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The Indonesian Business Competition Law: How the Police Plays a Role?

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Abstract

Introduction to The Problem: In Indonesia, there are specialized and independent institutions in enforcing business competition law. The institution is the Business Competition Supervisory Commission or KPPU. It is because the suspected of business actors who violate Act No. 5 of 1999 are often uncooperative. In assisting KPPU, the Anti-Monopoly Law mandates the police to enforce business competition law in Indonesia. But, the extent the police's role in helping the KPPU's duty became the arising problem that should be discussed.

Purpose/Objective Study: This research wants to discuss the role of the police in enforcing business competition law.

Design/Methodology/Approach: This research is doctrinal research (normative juridical); an investigation that uses a statutory approach. The legal material referred to in this study focuses on the primary legal content, namely Act No. 5 of 1999 on Prohibition of Monopoly Practices and Unfair Business Competition, or it often called Anti-Monopoly Law, and the Indonesian Criminal Law Code (KUHP).

Findings: This research shows that the police have the authority to uphold business competition law. The Anti-Monopoly Law gives power to the police in assisting KPPU. The provisions for the role of the police are contained in Article 36, Article 41 paragraph (3), and Article 44 paragraph (5) of the Anti-Monopoly Act. The role of the police to enforce business competition law begins at the time of the investigation or inspection process if the KPPU requests assistance to present reported parties, witnesses, expert witnesses, and other parties involved in business competition cases.

Paper Type: Research Article

Keywords: Police; KPPU; Business Competition Law

Introduction

Article 33 of the 1945 Constitution of the Republic of Indonesia generally stated that the economy should be organized based on economic democracy, which intended for people's prosperity. Thus, the land and waters, as well as the natural resources therein, are for the people's benefit (Tanjung & Siregar, 2013). It also tells us that in economic democracy, all must avoid various forms of unfair business competition



(Disemadi & Prananingtyas, 2019). One example is a monopoly that results in losses suffered by society and is undoubtedly contrary to the principle of justice.

The creation of a healthy business environment or 'fair competition' will have a positive impact on many people, both business actors and consumers (Ningsih, 2019). Fair competition will cause motivation or stimulation to business actors in increasing efficiency, innovation, productivity, and product quality, which will later compete with other business actors' products. Conversely, if there is an unfair competition or unfair business competition between business actors, it will have a very negative impact on the community as consumers and on the business itself (Mulyadi & Rusydi, 2017).

Therefore, the creation of a fair competition business environment needs to be pursued in a planned scheme, sustainable manner and followed by a legal policy related to business competition as well as efforts to prevent business actors' wrongdoings (Putri, Paramita, & Mahmudah, 2019). The legal system associated with the business competition is intended to provide a guarantee of fair business competition, which regulates various business competition mechanisms and ensures the establishment of fair business competition. Based on this, on March 5, 1999, Act No. 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Business Competition (Anti-Monopoly Law) took effect effectively on March 5, 2000.

The presence of the Anti-Monopoly Law policy has been presented in consideration of the Anti-Monopoly Law, which is as follows:

1. That development in the economic field must be directed to the realization of people's welfare based on Pancasila and the 1945 Constitution of the Republic of Indonesia;
2. That democracy in the economic field requires equal opportunity for every citizen to participate in the production and marketing of goods and services in a healthy, effective and efficient business environment, encourage economic growth and the operation of a fair market economy; and
3. That everyone who engages in Indonesia must be in a situation of fair competition. So, there is no concentration of economic power on certain business actors, without being separated from the agreement that has been implemented by the Republic of Indonesia for international contracts.

The Anti-Monopoly Law also mandates the need to establish an independent institution or peculiar institution that has a function in ensuring and supervising the provisions in the Anti-Monopoly Act by business actors (Yetti, Maiyori, & Winstar, 2018). This independent institution is known as the KPPU or Business Competition Oversight Commission (Sapitri, 2015). KPPU is an institution that handles, decides, or investigates a business competition case that cannot be disturbed by any party that has a 'conflict of interest' (Tanjung & Siregar, 2013). KPPU is also a 'Quasi Judicial'



institution that has executive authority over cases of an unfair business competition conducted by irresponsible business actors (Hermansyah, 2008).

