

Function of Business Competition Supervisory Commission in Preventing Monopoly Practices and Unfair Competition

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ABSTRACT: Objective of this Research is to analyze and explain as well to find the essence of a Business Competition Supervisory Commission, Law of independent commission in carrying out its functions as mandated by Law No. 5 of 1999. On the prohibition of monopolistic practices and Effort healthy competition This research method is empirical normative research using data and Theory from Supervisory Commission of Business Competition from the theories related to the supervision theory and the theory of justice as well as economic theory. Based on the research results can be concluded that the existing competition law in the Sulawesi region have not been able to realize healthy competition, as well as the performance of the Regional Business Competition Commission Makasaar, has not fully maximized. The state of business competition in Makassar also South and West Sulawesi there are still many circumstances where unfair competition is committed by government officials, and the private company, especially in the form of Bidding Conspiracy activity. Still stained with a lot of scheme in determining the tender winner, the committee initiated just to give the impression of healthy competition, still tinted with the practice whereby companies close to the powers and companies that have a big hand and a large capital bias, gain advantages in tender projects.

Keyword: Business Competition, Supervisory Commission, Monopoly Practices

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I. INTRODUCTION

Economic development conducted by the government of Indonesia at this time, are based on the essence to achieve a people's welfare in accordance with the mandate in the preamble of the Constitution of the Republic of Indonesia Year 1945. Where the purpose of the establishment of the Republic of Indonesia is to manifest nation's welfare.¹

Indonesian independence has a substantial meaning, in which that meaning is the dream destination of our country, one of which is the Indonesian government to protect the people of Indonesia and the entire homeland of Indonesia and to promote the general welfare. In the Fourth paragraph of the Constitution of the Republic of Indonesia Year 1945 also stated that the realization of social justice for all Indonesian people. Mohammad Hatta understands the social justice for all Indonesian people is a decisive step to implement a fair and prosperous Indonesia. The leaders of Indonesia Year 1945, aspires and hopes that the social justice in the economy can achieve equitable prosperity, equitable prosperity can be achieved through good economic development activities.²

¹ La Ode Husen, 2009, *Negara Hukum Demokrasi dan Pemisahan Kekuasaan, UMI-Toha, Makassar, See, Sufirman Rahman, La Ode Husen, Salle, 2017, Proper Government Role In Land Procurement For Public Interests In Indonesia, Imperial Journal of Interdisiplinary Rrsearch, Vol. 3, Issue, 5, p.918 .Role In Land Procurement For Public Interests In Indonesia, In other aspects of development programs undertaken by government agencies, ex officio require land or land as the location where the physical realization for the construction of facilities and infrastructure of public interest. Medium meaning of the intended public interest, does not have the potential to make people miserable but aims to improve prosperity and welfare of the people.*

² La Ode Husen, Said Sampara, Syamsuddin Pasamai, 2017, Community policing is a study in south sulawesi, *Imperial Journal of Interdisiplinary Research, Vol. 3 Issue, 5, p. 1026*

The Implementation of the preamble to the Constitution of the Republic of Indonesia Year 1945 is then implemented in Article 33. Indonesia's economy is the basic foundation of Article 33 Paragraph (1), (2), (3) and (4). Constitution of the Republic of Indonesia Year 1945 results are divided into the following amendment:

1. The economy is structured as a joint venture based on the basis of affiliation
2. Production branches which are important for the state and dominate the life of the people controlled by the State.
3. Earth, water and natural resources contained therein controlled by the State and used for the prosperity of the people.
4. National development was held based on economic democracy with the principles of togetherness, efficiency nuanced sustainable environmental justice, independence and balancing economic progress and unity of the community.

Economic development had to be oriented towards the realization of people's welfare. For that purpose, in the economic field, democracy is supposed to bring equal opportunity for every business participant to actively involved in the process of production and marketing of goods and / or services. In a healthy business climate, effective and efficient so as to encourage economic growth and operation of a market economy were reasonable.

Business opportunities created during the past three decades has in fact not been able to make the whole community and can participate in development in various sectors of the economy. The development of private business during the period, on the one hand characterized by various forms of government policies that are less precise as the market becomes distorted. On the other hand, the development of private businesses in fact largely a manifestation of unfair competition conditions.

