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Absolute Authority Law Review Commission Supervision of Business Competition in Case of Tender “Build Operate Transfer” (Case Study : Commission Decision On Case No. 07/KPPU-L/2012, 16 / KPPU-L / 2014 and No. 01 / KPPU-L / 2015)

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Abstract: The organization mainly in charge of carrying out Law No. 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (UULPM) is the Business Competition Supervisory Commission (KPPU). In UULPM if explored further turns can still cause a lot of problems, because the arrangements regarding the procedural law are not clear, giving rise to various interpretations and leads to the Commission’s outstanding (absolute) it is necessary to continue the assessment and monitoring so that implementation can be applied properly and effectively. The following factors contributed to the failure of the law's implementation: people who are unaware of law-abiding individuals and law enforcement authorities who enforce the law in an imprecise, ambiguous, and inconsistent manner, the facilities available to suport the implementation of the law is very less. The authority of the Commission are very extensive and outstanding (absolut) contained in UULPM beginning of investigation prosecution until the termination of the case so that the protection of businesses suspected of committing violations can hardly be separated from the law. This can be seen in the decision of cases auction “BUILD OPERATE TRANSFER” at the Commission that the writer used as a case study all unbeaten, even the power of the Commission were outstanding (absolute) can be seen in Article 47, Article 48 an Article 49 UULPM has the authority to bestows the criminal case to the Police.

Keyword: Absolute authority of the Commission, Law Violations, Penalties Law

Abstrak: Lembaga yang terutama bertugas menjalankan UU No. 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat (UULPM) adalah Komisi Pengawas Persaingan Usaha (KPPU). Dalam UULPM jika ditelusuri lebih jauh ternyata masih dapat menimbulkan banyak permasalahan, karena pengaturan mengenai hukum acaranya yang tidak jelas, sehingga menimbulkan berbagai macam penafsiran dan berujung pada kewenangan KPPU yang bersifat luar biasa (absolut) perlu terus dilakukan pengkajian dan pengawasan agar implementasinya dapat berjalan dengan baik dan efektif. Beberapa faktor yang menyebabkan kegagalan implementasi undang-undang ini adalah: masyarakat

yang tidak sadar hukum dan aparat penegak hukum yang menegakkan hukum dengan cara yang tidak tepat, ambigu, dan tidak konsisten, fasilitas yang tersedia untuk mendukung implementasi undang-undang ini sangat kurang. Kewenangan KPPU yang sangat luas dan luar biasa (absolut) yang tertuang dalam UULPM mulai dari penyidikan penuntutan sampai dengan pemutusan perkara sehingga perlindungan terhadap pelaku usaha yang diduga melakukan pelanggaran nyaris tidak dapat dilepaskan dari hukum. Hal ini dapat dilihat pada putusan perkara lelang "BUILD OPERATE TRANSFER" di KPPU yang penulis jadikan studi kasus semuanya tidak ada yang terkalahkan, bahkan kewenangan KPPU yang luar biasa (absolut) tersebut dapat dilihat pada Pasal 47, Pasal 48 dan Pasal 49 UULPM yang berwenang melimpahkan perkara pidana kepada Kepolisian.

Kata Kunci: Kewenangan absolut Komisi, Pelanggaran Hukum, Sanksi Hukum

INTRODUCTION

The Absolute Authority of The Commission for the Supervision of Business Competition is part of the implementation of legal aspects in contact with economic aspects. In the business world, competition is seen as a positive thing. In Economic Theory, perfect competition is an ideal market condition. In legal science, ideal market conditions can run in an orderly manner if the law (legislation) is used as the main benchmark'. Regulations governing the prohibition of monopoly are stipulated in the Prohibition of Monopolistic Practices Law No. 5 of 1999.

Year 1999 on the Prohibition of Unfair Business Competition and Monopolistic Practices (Law No. 5/1999 on UULPM). The consideration for the enactment of Law No. 5/1999 on UULPM is that there is a need for a legal standard for everyone doing business in Indonesia. Notwithstanding the Republic of Indonesia's implementation of international treaty agreements, entrepreneurs must engage in fair and reasonable competition to prevent the concentration of economic power in particular corporate actors.

To promote economic growth and the functioning of a reasonable market economy, democracy in the economic sphere necessitates equal opportunities for all citizens to engage in the production and marketing of goods and/or services in a safe, effective, and efficient business environment. Although economic development in the past has made a lot of progress, among other things with the increase in people's welfare, the business opportunities created during the past.

Although economic development in the past has resulted in a lot of progress, among other things by increasing the welfare of the people, the business opportunities created during the past period have not in fact enabled the entire community to be able and able to participate in development in various sectors of the economy'. The development of private businesses during this period was, on the one hand, characterized by various forms of inappropriate government policies that distorted the market. On the other hand, the development of private businesses in reality is largely a manifestation of unfair business competition.

The above phenomenon has developed and is supported by the existence of related relationships between decision makers and business actors, either directly or indirectly, which further worsens the situation. The national economy's implementation tends to exhibit a highly monopolistic form and makes no reference to the mandate of Article 33 of the 1945 Constitution. Social inequality results from the disproportionate benefits given to entrepreneurs who are close to the ruling class.

One of the things that has made economic resilience so brittle and uncompetitive is the rise of conglomerates and a select few strong entrepreneurs who lack a genuine

entrepreneurial spirit. In order to promote fair business competition, it is necessary to draft a law that will be enacted as a law on the prohibition of monopolistic practices and unfair business competition. This law will be designed to protect the rule of law and give each business actor equal protection.