Based on Article 36 letter e and Article 36 letter f of the Anti-Monopoly Law, KPPU has the authority to enforce business competition regulation. Unfortunately, the KPPU's power has not been running optimally. KPPU often experiences difficulties and obstacles in enforcing business competition law. A large number of business actors, as well as witnesses, are less operative. It has resulted in delays in the investigation process. Also, KPPU often faces business actors who unwillingly submit documents requested in the inspection process (Sukarmi, 2010).

The faced-problems lead KPPU to join forces with police. Thus, this article issues the role of the police to participate in investigating unfair business competition. The involvement legalized by Article 36 letter g of Anti-Monopoly Act. The police will assist KPPU whenever the business actors are not cooperative with the KPPU investigation.

Based on the authority, it will appear that KPPU and the police both have the power in enforcing business competition law, where such authority is given by the Anti-Monopoly Law. Authority is a term commonly used in the public legal order. Authority is 'formal power' that comes from the executive or administrative. Therefore, it is the power of a specific group of people or control over a particular field of government. According to Indroarto, authority is the ability given by legislation that causes legal consequences (Indroarto, 2003).

This study is not the sole research focusing on business competition law. There some studies found on that matter before this research has taken. In 2010, Sukarmi studied the role of Indonesian Police in enforcing the business competition law (Sukarmi, 2010). In the same year, Rachmadi Usman researched on the institutionalization of KPPU in enforcing the business competition law (Usman, 2010). Three years after, there is a study conducted by Simbolon, who investigated the KPPU's approach to deciding the violation in the business competition (Simbolon, 2013). The author, together with Kholis Roisah as a co-author, also studied the same field in 2019 on the enforcement of business competition law by the police in the Indonesian context (Disemadi & Roisah, 2019). Compared to previous studies, this investigation only focusing on the police's role in business competition law. Thus, discussed-matter always important and actual to be reviewed and studied.

Methodology

This research is doctrinal research that is research that uses normative legal research methods (juridical-normative), which is a method that analyzes and examines secondary data in the form of legal materials obtained through library research. The research approach used in this study is the statutory approach. The legal document



referred to in this study focuses on the primary legal material, namely Act No. 5 of 1999 and the Indonesian Criminal Law Code (KUHP). The secondary gained from books and legal journals related to the context.

Results and Discussion

KPPU's Business Competition Law Enforcement Policy

As stated earlier, KPPU is an independent institution in the business competition law enforcement in Indonesia, which is mandated by Act No. 5 of 1999. KPPU is an institution formed based on the Presidential Decree of the Republic of Indonesia No. 75 of 1999 on the Business Competition Supervisory Commission, which is currently amended by Presidential Decree Number 80 of 2008. The presence of this Presidential Decree is a follow-up to the implementation of Article 34 of the Anti-Monopoly Law.

The establishment of KPPU in Indonesia can be stated through philosophical reasons and sociological reasons (Sucipto, 2017). Philosophically, what makes the basis for the formation of the Commission is in the implementation of legal policy or regulation. It is necessary to have an institution that oversees the implementation of the rules. Through the granted authority by the state to the Commission, it is hoped that the Commission can carry out its duties and functions optimally. Besides the philosophy reason, the sociological basis for KPPU's existence is the declining image of the court in examining the business competition case. Additionally, the business world requires a quick case resolution and a confidential examination process (Nurjaya, 2009). Therefore, specialized institutions such as KPPU, whose members are experts in the fields of law and economics are needed, so that the settlement of unfair business competition cases in Indonesia can be done quickly and efficiently.

As an institution formed independently, KPPU has the authority regulated in Article 36 of the Anti-Monopoly Law. This authority includes the power to investigate, examine, decide cases, adjudicate alleged monopoly practices and other unfair business competition, and provide sanctions. With the jurisdiction of the KPPU granted by the Anti-Monopoly Act in examining and deciding allegations of monopoly and other unfair business competition, it is seen that the KPPU is a commission that runs and includes executive and judicial functions.

