

Functions And Challenges Of The Indonesia's Business Competition Supervisory Commission In The Era Of Industrial Revolution 4.0

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Abstract

Monopolistic practices and unfair business competition are needed to be regulated to protect both businessmen and consumers. The sovereignty of business competition law can be strengthened if the Indonesia's Business Competition Supervisory Commission/IBCSC (Komisi Pengawasan Persaingan Usaha/KPPU) can carry out its functions optimally, particularly in the era of Industrial Revolution 4.0 (IR 4.0). This research aims to ascertain whether the IBCSC can be perform its functions in enforcing business competition rules and what challenges it faces in performing its duties in the era of IR 4.0. This research applied a normative legal method and analyzed the data by using qualitative approaches. It found the IBSCS has authority to impose administrative sanctions against business actors who violate Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No.5 of 1999). Unfortunately, the supervisory function of the IBCSC pertaining electronic systems is not regulated by this Law. Although a Memorandum of Understanding (MoU) and Cooperation Agreement between the Ministry of Communication and Information Technology (Menkominfo) and the IBCSC facilitates the enforcement and supervisory of business competition law in the IR 4.0, it cannot strengthen the IBCSC's legal position as an institution. Therefore, it is strongly suggested to amend Law No. 5 of 1999 to cover transactions in the digital market to strengthen the functions and authorities of the IBCSC.

Keywords:

The Indonesia's Business Competition Supervisory Commission, Industrial Revolution 4.0, Anti-Trust Law

Introduction

A developed economy of a state can be seen based on the ongoing competition among business actors. The theory of free market economics introduced by Adam Smith is known as perfect competition. In a perfect market, there are many companies operating to sell goods with similar characteristics. Their ability to regulate market prices is determined by the supply and demand mechanism itself (price equilibrium). This means that when business actors increase prices, they are likely to lose their buyers because the buyers seek sellers who sell at cheap price.

The existence of competition prevents the concentration of market power (market power) in one or several companies, so that consumers have many alternatives in choosing goods or

services produced by producers. Competition is essentially good for society and the economic development of a nation because it is the core of market operations. It encourages innovation, productivity and growth that can create prosperity. Competition among companies to achieve sales and profit is the driving force in the market. An efficient and fair market is essential to accelerating private sector development and economic growth. However, competition can have both positive and negative implications. Positive competition is a mechanism to achieve efficiency and social welfare. Through consistently maintained competition, benefits will be created for the consumer community, in the form of a wide selection of products with market prices and high quality. Conversely, competition can have negative implications, if it is carried out with negative behavior or is jeopardized by anti-competitive actions by market players. Thus, it becomes uncompetitive and brings a loss impact on consumers. To prevent negative behavior of business actors that can distort the running of the healthy business competition mechanism, the application of business competition law is a must for every country with a modern economic system.

Based on this phenomenon, the risk of monopolistic practices and unfair business competition in various sectors is very large. Therefore, a legal rule is needed which can serve as a limitation for business actors not to engage in monopolistic practices and unfair business competition. The sovereignty of business competition law must be strengthened by Indonesia. It can be done if the Indonesia's Business Competition Supervisory Commission (Komisi Pengawasan Persaingan Usaha/KPPU) as a business competition law enforcement agency in Indonesia to be strengthened in performing its functions to enforce business competition law in Indonesia.

The Indonesia's Business Competition Supervisory Commission (IBCSC) was established by the enactment of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No.5 of 1999) which regulates business competition in Indonesia. It aims to improve the condition of the Indonesian economy and to obtain the trust of foreign countries in carrying out their economic activities in Indonesia. In addition, the enactment of this Law constituted one of the conditions prescribed by The International Monetary Fund in providing conditional loans for Indonesia to help stabilize its economy.

