

# Toward Wellbeing with Law Enforcement Based on Rationality and Causality

**Zulherman Idris<sup>a</sup>, Erlina<sup>b</sup>**, <sup>a</sup>lecturer in Civil Procedure Law and Antimonopoly Law and PUTS at the Faculty of Law, Universitas Islam Riau, Pekanbaru, <sup>b</sup>lecturer in Antimonopoly Law and PUTS at the Faculty of Law, Universitas Islam Riau, Pekanbaru, Email: [zulhermanidris@law.uir.ac.id](mailto:zulhermanidris@law.uir.ac.id), [erlinashmh@yahoo.com](mailto:erlinashmh@yahoo.com)

Properly understanding business competition law as a product of business law is certainly not easy and will always intersect with an atmosphere of mysticism and/or the purpose of its enactment (philosophical), the legal norms arranged in it (juridical), and the support and challenges of its implementation (sociological). Factors prove that the era of the enactment of Law No. 5 of 1999 is an important moment and a bold step toward a new era and a breaking of the past culture, which was a nepotistic field for the growth of an unhealthy monopolistic culture. This new law has changed the situation towards an open market, which provides a place for every business actor to exist in the market. Of course, this leads to a healthy market that is based on efficiency and innovation, and it provides benefits to every party (business-community/consumer). In other words, every business actor can carry out business activities of goods and/or services exchange to the maximum possible extent and in a culture of fair business competition. The consumer society has the freedom to obtain products and/or services at a competitive quality and price, which will in turn achieve prosperity. This is a hope for the enactment of this regulation. In order to achieve this expectation, the legislators have mandated the supervision and evaluation of violations of the law at the first level of the KPPU with measurable and logical error assessments. Because the basis of this error assessment is directed at business behaviour and not the market system, this means that this action is intentionally done and should have been avoided by applying the Per se Illegal approach and the Rule of Reason. In this approach, the legal certainty of a "market structure" issue can be measured. On the other hand, violations of a causal nature will be seen in the assessment and considered using a case situation approach, which is oriented to any resulting consequences that are considered to

hamper competition. This consideration allows for interpretation of the "rules" and "markets" (Rule of Reasoning).

**Key words:** *Business Competition, Law Enforcement, Welfare.*

## Introduction

The market, with all its operations, will always intersect with businesses and the public at large because there are various interests and needs related to the production, distribution, and marketing of goods and/or services. Market instability is vulnerable to free markets and tends to be uncontrolled, which eventually produces unfair competition that is far from the expectations of the community and business people.

Competition in the operation of the market is an absolute requirement to create efficiency in the field of products and services, and market participants are required to improve the products and services they produce. They will also always creatively innovate, which can in turn benefit the community by lowering prices and improving quality. Conversely, without fair competition in the market mechanism, unhealthy market domination will ultimately create market dominance without competition. This means that businessmen become inefficient in producing products and services, and on the other hand, consumers have no alternatives (Editorial, 2002). For this reason, the birth of a regulation in the field of business competition, such as Law No. 5/1999, is needed to decide whether or not the market competition is running well, as well as assess the justification for the exclusion of good market behavior that also constitutes an indicated violation.

This law is a unique and specific legal product, the arrangement of which is material and formal under a super-bodily<sup>1</sup> commission called the KPPU, which is responsible to the President (Law Number 5 Year, 1999). At the same time, the decisions on many products handled by the commission have shown the existence of assessment and consideration of measured violations<sup>2</sup>, which protect fellow businessmen and the community for the realisation of prosperity. This will become more evident through a deeper understanding of various KPPU decisions, such as in cases of prohibited agreements (Law Number 5 Year, 1999), prohibited activities (Law Number 5 Year, 1999), and/or abuse of the dominant position (Law Number 5 Year, 1999) with all forms of legal actions.