Sukarmi stated that KPPU is a complementary state institution (*state auxiliary organ*) when viewed from the context of the state administration (Sukarmi, 2010). Additional state institutions are state institutions that are formed outside the constitution. They are also institutions that assist the implementation of the tasks of key state institutions such as state, executive, legislative and judicial bodies (it can be said that KPPU is a pseudo independent state institution or '*quasi*'). The role of KPPU as a pseudo independent institution becomes vital as a conscious effort for a country that is transitioning from authoritarianism to democracy (Disemadi & Roisah, 2019).



As mentioned above, business competition law enforcement by KPPU is not always optimal (Disemadi & Roisah, 2019). KPPU investigators sometimes often experience difficulties in presenting parties (business actors) who are alleged to have violated the provisions of the Anti-Monopoly Act both during the preliminary examination and during the further investigation. This phenomenon will undoubtedly affect the performance of KPPU in enforcing business competition law.

Policy on the Role of the Police in Enforcing Business Competition

Continuing the previous discussion related to the difficulty of KPPU in presenting business actors who violated the Anti-Monopoly Act, based on the provisions of Article 11, there is the role of the police in overcoming this matter. The police can have a role in the process of enforcing business competition law when business actors refuse to be examined, provide the information needed in investigations or examinations, or business actors obstruct the process.

Rejection of the investigation and inspection process carried out by business actors can be categorized as a criminal offense regulated in Article 261 of the Criminal Code. It stated that "Anyone who stores material or objects that he knows is intended to commit one of the crimes ... is liable to a maximum of nine months imprisonment." Based on the provisions of Article 41 paragraph (3) of the Anti-Monopoly Act, if the rule is violated by a business actor, the KPPU can submit the case to the investigator (police) to investigate.

Furthermore, based on Article 44 paragraph (5) of the Anti-Monopoly Act, the Commission decision, as referred to in Article 43 paragraph (4), is sufficient preliminary evidence for investigators to conduct an investigation. The article indeed relates to the provisions of Article 43 paragraph (4), that the decision is a decision that has permanent legal force at the KPPU level and has not been appealed or appealed. The matter that must be followed up by the police is when the KPPU's decision contains a criminal element.

Based on the provisions of Article 216 of the Indonesian Criminal Code, the police can exercise their authority, if the parties sanctioned by KPPU do not voluntarily implement the sanctions. It means that business actors who have been reported have defied public officials' decisions (KPPU).

Regarding sanctions regulated in the Anti-Monopoly Act, there are two types of penalties, namely administrative sanctions and additional criminal sanctions. Provisions on administrative sanctions are regulated in Article 47 of the Anti-Monopoly Act, namely as follows:

1. The cancellation of the agreement as referred to in Article 4 to Article 13, Article 15 and Article 16; and/or



2. Order to business actors to stop vertical integration as referred to in Article 14; and/or
3. Order for business actors to stop activities which are proven to cause monopoly practices, cause unfair business competition, or harm the community; and/or
4. Orders to business actors to stop the abuse of dominant positions; and/or
5. The cancellation of a merger of business entities and acquisition of shares as referred to in Article 28; and/or
6. The payment of compensation; and/or
7. The imposition of fines as low as IDR. 1,000,000,000.00 (one billion rupiahs) and as high as IDR. 25,000,000,000.00 (twenty-five billion rupiahs).

