

Economic Democracy: Examining the Law Enforcement of Business Competition in Indonesia

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Abstract: -The national economy of Indonesia is prepared based on economic democracy with the principles of togetherness, justice, sustainability, environmental insight, independence, and maintaining a balance between progress and national economic unity. One of the indicators is the availability of legal standing of business competition. This article aims to reveal the type of legal approach used by the Regional Representative Commission or Komisi Pengawas Persaingan Usaha (KPPU) of Makassar City towards law enforcement in business competition in Makassar, South Sulawesi. The research method used in this research is field research, which reveals the facts that occur in the field. The results of the research found that the decision of the KPPU Regional Representative Office of Makassar City which was the object of research indicated that in enforcing business competition law, it used a legal positivism approach as indicated by three indicators: First, KPPU decided cases solely based its decisions on legal norms in law; Second, KPPU uses syllogistic analysis in making decisions; Third, KPPU does not consider non-legal factors in making decisions

Key-Words: - Business Competition, law enforcement, economic democracy, supervision, legal approach

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1 Introduction

In general, the law is understood as a norm, a binding rule in regulating human life. (Christiani, 2016) The law must realize justice, legal certainty, and legal benefits. (Putri & Arifin, 2018) Justice in law comes from the teachings of ethics, legal

certainty comes from dogmatic-normative teachings, while the benefits of law come from the teaching of utility. The legal system is law enforcement recognized by the state based on the constitution to regulate social interactions. (Dudchenko, Tsurkan-Saifulina, & Oleksandr V. Tsurkan, 2018).

The positivistic approach as a means of law applies as an order from the authorities. The positivistic legal view that law has no relationship with morals. (Bello, 2014) Law is different from morals because morals cannot be proven by using argument or logic. Law can be seen as a collection of legal materials or court decisions, but the law has a significant role in knowing and understanding something behind the law. (Gardner, 2001) Therefore, legal positivism separates the law as it is from the law as it should be.

The legal paradigm starts with morality, values, and justice. (Hart, 2018) There are two legal paradigms in its development: the positivistic legal system and the sociological, legal system. The positivistic legal system follows the juridical-dogmatic teaching that law is free from values. The positivistic legal system in that law cannot be influenced by non-legal considerations, such as moral, political, economic and social. (Lisitsa & Moroz, 2019) However, the sociological, legal system follows the utility teaching that law should be studied methodologically and examined from non-legal aspects such as moral, political, economic, and social.

The positivistic legal system is one of Europe's philosophical products, to be precise in France. The positivistic legal system influences the formation and enforcement of laws in the Netherlands and Indonesia. (Haryono, 2019) The Netherlands and Indonesia follow a positivistic legal system. Positivistic law places law as a phenomenon that must be responded to and processed scientifically. (Hermanto, 2016) Unlike sociological laws, laws must be responded to openly in human life through the scientific method.

Positivistic law is the law enforcement to evaluate facts and legal phenomena, always referring to considerations of the will of law that the authorities have made. Positivistic law is called formalistic legalism to make decisions, only laws as law, besides that there is no law. Therefore, legal is free of value or free from non-legal influences such as moral, political, and economical. In resolving all legal facts as a matter in court, it must be based on law.

In law enforcement (Susilowati, 2019), the positivistic legal system and the sociological, legal

system are theoretical foundations for studying and solving Indonesia's legal problems. On the other hand, the legal system's mechanism stipulates that the existence of the Business Competition Supervisory Commission has comprehensive strength and responsibility in business practices. (Kovacic & Winerman, 2010) Thus, Komisi Pengawas Persaingan Usaha (KPPU) used the legal system in law enforcement regarding the business competition. (Kurniawan, 2019) The state must be involved concerning the positivistic legal system. (Simbolon, 2019)

Civil law in the state legal system is one of the areas of regulating business practices, in case of monopoly and disputes, it depends on the court's decision to interpret the law. The relationship between law and business provides the court's function to interpret the objectives of business actors' antitrust law. (Li, 2018)

The positivistic legal system in developing Indonesian law is inherited from the Dutch legal system. The contribution of the positivistic legal system in Indonesia is realized through many House of Representatives' policies. (Harijanti, 2015). One of the applied laws (kepal applied) in the positivistic legal system is Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition carried out by Komisi Pengawas Persaingan Usaha (KPPU).

Business competition is significant to discuss and cannot be ignored because it is extraordinary and occurs continuously in Indonesia. (Barthos & Borobudur, 2019) Even though the business competition is held outside the court conducted by KPPU, that does not mean ignoring the positivistic legal system. From 2009 to 2019, KPPU received reports of 1,961 cases, and 233 cases were successfully decided. However, the big question in law enforcement is whether the Makassar City Regional Representative Commission uses a positivistic legal approach in implementing Law Number 5 of 1999? What are the indicators used by the Regional Representative Office of Makassar City as benchmarks in applying a positivistic legal approach in deciding business competition cases?