---

<sup>1</sup>This is related to the duties and authorities of KPPU as regulated in articles 35 to 36 of Law Number 5 Year 1999 Monopolistic Practices and Unfair Business Competition LNRI 1999 Number 33, in which there is an authority that starts from conducting an investigation, concluding, picking up businessmen, summon and present witnesses, decide whether or not there is a loss until giving a decision whether or not there is a violation.

<sup>2</sup>This is intended to provide an assessment of the market's indications of an economic interest and / or a violation of the law, all of which if observed will focus on a greater interest, namely the interests of the public at large.

## Discussion

In principle, business competition law is held to support a market economic system that sustains the healthy lifestyle and atmosphere of competition between businessmen, and ensure that the consumer community is not exploited. The absence of legal signs in the market mechanism will provide a great opportunity for the occurrence of fraudulent competition by dominant businessmen, as was the past experience during the New Order government.

In the New Order era, there is historical evidence that governmental economic growth policies, without accompanying legal regulations that can provide legal certainty for fellow businessmen, will result in monopolistic harm to many parties. Authorities in the market give differing treatment among businessmen, which also proves that market instability and unfair competition occur in many economic sectors. That is why the ruling government reformation brought about by President Bacharuddin Jusuf Habibie has been able to produce a regulation in the form of Law No. 5/1999. This regulation in the field of Business Competition, which is usually called the Prohibition of Monopolistic Practices and Unfair Business Competition, aims to protect general interests and improve national economic efficiency in an effort to improve people's welfare<sup>3</sup>.

This study will explain 2 (two) approaches, namely law enforcement as a guard in Law No. 5 of 1999, which can be accepted as common sense (rational); and the application of the law is not absolute because it considers the reasons (causa) for determining a violation towards welfare. It is intended that the determination of errors in this law is based on a clear and written rule. This is so that if it is applied in a concrete event to the fault of the business actor, then on one side, the legal considerations can be accepted by common sense. On the contrary, when the application of the law is associated with concrete events and proven to meet the elements of the article, it is possible to give legal consideration to more rational reasons that are not necessarily in line with the provisions of said article, and which can also be accepted by common sense. This is because the determination of a violation is not the aim of a monopoly act; rather, a monopoly act is on a result other than the purpose.

---

<sup>3</sup>See Article 3 of Law Number 5 of 1999 concerning Monopolistic Practices and Unfair Business Competition, LNRI of 1999 No. 33, which also aims to achieve the achievement of a conducive business climate through the regulation of fair business competition so as to ensure certainty of equal business opportunities for large, medium and small businessmen, as well as creating effectiveness and efficiency in business activities.

***The issuance of Law No 5 of 1999 as a Form of Legal Supervision in Organizing a Market for the Establishment of Welfare***

Competition is, objectively, the business of businessmen because they are the ones who carry out the production, distribution, and marketing of goods and services, and it is in them that the operation of the market occurs. On the other hand, the effect of an organization also has implications for the consumer community as part of the production, distribution, and marketing of the goods and/or services.

To avoid various acts, agreements, and the positions of similar businessmen ultimately leading to fraud and harm to the consumer community, the state/government will intervene through regulations. This is commonly referred to as power of economic regulation.

The involvement of the state in the business world, besides the implementation of a regulation product through law enforcement, is also in the framework of economic development that is directed at the realisation of people's welfare, based on Pancasila and the 1945 Constitution.

The course of history demonstrates that there is a decline in the perspective of teachings between the free market (free market) and the market regulated by the government<sup>4</sup>. The Indonesian government's development policies, which have an orientation to economic growth, have also been actively politically involved in developing a monopolistic culture by involving businessmen in the field of economic development; giving special treatment and privileges to those who are considered capable of supporting the policy; and finally, in the existing development, giving birth to many political products that are pro-monopolistic, which became the culture of market organizers in the new order (Elita, 2011)<sup>5</sup>.