However, the IBCSC faces challenges in carrying out its functions when technological progress has changed the face of the world economy, especially the industrial and trade sectors. One of the important phases in technological development is the presence of the Industrial Revolution 4.0(IR 4.0). The IR 4.0 is marked by extraordinary developments in technology and information. In this era, the term Artificial Intelligent (AI), robotics, Internet of Things (IoT), and 3D printing machine are utilized. The world has entered an era where there is automation and the latest data exchange in corporate technology which includes cyber-physical systems, internet, cloud computing, to cognitive computing. For this reason, the Indonesian industrial world must prepare itself to shift industrial orientation from manufacturing to the service sector. Business competition in Indonesia is getting tougher due to the development of science and technology in the era of IR 4.0. Companies are competing to create inventions and innovations by strengthening research and quality. Human resources who have high competence may become the key to win the competition in the era of IR 4.0.

Research Methods

The research method is a normative legal approach, namely research using data obtained via library materials. It is based on secondary data which is comprised of primary legal, materials namely laws and relevant statutory documents and the secondary legal materials are derived from books and journal articles. The legal materials are analyzed by using qualitative approaches based on a content analysis

Results and Discussion

Research Findings

a. The Indonesia's Business Competition Supervisory Commission (IBCS)

The legal impact that may be imposed on business actors who have violated the monopolistic practices and unfair business competition is legal sanctions. The types of sanctions are as follows:

Administrative Sanctions

Based on Article 47 of Law No. 5 of 1999, The IBCSC has the right to impose administrative sanctions on business actors who have been proven to have committed violations. These sanctions can be in the form of:

- 1) Determination of the cancellation of agreements that have been made by business actors as referred to in articles 4 to 13, 15 and 16. Orders to businesses to stop vertical integration as referred to in article 14; and or orders to business actors to stop activities proven to have caused monopolistic practices and or causing unfair business competition and or detrimental to the public; and or orders to business actors to stop abuse of dominant position; and or
- 2) Determination of the cancellation of the merger or consolidation of business entities and the acquisition of shares as referred to in Article 28; and or determination of compensation payments; and or imposing a fine of as low as Rp. 1,000,000.00 (one billion rupiah) and a maximum of Rp. 25,000,000,000.00 (twenty billion rupiah)

Criminal sanctions

Apart from administrative sanctions, the antitrust law also provides for criminal sanctions which can be divided into two categories, namely:

- 1) Criminal Sanctions in Law No. 5 of 1999 are divided into 2 categories of sanctions, namely:

The main criminal sanctions contained in Article 48 of Law No.5 of 1999, which reads:

- i. Violation of the provisions of Article 14, Article 16 to Article 19, Article 25, Article 27, and Article 28 shall be punishable by a minimum of IDR 25,000,000,000.00 (twenty five billion rupiah) and a maximum of IDR 100,000,000.00 (one hundred billion rupiah), or imprisonment in lieu of a fine of up to 6 (six) months.
- ii. Violation of the provisions of Articles 5 to Article 8, Article 15, Article 20 to Article 24 and Article 26 of Law No.5 of 1999 is punishable by a fine of as low as Rp.5,000,000,000.00 (five billion rupiah) and a maximum of Rp.25,000. .000,000.00 (twenty five billion rupiah), or imprisonment in lieu of a fine of up to 5 (five) months.
- iii. Violation of the provisions of Article 41 of Law No.5 of 1999 is punishable by a fine of as low as IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 5,000,000,000.00 (five billion rupiah), or imprisonment in lieu of a permanent fine. 3 (three) months Indonesia, Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Article 48.2).

- 2) Additional Criminal Sanctions contained in Article 49 of Law No.5 of 1999 which reads:
- i. Business license revocation; or
 - ii. Prohibition for business actors who have been proven to have violated this Law from holding positions of directors or commissioners for at least two years and for a duration of five years;
 - iii. Termination of certain activities or actions that cause losses to other parties.