This phenomenon has developed and supported by the corresponding association between decision-makers with people in business, either directly or indirectly, thereby further exacerbating the state of implementation of the national economy less refers to the mandate of Article 33 of the Constitution of the Republic of Indonesia Year 1945, and tend to show patterns that are very monopolistic, the businessman close to the power elite have easy excess which leads to social inequality. The emergence of a conglomerate and a small group of powerful businessmen who are not supported by true entrepreneurial spirit is one of the factors that led to the economic resilience becomes very fragile and unable to compete.

Based on what was pointed out above, in the form of Act No. 5 of 1999 on the prohibition of monopolistic practices and unfair business competition can be an important instrument to encourage the creation of a climate of healthy competition, as has been pointed out above. Moreover, this law can be said to be complete, in the sense of providing substantial regulations on competition, such as monopolistic practices, price fixing, price discrimination, cartels, trusts, and vertical investigation.

Law on prohibition of monopolistic practices and unfair business competition which are intended to enforce the rule of law and provide equal protection for every business in the effort to create healthy competition.

Implementation of Law No. 5 of 1999 on the prohibition of Monopolistic Practices and Unfair Business Competition can be well implemented and effective in accordance with its objectives, therefore it is necessary to set up Business Competition Supervisory Commission, which is an independent institution that apart from the influence of the government and other parties, which authorized supervise competition and impose sanctions. The sanctions in the form of administrative measures, while criminal sanctions are the public law courts.³

The function of the Commission (KPPU) can be seen in recent years in settling some unfair competition, especially in the city of Makassar, for example in the case of Yamaha Motor distribution system in 2011, in violation of article 19 (d) of Law No. 5 of 1999. Monopoly cargo service Sultan Hasanuddin airport, and Monopoly by airport taxis, in violation of article 17 (a, d), tender the construction of Hasanuddin University Teaching hospital, tender Takalar construction of seaport facilities. Violated article 22 of Law No. 5 of year 1999.

However, some cases of unfair competition that successfully revealed by the Commission (KPPU), is still considered too little in numbers and not maximized considering this agency has extensive authority given by the Law, it needs a better arrangement in terms of internal and external, after all this time the Commission perform all its duties independently to judge in terms of investigating the case, analyzing to deciding a case of unfair competition.

³ La Ode Husen, 2017, *Accountability and Oversight In the Structure State System in Indonesia*, International Journal Of Science and Research (IJSR), Vol.6 Issue 6, p. 2078 , Indicator accountability, ...Transparency, Measurable, Corection and Sanction.

It can be seen from the many cases of cartel carried out by a group of entrepreneurs to be able to control the price, resulting in the increase in some of the staple food, and very clearly violated article 11 of Law No. 5 of 1999, as well as with conspiracy as well as the Tender and market domination many found especially in the case of many of Modern Retail in the city of Makassar, it is very clearly violating article (19), (21), (22), (24) of Law No. 5 of 1999.

Identification of problems

Based on the provisions and the above discussion the authors give a formulation of the problem as follows: To what extent the law enforcement Business Competition Supervisory Commission in preventing Tender conspiracy practices.

Theoretical basis

The main objective of the law is order, obedience to this order, a basic requirement for an orderly society. The purpose of the law is the achievement of Justice. To achieve order, it is required to have legal certainty in relationships between people in society. The law must be enforced and everyone expects the enactment of the law in the event of a concrete event. That is what is desired by the law certainty. Legal certainty is a safeguard against arbitrary action, which means that someone will be able to obtain something that is expected in certain circumstances. Society expects the certainty, because of the lack of legal certainty would be more orderly society. Legal work to create legal certainty, with that will be the achievement of other laws, the public order. Law enforcement must be a member of benefit to the community, in addition to aim at creating fairness. Law enforcement activities first of all aimed at enhancing public order and rule of law in society. In the framework of this endeavor, the system of coordination and harmonization of duties between law enforcement agencies will be used. Effort to uphold the law and enforcement of the enforcers.

Law enforcement as a process, in essence is discretion regarding making decisions that are not strictly by the rule of law. Therefore, that law enforcement is not solely for the implementation of the legislation, even though the trend within Indonesia that makes theory of law enforcement so famous and phenomenal. Other than that there is a strong tendency to interpret the rule of law as the implementation of the judges' decisions.

1. Factor of the law itself, which in this paper will be limited to the Act only.
2. Law enforcement apparatus, namely the parties that form and applying the law
3. means or facilities factor to support the law enforcement
4. community factors, namely the environment in which they may apply or applied
5. Cultural factors, namely as a result of the work, creativity and taste which is based on human initiative in social life.