---

<sup>4</sup>Compare it with the Journal of Business law, Vol. 19 May-June 2002, p. 4. That History has recorded teachings that legitimize both of these. Just say the classic Laissez Faire theory from Adam Smith which supports that the market should be left free without intervention from the government, if something unexpected happens then the market will automatically correct it with what is called an invisible hand. In the development of this theory, it is interpreted that the invisible hand is the intervention of the government through the regulation regulations to determine that the competition is proceeding as expected. So in the end the state through its government will provide and issue regulations, which in practice will get a "referee" to provide an assessment of violations of these regulations. In its development the meaning of this intervention is more extreme, namely that the market economy must be fully controlled, even that its ownership rights cannot be given to its citizens. This teaching is called the communist flow of Karl Mark's economy, which in its development could not answer the times, and finally many communist countries changed their course and the latest developments came a middle ground, namely the existence of market freedom and market principles governed by the government.

<sup>5</sup> The government has played a role in fostering unhealthy competition in various fields, in the form of actions. Creating Artificial (artificial) obstacles and Captive Market. Give excessive privileges to certain businessmen. Among SOEs business competition also often occurs, this nuances of KKN, where companies that are given privilege have vested interest / permanent interests with the government or the ruling political elite.



However, economic development should be directed towards the realization of people's welfare based on Pancasila and the 1945 Constitution. In order to support the realization of people's welfare based on Pancasila and the 1945 Constitution, a situation and condition of the business world must be created that is capable of involving all aspects and all layers economic supporters and actors, which must be realized in the creation of democracy in the economic field. Democracy in the economic field requires equal opportunity for every citizen to participate in the process of producing and marketing goods and/or services in a healthy, effective and efficient business climate, so as to encourage economic growth and the operation of a fair market economy.<sup>6</sup>

Fair business competition will foster a conducive economic climate. Only in a healthy environment of economic competition can there be progress and equitable justice for all levels of society. In general, countries that implement healthy economic systems greatly contribute to the progress of the country's economy. Besides that, healthy business competition not only contributes to the progress of the country's economy, but also encourages all parties involved in the business world to be honest, creative, and responsible. Of course, such human resources are very supportive of a nation's progress (Helza, 2006).

As a legal product, which has advantages and disadvantages that were born in the transition period during the reform era, the materials and formal rules in Law No. 5 of 1999 are able to oversee and provide a measure of prohibited acts in competitive business. Indications of violations (agreements, activities, and dominant positions) have been able to measure causality in various actions that can trigger unfair business competition. This makes it easier for business people and the consumer community to know and recognise which actions are allowed and which actions may not be carried out in market operations. At the same time, these stakeholders will realise that the operation of the market is supervised by the application of the law.

Law No. 5 of 1999 is a product of business law, which requires a deeper understanding of the law, in all its scope, than civil law and criminal law. Because business competition law does not recognize civil and criminal terminology and is instead better known in the scope of business law, the demands for liability are more legal and moral in nature. Viewing business competition law from a civil or criminal standpoint will not yield an understanding of the intent and purpose of the enactment of Law No. 5 of 1999. Thus, in pursuing market opportunities and business targets, each businessman and the community must realise that the operation of the market is overseen through this law's enforcement. They must also think

---

<sup>6</sup>Law of the Republic of Indonesia Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Part Considering letter a, which is contained in State Gazette of the Republic of Indonesia of 1999 Number 33 and Supplement to the State Gazette of the Republic of Indonesia Number 3817.

about one another and be able to hold the market fairly, with full responsibility for the legal signs and moral ethics.

In this context, each businessman has to, while still paying attention to quality, be able and open to accepting competition as a natural regulator of their products' efficiency in Natural Resources (SDA) and Human Resources (HR). With this efficiency in mind, businessmen will create, innovate, and provide services in producing, distributing, and marketing their products and services. This is the ideal goal and hope of running the market. If all businessmen carry out their business activities in a healthy manner, the market structure that is formed will also be healthy, which will ultimately benefit all parties: businessmen will have the same opportunity to run their businesses, consumers have the freedom to obtain goods and/or services that are of a competitive minimum quality, and the government will find it easy to carry out existing laws as a result of infrequent and/or non-violation of the law. Ultimately, prosperity for many will become a reality.