3) Criminal sanctions in the Criminal Code. In addition to the criminal sanctions contained in Law No. 5 of 1999, there are also criminal sanctions stipulated in the Criminal Code, which is contained in Article 382 which reads: "whoever obtains, carries out or expands the results of trade or trade or a company owned by himself or another person, commits a fraudulent act to mislead the general public or a certain person, is threatened because of fraudulent competition, with a maximum imprisonment of one year and four months, a maximum fine of thirteen thousand and five hundred rupiahs, if the said act may cause losses to the concurrency or the concurrency of other people" (Article 282).

b. Industrial Revolution 4.0

Industrial Revolution 4.0 (IR 4.0) is marked by an increase in manufacturing digitization driven by the following factors:

1. The increase in data volume, computing power, and connectivity.
2. The emergence of business analysis, skills and intelligence.
3. The occurrence of a new form of interaction between humans and machines.
4. The improved digital transfer instructions into the physical world, such as robotics and 3D printing.
5. Activities all over the internet or the Internet of Things (IoT).
6. Relying on information transparency and accessibility.

IR 4.0 is reflected through digitalization in various fields that will connect millions of people via the web, thereby increasing business opportunities, business and organizational efficiency, and renewing the environment through better asset management. Technology will make it easier for humans to access information through digital technology freely and under control. In the future, technological developments will form a new world society, namely the digital era. To be able to adapt to the changes brought about by the IR 4.0 a worker must have abilities that cannot be done by machines. One example is the ability to solve problems or creativity, where soft skills are the key. In order to face changes in the coming years, it takes workers who have soft skills such as solving complex problems, critical thinking, creativity, human management, coordinating with others, emotional intelligence, judgment and decision making, service oriented, negotiation, and cognitive flexibility. Soft skills are one of the most important factors for workers in the future to have. Such as communication skills and collaborating with others, solving problems, and other aspects of emotional intelligence. In the IR 4.0 later, a business opportunity that will be widely used is the business of developing software as a service.

2. Discussions

a. The functions of the IBCSC in enforcing business competition rules

In today's business, many agreements and business activities contain elements that are unfair to parties whose economically or socially are weaker on the pretext of maintaining fair competition. Competition also applies among business actors. Competition is carried out both

positively and negatively. Negative or unfair business competition can lead to monopolistic practices in which the market is only controlled by the business actor. Apart from that, another result that arises is the tendency of business actors to sell expensive goods without adequate quality.

In line with the trend of economic globalization, as well as the dynamics and development of private businesses since the early 1990s, business opportunities created by entrepreneurs at that time were not enabled the whole community to participate in development in various economic fields. The development of private enterprises, on one hand, is colored by various forms of inappropriate policies of the authorities so that the market becomes distorted. On the other hand, the development of private entrepreneurs in society or consumers is mostly a manifestation of conditions of unfair or fraudulent business competition.

The circumstances are due to a lack of understanding among business actors regarding Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No.5 of 1999). The meaning of Unfair Business Competition according to Article 1 point 6 of Law No. 5 of 1999 is competition between business actors in carrying out activities for the production and or marketing of goods and or services carried out in a dishonest manner or against the law or hindering business competition. Dishonest or against the law or inhibiting business competition is usually done through an agreement.

Competition in the business world is an absolute requirement for the implementation of a market economy. In practice, no perfect competition occurs. Even unfair competition that is detrimental to consumers can occur in competition between business actors. A small number of business actors can make various agreements to divide the marketing area, regulate prices, quality and even the quantity of goods and services offered (cartels) in order to obtain the maximum profit in a relatively short time. These things are done with the intention of avoiding competition that is detrimental to themselves. Oligopoly market occur when there are few sellers (few sellers) and they are in interdependence. Having only a few sellers in the market indicates that each company's market share in the market is quite significant. The existence of barriers to entry into the market results in the number of firms being smaller than in perfectly competitive markets.

Due to the above-mentioned unfair competition, business competition law must be strengthened by the law enforcement agencies in Indonesia. This can be realized by strengthening the IBCSC (KPPU). The IBCSC was founded as the result of the enactment of Law Number 5 of 1999 which regulates business competition in Indonesia. In carrying out its duties, the IBCSC receives the reports on suspected violations of the provisions stipulated in Law No. 5 of 1999. It has the authority to conduct investigations of business actors suspected of committing the violations. In Law No. 5 of 1999, there are two types of sanctions that can be imposed on business actors proven to have committed the violations, namely administrative sanctions and criminal sanctions. However, based on article 36 letter i of Law No. 5 of 1999, it has only the authority to impose sanctions in the form of administrative actions against business actors who are proven to have committed violations. There are at least six administrative actions that can be imposed by the IBCSC on business actors proven to have committed violations, namely:

1. To determine the cancellation of the agreement as referred to in Article 4 to Article 13 as well as Articles 13, 15 and 16 of Law No.5 of 1999;
2. To order business actors to stop vertical integration as referred to in Article 14 of Law No.5 of 1999;

3. To orders business actors to stop business activities proven to have caused monopolistic practices and / or causing unfair business competition and / or detrimental to society;
4. To orders to business actors to stop abuse of dominant position;
5. To determine the cancellation of the merger or consolidation of business entities and the acquisition of shares as referred to in Article 28 of Law No. 5 of 1999; and
6. To impose a minimum fine of Rp. 1000,000,000 (one billion rupiah) and a maximum of Rp. 25,000,000,000 (twenty five billion rupiah).

The IBCSC is an independent institution which has the function of supervising and enforcing business competition law based on Law No. 5 of 1999. However, it is not a special court for business competition so that it does not have the authority to impose criminal or civil sanctions. It is an administrative institution so that its authority is limited to administrative sanctions. The duties of the IBCSC include assessment, supervision, taking action in accordance with the authority, providing advice and considerations, drafting guidelines or publications, and providing periodic reports to the President and the Parliament regarding the implementation of business competition based on Law No.5 of 1999. The duties the IBCSC is regulated in Article 35 of Law No. 5 of 1999. In general, the IBCSC's authority is the investigative, enforcement, and litigating authority which are stated under Article 36 of Law No. 5 of 1999. Yet, it does not have a law enforcement function in the field of digital market competition law, consequently the IBCSC's legal position in the digital market business competition is still questionable.

b. The challenges faced by the IBCSC in enforcing business competition rules in the era of IR 4.0

The supervisory function of the IBCSC in digital market practice is not regulated by Law No. 5 of 1999 and when it comes to electronic systems. However, the Ministry of Communication and Information Technology (Menkominfo) made an extension of the Memorandum of Understanding (MoU) and Cooperation Agreement between the IBCSC and the Minister to provide assistance to the IBCSC in enforcing and supervising business competition law in the IR 4.0. The contents of the MoU and Cooperation Agreement are further explained in Press Release No.35 / KPPU-X / 2018. The scope of the MoU includes data and / or information exchange; harmonization of business competition policies and partnerships in the field of communication and information technology; advocacy and dissemination of the principles of fair business competition and supervision of partnerships in the field of communication and information technology; carrying out activities and / or compiling joint studies / guidelines; and support from resource persons and / or experts. Meanwhile, the scope of the Cooperation Agreement includes the exchange of data and / or information related to the prevention and handling of monopolistic practices and unfair business competition as well as supervision of business partnerships in the postal and information technology sector; harmonization of policies on fair business competition and business partnerships in the postal and information technology sector; advocacy and dissemination of the principles of fair business competition and supervision of business partnerships in the postal and information technology sector; carrying out activities and / or compiling joint studies / guidelines; and support from sources and / or experts related to business competition and business partnerships in the postal and information technology sector. Reflecting on the above, concerns regarding regulatory

disharmony, exchange of data and information, as well as advocacy and socialization of the digital market have indeed been minimized, but until recently there are still concerns regarding the position and authority of the IBCSC to oversee the practice of unfair business competition in the digital market.