2 Research Methodology

The method developed in this research is qualitative research with a normative legal approach. This research also analyzes and examines a KPPU decision. The normative legal approach is used to strengthen law enforcement carried out by the state through KPPU. The data in this study consisted of field data and secondary data. Field data was obtained by observing and recording business competition case data at the Regional Representative Office of Makassar City. Secondary data were collected from several recent articles from reputable journals related to law enforcement conducted by KPPU through its assignment.

3 Results

3.1 KPPU's Involvement in Supervision and Law

Enforcement of Business Competition

Amendment to the 1945 Constitution Article 33 paragraph 1 is the constitutional basis of the state economy. Article 33, paragraph 1, states that "the national economy is regulated based on economic democracy." Legal experts understand the meaning of "economic democracy" in Article 33 paragraph 1, there is an academic debate by dividing two groups of interpreters, as follows;

1. The first group of interpreters interpreting economic democracy as meant in Article 33 contains the concept of people's economy, so this group of interpreters demands that the state be involved in all economic activities based on the law.

2. The second group interpreted that Article 33 requires a liberal economic concept, so that the state is not involved in all economic activities. This concept emphasizes the content of Article 33 to realize liberal rights, prosperous rights, business freedom and demands for economic autonomy. This concept is free from state interference.

The academic debate in the interpretation of Article 33 of the 1945 Constitution regarding the people's economy is not a new problem. But for a

long time it has been the object of serious debate in the field of economics by producing three theories about state involvement in economic activity, as follows;

1. The minimum theory of the state is capitalist production which is built on the assumption that economic activity with the free competition will be more beneficial to all people than intervention by the state. When the state does not intervene in economic activities, the economy becomes efficient because economic actors and people will be guided by invisible hands to become the best. However, if the state intervenes in economic activities, it is disturbed by the state authorities' bribery practice.

2. Maximum theory supports the state's function for human economic activity as an antithesis that rejects state interference. The basic assumption of reality is complicated to balance individual interests and interests if the state does not intervene optimally. Therefore, the state's solution must monopolize all economic activities, so that the capitalist pressure is removed to manifest us as human beings.

3. The state involvement theory is that economic activity must be controlled and corrected by the state through the government in creating balance. This theory wants everyone to be free to do business anywhere, but if disturbed, it requires the state's involvement in dealing with it. The state provides as many full employment opportunities as possible for the people.

Based on state involvement theory, the 1945 Constitution is used to overcome all economic activities from interference by others in creating welfare. The substance of the 1945 Constitution Article 33 paragraph 4 states that "The national economy is prepared based on economic democracy with the principles of togetherness, justice, sustainability, environmental insight, independence, and maintaining a balance between progress and national economic unity".

It Refers to Article 33 (5) of the 1945 Constitution implemented in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition as evidence of measurable state involvement in the people's economy. Law Number 5 of 1999 is

significant to stabilize economic democracy, without monopolies for certain business actors and can become a fair competition.

According to Wolfgang Friedmann that measured involvement in the people's economy through the four functions of the state as follows;

1. The state's function as a provider is to realize the welfare of all people, is responsible for providing security with a minimum standard in the life of all people and various other social security.
2. The state's function as a regulator is to regulate the economic system following laws or regulations so that the economy moves in a balanced manner between the interests of business actors and those of individuals.
3. The state functions as an entrepreneur in the economy through state-owned companies. These functions and roles are dynamically established to balance the roles of the private sector and the public sector.
4. The state functions as a supervisor to formulate fair standards in economic activities, including state-owned enterprises. Even the supervision of economic activities operated in the private sector for business competition between various business actors is aimed at competition and business competition from various business actors to work healthier.

It was emphasized that the four types of state functions in economic activities were inspired by the founders of the state with their messages contained in Article 33 (1) of the 1945 Constitution. In particular, the supervisory function in Law Number 5 of 1999 emphasizes its supervision by the state commission applied in Presidential Decree No. 75 of 1999 concerning the Business Competition Supervisory Commission (KPPU). It has authority to supervise the implementation of Law no. 5 of 1999, particularly regarding the prevention and enforcement of business competition law violations.