***The Application of Law in Law No. 5/1999 is not Absolute and Seems to Be Distorted with Equal Considerations, Alignment and Business Opportunities for Every Citizen***

The business competition law has clear provisions regarding legal actions that can be declared contradictory, so that it can be stated that there has been a "violation", as the term is used in this law; however, the form of the violation referred to, if it is associated with a concrete event in the process of law enforcement, also has provisions for legal considerations, of which there are many examples in previous KPPU decisions. This certainly connects with the steps and phases that apply to a decision at the court level in general, which is known as the phasing of constituents, qualifiers, constituents (LiliMulyadi, 2009); (Sudikno, 1988). Because in the process of examining cases until a verdict will be passed through the framework and legal considerations.

Article 4-29 of Law No. 5 of 1999 has determined the form of legal actions and/or legal events which are indicative of violations. But the violation in question is not always absolute, because the penalty of error will apply after the legal considerations have passed several exceptions that are substantially related to 2 (two) things, namely:

- a. Actions where the constituents fulfill the element of violation, but the causality of the action is in fair competition.
- b. Actions that constitute an act that violates, but are excluded by legislation. In a more in-depth study, this was found to have a relationship with the legal method applicable in a criminal offense, commonly referred to as the elimination and disappearance of a criminal offense. The fulfillment of an element of a criminal act can still be annulled by reasons for the elimination and disappearance of the criminal act.

Based on the explanation above, business competition law in law enforcement also recognizes an analytical approach commonly called the Rule of Reasoning and Illegal Perse (Journal of Business Law, 2005); (ArieSiswanto, 2002)<sup>7</sup>. This approach focuses on the logical and measurable cause and fulfillment of the violation element, both in the behavior of the business actor and the market structure, but at the end point, there is also a decision that can annul the violation. This can be illustrated through the following examples:

- a. Business practitioners have the ability to maintain market positions through predictive ability or high business foresight.
- b. A fast-growing company that offers a combination of quality and reasonable prices for goods and/or services that consumers demand. With this act, the market share is growing fast, thereby increasing economic prosperity.
- c. Market control that is a result of having the support of legislation.
- d. Market control that occurs naturally.

According to Peter W. Heermann, that natural monopoly occurs when economies of scale (economies of scale) are very difficult or not possible at all for other businessmen to enter. Therefore, having that monopoly in the hands of one business actor is the most efficient solution. Generally, natural monopoly covers infrastructure or public service industry sectors related to the grid, such as electricity, water, gas, roads, railroads, seaports, and air (Peter, 2002).

These are also known as a monopoly according to laws that are beneficial to the state. It was revealed that the monopoly and/or concentration of activities related to the production and/or marketing of goods and/or services that control the lives of many people and production branches, and which are also important to the state, are regulated by law and organized by State-Owned Enterprises (SOEs) and/or bodies or institutions established by the government (Law Number 5 Year, 1999).

In practice, it can be exemplified in terms of the organization of JasaRaharja, Health Insurance, Electricity, Road and Bridge Construction, Railways, Pelindo, AngkasaPura, and so on.

---

<sup>7</sup>Rule of Reason is an approach to evaluate the consequences of an agreement or business activity to determine whether an agreement or activity is inhibiting or supporting competition, whereas Perse Illegal is an approach that states any particular agreement and / or activity as illegal, without the need to prove further for the impact arising from the agreement or activity, further compare it with AM Tri Angraini.

There are also exceptions in intellectual property rights<sup>8</sup> for the mastery of the production of goods and/or services in a monopoly capacity in the private sector. This is so that if a right has been registered, the holder can prevent other competitors from using the right within the specified time period.

In addition there are also other reasons for monopoly:

1. Acts and/or agreements aimed at implementing the applicable laws and regulations.
2. Research collaboration agreements to improve the standard of living of the wider community (Law Number 5 Year, 1999).