Viewed from Soekamto Soeryono theory of law enforcement apparatus, it is consistent with the theory that using that approach in the theory of competition law expressly prohibiting it, regardless of whether there is excess negative. Some form cartels, monopolies and unfair competition, should be considered itself contrary to the law. The emphasis is on the formal elements of such acts, the theory known as the theory per se illegal.

II. DISCUSSION

Enforcement by the Business Competition Supervisory Commission in Preventing Practice Tender conspiracy.

Tender offer conspiracy, which is often regarded as an activity that can be an inhibit the State development. This view is due to that the essence of collusion or conspiracy contrary to justice, because it does not provide equal opportunities to all bidders to acquire the object of the goods and / or services offered by the organizers. Due to the conspiracy tender, bidders with good faith have become hampered to enter the market, and the result is the appearance of more uncompetitive prices.

In South Sulawesi province ranks second nationally in terms of bid rigging conspiracy based on the Commission 2016 data report. Dr Kurnia, center Commission (KPPU) member states that 90% of reports received reported by the project tender and ranks second in South Sulawesi, where the first order won by city Medan North Sumatra in terms of bid rigging. Commission inspectors of Business Competition (KPPU) regional office (KPD) Makassar handle 14 cases for the last 9 tender year with the State losses reach to trillions Rupiah.

With socialization and education are being conducted by the Commission (KPPU) there are hopes that there may be awareness to report any irregularities by Tender Project. The high numbers of bid rigging in many case of Tender projects undertaken by existing entrepreneurs in the Sulawesi, Maluku and Papua region.

One form of vigorous law enforcement carried out by the Commission is prohibited activities that include Conspiracy.

Tender conspiracy is essentially a form of agreement or act to regulate the tender that was won by the business or a particular group of businesses. Bid rigging can result in unreasonable price much higher than the quality or quantity of a given product. At the tender conspiracy usually leads to corruption, let alone giving the biggest tender is usually the government. Tender is the proposal of bid price to buy a place as the goods or service providers.

The conspiracy practice in tender, in this tender is prohibited because it can lead to unfair competition and contrary to the purpose of implementation of the tender, which is to provide equal opportunities to businesses in order to come to offer competitive price and quality. Consequently, in the end in the implementation of the tender process will get the lowest price with best quality. Make a deal with parties related directly or indirectly to the giver of the project, the organizers of the tender, or between them to determine the winning bidder in rotation on a series of tenders.

Making a deal with the parties involved directly or indirectly with the giver of the project, organizers tender, or to determine the winner among them both to work together as well as with certain compensation, using an exclusive agreement making the tender offer before the set time.

Law No. 5 of 1999 prohibits the act of businesses aimed at blocking or contrary to the principles of fair competition, among others, such as market access restrictions, collusion, and measures which aim to eliminate competition. No other can lead to the occurrence of unfair competition is an act or conspiracy to demand and determine the winner of the tender as stipulated by Article 22 of Law No. 5 of 1999.

Setting the winning bidder is commonly found in the procurement of goods or services carried out by the central government or local governments, state enterprises, and private enterprises, for the Article 22 of Law No. 5 of 1999 not only includes the procurement activities undertaken by the government, but also procurement activities undertaken by state companies, state enterprises, and enterprises and private companies.

On the basis of Article 22 of Law No. 5 of 1999, the tender is an offer asking price to buy a job, to hold the goods or to provide services, in this case not referred to the amount bid by a few or by businesses in terms of appointment direct election. Understanding the tender includes bids submitted prices to buy up or carry out a job, procuring goods and or services, purchase goods and or services, sell goods and or services. In Article 22 of Law No. 5 of 1999, bid rigging elements include, business, conspiracy, elements other hand, regulate and determine the winner of the tender, unfair competition.

Conspiracy in the tender can be done openly or secretly through adjustment measures, the offer before it is submitted, or creating deceptive competition or approve or facilitate, or providing the opportunity exclusive, or refused to take action despite knowing that it is done to regulate in order to win a particular bidder. Many Bid rigging mentioned above carried out by the parties of the tender committee and the company that monopolizes the case of winning the tender by using the political power and bribing the auction committee.

III. CONCLUSION.

Law enforcement conducted by business competition commission inspectors' in preventing the conspiracy practices Tender is by providing socialization to the provincial government and municipal government and district government to avoid Tender conspiracy practices, if there is still Tender conspiracy occur then criminal sanctions and Administrative sanctions to every actor bid rigging is given for the sake of law enforcement in the field of business competition, especially Tender conspiracy.

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