4 Discussion

4.1 Positivist Legal Approach to Law Enforcement in Business Composition in Makassar

Because law enforcement by KPPU has succeeded in handling many cases, both through reports from the public and the results of investigations conducted by KPPU itself, from 2009 to 2019, he succeeded in deciding 233 cases out of 1,961 cases that were submitted to the Central KPPU. In 2010 there were at most 42 cases decided, and at least in 2012, there were 9 cases. Then in 2009, there were 35 cases, 2011 there were 13 cases, 2013 there were 12 cases, 2014 there were 19 cases, 2015 there were 22 cases, 2016 there were 24 cases, 2017 there were 11 cases, 2018 there were 23 cases, 2019 there were 23 cases.¹

The facts of business competition, 233 cases were decided by Central KPPU, and 181 cases were continued to the District Court's appeal process. The District Courts decided 106 cases with decisions favouring KPPU and 75 District Court decisions that overturned KPPU's decisions. Then 106 decisions won by KPPU were processed to the Supreme Court Cassation and 102 cases won by KPPU. 75 District Court decisions were defeating KPPU, 43 Supreme Court cassation decisions that beat KPPU.

The increasing number of business competition cases shows that the Central KPPU decided 233 cases, 181 cases were continued to the appeal process at the District Court. The District Courts decided 106 cases with decisions favouring KPPU's decisions and 75 District Court decisions that overturned KPPU's decisions. Then 181 cases were decided by the District Courts, 145 cases were processed at the appeal level to the Supreme Court and decided with 102 cases being won by KPPU and 43 decisions beating KPPU.

Data on District Court decisions and Supreme Court decisions that further strengthen Central KPPU decisions show that the type of legal approach used by Central KPPU is the same as the type of legal approach used by the District Courts and the Supreme Court.

The conditions for handling business competition cases at the regional level carried out by the KPPU in Makassar, South Sulawesi Province from 2009 to 2019 consisted of 19 cases. Fifteen cases have been declared legally and convincingly

¹Kantor KPPU Perwakilan Daerah Kota Makassar, *Observasi*, tanggal Januari 2020

proven to have violated Law no. 5 of 1999, and only four decisions were declared not proven.

The KPPU decided 15 cases in Makassar; an appeal process followed 12 cases at the Makassar District Court with various decisions: 2 decisions justifying the KPPU decision and ten decisions overturning the KPPU decision in Makassar. Subsequently, 11 cases have been decided by the Makassar District Court, all of whom proceeded to appeal to the Supreme Court and succeeded in deciding 10 cases with variations of 7 Supreme Court decisions that confirmed the KPPU decision in Makassar and three decisions confirming the court's decision.

After KPPU in Makassar monitored alleged violations of Law no. 5 of 1999 with a case of monopoly in taxi services at Sultan Hasanuddin International Airport by PT. Angkasa Pura I (Persero) Makassar Branch Sultan Hasanuddin International Airport, KPPU formulated the position of the case as follows:

1. PT. Angkasa Pura I (Persero) Sultan Hasanuddin International Airport Branch limits transportation operators that can operate to Sultan Hasanuddin International Airport by seven operators, namely: 4 taxi operators, two rental transportation operators, and 1 Damri bus operator;
2. Limiting taxi operators and rental transportation units to 10 units and Damri bus operators to only two units;
3. Determine high operating costs for a taxi, rental transportation and Damri buses at Sultan Hasanuddin International Airport.

The results of the investigation of cases carried out from 29 July to 9 September 2009, the KPPU in Makassar determined that Article 17 and Article 19 letters (a), (c), and (d) Law Number 5 of 1999 were allegedly violated as the Reported Party of PT. Angkasa Pura I (Persero) Sultan Hasanuddin International Airport Makassar Branch.

It is estimated that PT violated the stipulation of articles of Law Number 5 the Year 1999. Angkasa Pura I (Persero) Makassar Branch Sultan Hasanuddin International Airport is carried

out by the KPPU using legal positivism. Legal positivism as a basis for justifying or blaming the Reported Party in court. KPPU must have a handle on finding truth and justice through legal norms formulated in the articles of Law Number 5 the Year 1999. The legal paradigm applied by KPPU in law enforcement from business competition matches the positivistic legal system introduced by John Austin. and Hans Kelsen with his teachings on pure law.

KPPU and the court use legal positivism as an approach in applying the law as absolute truth. Legal positivism has a strong influence in building a law enforcement paradigm for applying Law Number 5 of 1999.

In Decision Number 18 / KPPU-I / 2009 it was found that in making decisions by analyzing the elements in the article of Law Number 5 of 1999 as the basis and legal norms to determine the truth of the violation of PT. Angkasa Pura I (Persero) Branch Sultan Hasanuddin International Airport Makassar as the Reported Party. KPPU analyzes the elements in Law Number 5 the Year 1999 Article 19 letters (a) and (d) as a measure of absolute truth. Therefore, the KPPU in its decision stated that the Reported Party was legally and convincingly proven to have violated Article 19 letters (a) and (d).