Whereas the primary criminal sanctions are regulated in Article 48 of the Anti-Monopoly Act are:

1. Violations of the provisions of Article 4, Article 9 through Article 14, Article 16 through Article 19, Article 25, Article 27, and Article 28 shall be fined as much as a minimum of IDR. 25,000,000,000.00 (twenty-five billion rupiahs) and as high as possible IDR. 100,000,000,000.00 (one hundred billion rupiahs), or imprisonment instead of a fine for 6 (six) months;
2. Violations of the provisions of Article 5 to Article 8, Article 15, Article 20 to Article 24, and Article 26 of this Law are liable to a fine of no less than IDR. 5,000,000,000 (five billion rupiahs) and up to a maximum of IDR. 25,000,000,000.00 (twenty-five billion rupiahs), or imprisonment instead of fines for a maximum of 5 (five) months; and
3. Violations of the provisions of Article 41 of this Law are threatened with a penalty of not less than Rp.1,000,000,000.00 (one billion rupiahs) and a maximum of Rp.5,000,000,000.00 (five billion rupiahs), or imprisonment instead of a fine for a maximum of 3 (three) months.

Then the additional criminal provisions are regulated in Article 49 of the Anti-Monopoly Act, which refers to Article 10 of the Criminal Code, which is as follows:

1. Revocation of business license
2. Prohibition of business actors to hold the position of director or commissary for at least 2 (two) years and a maximum of 5 (five) years; or
3. Termination of certain activities or actions that cause losses to other parties.

From the description above, with the support and assistance from the police, the process of law enforcement in business competition in Indonesia can be faster and more efficient in terms of time, cost, and energy. It is solely to provide legal certainty and the credibility of the institution in front of the community in general and for business people in particular (Disemadi & Roisah, 2019).

When viewed from the theory of authority previously mentioned, it is clear that the power possessed by the KPPU and the police in enforcing business competition law is



attribution authority. It means that the power is given by law and attached to a position (Sukarmi, 2010). The KPPU and police appear to have the authority to uphold business competition based on the Anti-Monopoly Act, where based on this law, the police as investigators are given the power to assist the KPPU.

In carrying out their duties related to police cooperation with KPPU, the police carry out law enforcement functions by article 2 of Act No. 2 of 2002 on the Indonesian National Police. The police are involved in collaboration with many other state institutions, including the KPPU, in enforcing monopoly practices and unfair business competition (Sukarmi, 2010).

The primary duties of the police, as stipulated in article 13 of the Indonesian National Police Law, are to maintain public security and order, enforce the law, and provide protection and service to the public. One of the tasks of the police is to uphold the law, including business competition law that is guarded by KPPU. It is explained in more detail in article 14 of the Law of the Indonesian Police that the police can investigate everything that meets the elements of a criminal offense by the provisions of the Criminal Code and other laws and regulations. Based on the provisions of this article, the police can investigate violations of the Anti-Monopoly Act if ordered. In connection with the collaboration carried out with KPPU, the police can assist KPPU with cases of monopoly practices and unfair business competition that contain elements of criminal acts.

With cases arising from violations of the Anti-Monopoly Act, investigators (the Police) can use the legal basis based on the Criminal Code as mentioned earlier as their material law and the Criminal Procedure Code (KUHP) for the formal law in conjunction with the Anti-Monopoly Act (Sukarmi, 2010). To provide penalties mentioned above, of course, it must start from the process of investigation and investigation by the police. Henceforth comes the trial process in court.

Conclusion

In Indonesia, an independent institution that has the authority to enforce business competition law is the KPPU. KPPU was formed based on the Anti-Monopoly Law to prevent monopoly practices and unfair business competition in Indonesia. KPPU is not always a sole investigator in business competition cases. It can join forces with Indonesian Police in case the business actors do not cooperate with KPPU's examination process.

The Anti-Monopoly Act gives authority to the police in assisting KPPU. The role of the police in enforcing business competition law starts at the time of the investigation or inspection process. The condition is when KPPU requests assistance to present reported parties, witnesses, expert witnesses, and other parties involved in business competition cases regulated in the Anti-Monopoly Act. After arriving at a decision



issued by KPPU, the police, as investigators, still have a role if the judgment contains criminal aspects. About cases originating from violations of the Anti-Monopoly Act, which contain criminal elements, the Police can use the legal basis based on the Criminal Code (KUHP) for its material law and the Criminal Procedure Code (KUHP) for the formal law in conjunction with the Anti-Monopoly Act.

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