However, the MoU and the Cooperation Agreement between the IBCSC and Menkominfo generally do not strengthen the IBCSC's legal position as an institution that is authorized to oversee unfair business competition in the digital market. This is because digital market trading and practices have not been regulated by Law No. 5 of 1999. In addition, the definition of business actors in Law No. 5 of 1999 is also still limited to business actors conducting business activities within the jurisdiction of the Indonesian state. As a result, business actors carrying out business activities outside the jurisdiction of Indonesia but having an impact on the Indonesian economy are not included in the scope of business actors, consequently the IBCSC cannot take action. The absence of regulation on the digital market and the narrow definition of business actors in Law No. 5 of 1999 are some examples that show that the provisions of Law No. 5 of 1999 are no longer suitable in the era of IR 4.0. Therefore, there is a need for amendments to Law No. 5 of 1999 to cover transactions in the digital market as well as to expand the duties and authorities of the IBCSC. The amendment or renewal of Law No. 5 of 1999 will constitute a legal and economic instrument to ensure that business competition between business actors, both in the conventional market and the digital market, can take place fairly. In this regard, legislators in Indonesia and the IBCSC can refer to the regulations of countries that are familiar with the digital market in advance so that they can create the adequate and appropriate regulations, policies, and strategies in facing the IR 4.0 era. Such regulations will ensure a more democratic economy, more effective market growth and guarantee legal certainty in enforcing business competition law in Indonesia, both in conventional and digital markets.

Conclusions

The functions of the IBCSC are to obtain the reports on suspected violations of the provisions stipulated in Law No. 5 of 1999 and to conduct investigations of business actors suspected of committing the violations of this Law. It has the authority to impose administrative sanctions against business actors who violate Law No. 5 of 1999.

Although the supervisory function of the IBCSC is not regulated by Law No. 5 of 1999 when it comes to electronic systems, the Ministry of Communication and Information Technology (Menkominfo) made a Memorandum of Understanding (MoU) and Cooperation Agreement to provide assistance to the IBCSC in enforcing and supervising business competition law in the IR 4.0. However, the MoU and the Agreement between the IBCSC and Menkominfo cannot strengthen the IBCSC's legal position as an institution to oversee unfair business competition in the digital market because such a market has not been regulated by Law No. 5 of 1999. Hence, it is urgent to amend Law No. 5 of 1999 to cover transactions in the digital market in order to strengthen the functions and authorities of the IBCSC.

References

- Hikmahanto Juwana, "Sekilas tentang Hukum Persaingan dan Undang-Undang Nomor 5 Tahun 1999", Jakarta: *Jurnal Hukum*, 1998
- Irna Nurhayati, "Kajian Hukum Persaingan Usaha: Kartel Antara Teori Dan Praktik", *Jurnal Hukum Bisnis*, Vol. 30, No.02, 2011

- Nick Godfrey, "Why Is Competition Important For Growth And Poverty Reduction?" *Global Forum VII on International Investment* 27-28 March 2008.
- Osgar S Matompo dan Moh. Nafri, "Revolusi Industri 4.0 Dalam Perspektif Hukum Persaingan Usaha Di Indonesia," *Maleo Law Journal*, Vol.4, Issue 2 Oktober 2020.
- Sutan Remy Sjahdeini, "Latar Belakang, Sejarah, dan Tujuan UU Larangan Monopoli", *Jurnal Hukum Bisnis* Vol. 19, Mei-Juni 2002.
- Andi Fahmi Lubis, *et.al*, *Hukum Persaingan Usaha Antara Teks dan Konteks*, Jakarta: Komisi Pengawas Persaingan Usaha Republik Indonesia, 2009.
- D. Carlton dan J. Perloff, *Modern Industrian Organization*, New York: Addison-Wesley Longman, Inc, 1999.
- Mustafa Kamal Rokan, *Hukum Persaingan Usaha: Teori dan Praktiknya di Indonesia*, Jakarta: PT. RajaGrafindo Persada, 2010.
- Normin S. Pakpahan, *Pokok-Pokok Pikiran Tentang Hukum Persaingan Usaha*, Jakarta: Proyek ELIPS, 1999.
- Rachmadi Usman, *Hukum Persaingan Usaha di Indonesia*, Jakarta: Sinar Grafika, 2013.
- Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2016.
- KlikLegal, "Kepastian dan Kedudukan Hukum KPPU di Era Industri 4.0: Pengawasan dan Pemberantasan Praktek Persaingan Usaha Tidak Sehat Pasar Digital"
<https://kliklegal.com/kepastian-dan-kedudukan-hukum-kppu-di-era-industri-4-0-pengawasan-dan-pemberantasan-praktek-persaingan-usaha-tidak-sehat-pasar-digital/>, diakses 1 Desember 2020.