1 month and does not sell competitor items (S 'Cafe, Milkjus, Camelo, SooIce). It is possible to award the 1st month prize and the next two months to the 3rd month.

Second, letter an of Article 25(2) 'Business actors shall have a dominant position as referred to in paragraph (1) if: a. one business actor or a group of business actors controls 50 per cent (fifty per cent) or more of the market share owned by a specific form of products or services.' In this case, PT Arta Boga Cemerlang (ABC) was proven to have violated this article based on the KPPU's ruling. The Council of the KPPU, headed by M. Iqbal discovered several evidence that, with wholesale and semi-wholesale stores that sell batteries, ABC has made several PGKs. Among other items, PGK includes an application for ABC batteries plus other supporting promotional resources to be seen on the appropriate wholesale display.

As a result, PGK, which lasted from March 2004 to June 2004, resulted in a substantial decrease in sales rates for Panasonic batteries. Panasonic battery sales had only risen and recovered until June 2004, which was the end of the PGK deal, the assembly said. The author assumes, compared to the PT Forisa Nusapersada scenario, that KPPU can also use the means referred to in Article 25 paragraph (2) letter a, because PT Forisa Nusapersada has a market share of more than 50%, which in November 2014 is about 90.09% to 94.30%.

3. CONCLUSION

The conclusions are as follows the guilty verdict on business violations in the PT Forisa Nusapersada case is appropriate, the publication of Internal Office Memo No.15/IOM/MKT-DB /XII/2014 is strong proof that business competition practices have not occurred. Healthy. Second, PT Forisa Nusapersada, which is proven to have a dominant position of more than 50%, the KPPU should also apply Article 52 paragraph (2) letter a, besides that KPPU should also use Article 15 paragraph (3) as applied to the case of PT Arta Boga Cemerlang (ABC). Third, a comparative study of the two KPPU decisions shows that there are inconsistencies in applying norms in almost similar cases.

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