The KPPU's legal considerations that the elements in Law Number 5 of 1999 Article 19 letter (a) that are predicted to be violated by the Reported Party are:

1. Entrepreneurs;
2. Rejecting and deterring certain business actors;
3. Doing the same business activities;
4. In the same market (business location).

Investigation in the case of PT. Angkasa Pura I (Persero) Sultan Hasanuddin International Airport Makassar Branch which was carried out by KPPU repeatedly as a legal fact, as follows:

1. Business actors referring to Article 19 letter (a) of Law Number 5 the Year 1999 are PT. Angkasa Pura I (Persero) Sultan Hasanuddin International Airport Makassar Branch;
2. PT. Angkasa Pura I (Persero) Sultan Hasanuddin Airport in Makassar limits taxi operators, rental transportation, and

Damri buses that can operate with an operational license from the Governor or Head of the South Sulawesi Provincial Transportation Office, each with only ten units for taxis, rental transportation and two units for Damri buses;

3. Conducting the same business activities, namely the passenger transportation business;
4. The same market is at Sultan Hasanuddin Airport in Makassar.

The elements contained in Article 19 letter (a) become the central premise to be matched with the minor premise in legal facts carried out by the Reported Party. The KPPU's decision stated that the Reported Party was legally and convincingly proven to have violated Article 19 letter (a) of Law Number 5 the Year 1999.

Then in Article 19 letter (d) of Law Number 5 the Year 1999 the Reported Party has violated its elements as formulated by KPPU, as follows;

1. Entrepreneurs;
2. Practicing Discrimination;
3. Refers to Specific Business Actors.

Furthermore, the elements in Article 19 letter (d) related to legal facts found in the process of investigation of cases by KPPU as violations of the Reported Party against Article 19 letter (d) are:

1. Business actors referring to Article 19 letter (d) of Law Number 5 the Year 1999 are PT. Angkasa Pura I (Persero) Sultan Hasanuddin International Airport Makassar Branch;
2. Discriminatory practices limit other land transportation quotas to operate at Sultan Hasanuddin International Airport in Makassar, while Kopisdara Taxi operators are not limited;
3. Business actors are each limited to 10 units such as PT. Bosowa Utama, PT. Putra Transport Nusantara, Primkopau Lanud Hasanuddin, and CV. Anugerah Karya, while the Kopisdara Taxi is not limited to operating 185 units.

The legal considerations by the KPPU are to elaborate on the elements contained in the articles of Law Number 5 of 1999, then to match the Reported Party's legal facts as an illogical way of thinking. The articles' elements become the central premise, while the competition violation case business is a minor premise. A syllogism is a law which is a central premise that is taken for granted as belief in the absolute truth of law. There is no need to question its truth from a non-legal perspective such as justice and various other values such as happiness, security, and various other non-legal human life values.

In the context of the positivistic legal system in Indonesia, each case's resolution uses the law as the primary reference in implementing the law in court. Therefore, judges in solving cases refer to the law in upholding law and justice.

The area of Sultan Hasanuddin International Airport is minimal as a transportation business area. Non-legal factors in the form of the transportation business area owned by Sultan Hasanuddin International Airport cannot be used as an excuse to limit the businesses of some operators and transportation units to operate in the Sultan area Hasanuddin International Airport. Restricting business is an act of discrimination against transportation operators or certain business actors as stated in Article 19 letters (a) and (d) of Law Number 5 the Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

Law enforcement by the KPPU of Makassar City is an implementation of the legal positivism approach. Laws made by the state must resolve all social problems that occur in society. Allowing social problems in society is a must if there is no law prohibiting the problem.

5 Conclusion

In applying business competition law, KPPU uses a legal positivism approach to violators of Law Number 5 the Year 1999. The technique of applying it is by formulating the law articles' elements, which are considered violated as major frames, then matching them with the elements of the acts committed by the perpetrators. Matching between

major and minor premises is a form of syllogistic analysis conducted by the Commission. KPPU denies all non-legal factors in making its decision, such as the Sultan Hasanuddin International Airport factor. It is limited for the transportation business as a reason for the airport to restrict individual transportation operators from operating in the airport area. It is not a consideration for KPPU stating that the Airport Management policy is proven to have violated Article 19 letter (a) and letter (d) of Law Number 5 the Year 1999.

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Contribution of Individual Authors to the Creation of a Scientific Article (Ghostwriting Policy)

Marilang, initiated the idea, constructed the research designed, collected the data, analysed the data.

Muhammad Majdy Amiruddin, assisted in interpreted data, enhanced the idea and constructed the data.

Abdul Syatar assisted in data analyses, enhanced the work flow.

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