In this aspect, the justification for violation is carried out not only in legal analysis but also in economic analysis. For this reason, law enforcement efforts are not only focused on violating the elements in the article, but also need to determine the market conditions formed by "prohibited agreements, prohibited activities, abuse of dominant position "which in the end" unfair business competition".

## **Closing**

The business competition law enforcement contained in Law No. 5 of 1999 contributes to the achievement of people's welfare, because of the directives of the law that require competition to proceed in a healthy manner. For this reason, each business actor is directed to accept competition. With the competition will emerge positive attitudes and creative ideas about efficiency in natural and human resources, resulting in reduced production costs. In line with this, businessmen will behave similarly and in healthy competition, which will generate creativity and innovation for products and/or services and ultimately reduce production costs by achieving promising profits. In addition, the consumer society will have the freedom to obtain goods and/or services in which they are interested and which are of a competitive quality and price. These attitudes and actions will be directly proportional to the welfare achievements expected in the midst of the community, and they will also be in line with one of the considerations proposed. The Draft Law on the Prohibition of Monopolistic Practices provides for community prosperity, not the prosperity of the people. An economic system like this thrives on the principles of balance and harmony, and it provides equal and fair business opportunities for every citizen.

---

<sup>8</sup>See Article 50 letter b. Law No. 5 of 1999, namely agreements relating to intellectual property rights such as licenses, patents, trademarks, copyrights, industrial production designs, integrated electronic circuits, and trade secrets, as well as agreements relating to franchising.



## REFERENCES

- Abd Hakim, G. N. (1999). Analysis and Comparison of Anti-Monopoly Law, PT Alex MedyaKomputindo, Jakarta.
- ArieSiswanto, (2002). Business Competition Law , Ghalia Indonesia Jakarta, p. 63
- Asril, S. (1919). Monopolistic Practices and Unfair Business Competition, Review of Law No. 5 of 1999, PT Citra Aditya, Bandung.
- Ayudha, D. P. (2000). Business Competition and Regulations in Indonesia, Elips, Jakarta.
- Editorial, (2002). Journal of Business Law, Antitrust Law, Challenges and Problems, Vol 19, Jun 2002.
- Elita, R.G. (2011). Indonesian Anti-Monopoly Law, PT Citra AdityaBakti, Bandung.
- Gunawan, W. (2001). Merger at the Moinopoli Perspective, PT Raja GrafindoPersada, Jakarta.
- Helza, N. L. (2006). Conspiracy as a Business Crime Associated with Law Number 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition (Case Analysis of PT IndomobilSukses International, Tbk) Share Sales, Paper.
- Journal of Business Law, (2005). Business Competition and Tender Collusion, Vol 24 No. 2 of 2005.
- Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.
- Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.
- Kausarian, H., Lei, S., Goh, T. L., & Cui, Y. (2019). A new geological map for formation distribution on southern part of south China sea: West Kalimantan, Indonesia. *International Journal of GEOMATE*, 17(63), 249-254.
- Law Number 5 Year, (1999). Monopolistic Practices and Unfair Business Competition LNRI 1999 Number 33



LiliMulyadi, (2009). Judge's Decision in Civil Procedure Law; theory, practice, Telknik making and Problems, Bandung; Citra adytiaBakti, Bandung.

Munir, F. (1999). Anti-Monopoly Law, PT CutraAditya, Welcoming the Era of Free Competition, Bandung.

Peter, W. (2002). Heermann in the Law Concerning Monopolistic Practices and Unfair Business Alienation (Law Concerning Prohibition of Monopolistic Practices and unfair business competition, Catalyst Publishing Media Services, Jakarta.

Soesilo, R. (1991). Book of Criminal Law and his comments, Bogor Politea.

Sudikno, M. (1988). Hukum Acara Perdata Indonesia, Yogyakarta: Liberty.

Tri Agraini, A.M. (2003). Prohibition of Monopolistic Practices and Unfair Business Competition Perse Illegal or Rule of Reason, UI. Faculty of Law UI, ASCA Undergraduate, Jakarta.