METHOD

The research in this article uses a normative juridical approach with a case study method, aiming to analyze the legal norms in Law No. 5 of 1999 related to the absolute authority of KPPU in monitoring and prosecuting cases of “Build Operate Transfer” (BOT) tenders. The analysis focuses on three KPPU decisions, namely No. 07/KPPU-L/2012, No. 16/KPPU-L/2014, and No. 01/KPPU-L/2015.

The data used is secondary, derived from laws and regulations, KPPU decisions, and legal literature. Data collection was conducted through literature study, and analyzed qualitatively descriptively. This research does not involve respondents, but makes three cases as the main object through purposive sampling technique to assess the extent to which the authority of KPPU has an impact on business actors.

RESULT AND DISCUSSION

This law aims to implement the spirit and soul of the 1945 Constitution while also establishing legal certainty to further promote the acceleration of economic development in an endeavor to increase public welfare. A Business Competition Supervisory Commission must be established in order for this law and its implementing regulations to be implemented effectively and in line with its goals and principles. This commission is an independent organization free from the influence of the government and other parties, and it has the authority to monitor business competition and impose penalties. Administrative actions are used as sanctions, but the court has the ability to impose criminal sanctions. Generally speaking, the content of this law on the prohibition of unfair business competition and monopolistic practices includes six (six) regulation parts that include:

1. prohibited agreements;
2. prohibited activities;
3. dominant position;
4. Business Competition Supervisory Commission;
5. law enforcement; and
6. other provisions.

The goal of this law is to defend the public interest and protect consumers by balancing the interests of business actors and the public interest. It is based on economic democracy and is founded on Pancasila and the 1945 Constitution. According to Article 30 paragraphs 1 and 2 of the UULPM, a Business Competition Supervisory Commission (henceforth referred to as KPPU) is established to supervise the execution of the UULPM.

According to Article 30, KPPU is an autonomous organization free from the influence of the government and other parties. The President is the organization's ultimate boss when it comes to carrying out its responsibilities. After receiving approval from the House of Representatives, the President appoints KPPU.

The UULPM does not regulate the details of the procedures for reporting and resolving instances of unfair commercial competition and monopolistic behaviors, but establishes the protocols for resolving cases worldwide in accordance with Law No. 5 Year 1999's Article 38, namely:

(I) Any person who knows or reasonably suspects that a violation of this Act has occurred may report in writing to the Commission with clear information about the violation, by including the identity of the reporter.

(2) A party aggrieved as a result of a violation of this Act may report in writing to the Commission with clear information about the violation, including the identity of the reporter. This Act may report in writing to the Commission with complete and clear information about the violation and the loss incurred, by including the identity of the reporter. (3) The identity of the reporter as The Commission will maintain the confidentiality of the information mentioned in paragraph (1). (4) The Commission will further regulate the procedures for submitting reports as mentioned in paragraphs (1) and (2). In the exercise of its authority, KPPU makes its own procedures for submitting reports to the KPPU secretariat. In the interest of smooth implementation of duties, KPPU issued Commission Decree No. 05/KPPU/Kep/IX: 05/KPPU/Kep/IX/2000 on the Procedure for Submitting Reports on the Handling of Alleged Violations of the UULPM. A few years later, the Commission Decree was refined by issuing Commission Regulation Number : 1 Year 2006 on Procedures for Handling Cases in KPPU which has now been updated again with Commission Regulation Number 1 Year 2010 on Procedures for Case Handling at KPPU which is effective on April 1, 2010. The birth of KPPU through UULPM has extraordinary duties and authorities that can even be said to be absolute. KPPU has the duty to assess business activities, assess agreements and take actions.

The duties and authorities of KPPU in its position as a supervisor are regulated in Article 36 and Article 47 of Law No. 5 Year 1999 on UULPM.

Article 36 includes:

1. Get information on purported monopolistic practices and/or unfair business competition from the general public and/or business actors;
2. Look into the purported existence of business operations and/or business players' behaviors that could lead to unfair competition and/or monopolistic tactics;
3. To Examine and/or look into claims of unfair business practices and/or monopolistic behavior business competition reported by the public or by business actors or to present business actors, witnesses, expert witnesses, or any person as referred to in letters e and f, who are not willing to fulfill the Commission's summons;
4. Request data from government organizations regarding the examination and/or investigation of corporate actors that break this law's provisions;
5. For investigational or examinational purposes, gather, review, and/or evaluate letters, papers, or other evidence;
6. Make a decision and assess whether other business actors or the general public have suffered damages;
7. Inform business actors accused of engaging in unfair competition or monopolistic activities of the Commission's decision.;
8. Business actors that breach this law's provisions may be subject to administrative penalty.

Article 47 includes:

1. The Commission has the power to take administrative measures as punishment against corporate actors that break this law's requirements.
2. The administrative measures mentioned in paragraph 1.

Together with Presidential Decree No. 75 of 1999 on KPPU (which was modified by Presidential Decree No. 80 of 2008, which altered the Business Competition Supervisory Commission's Decree No. 75 of 1999), in conjunction with Presidential Decree Commission No. 05/KPPU/Kep/IX/2000 in conjunction with the Commission Regulation Commission Regulation No. 1 Year 2006 on Procedures for Handling Cases at KPPU which has now been updated again with Commission Regulation No. 1 Year 2010 on Procedures for Handling Cases at KPPU.

UULPM has regulated what actions can be categorized as violations of business competition along with the sanctions. Administrative sanctions under Article 47, principal criminal sanctions under Article 48, and supplementary criminal sanctions under Article 49 are all possible forms of UULPM sanctions. According to Article 30 paragraph 1 of the UULPM, which specifies that a Business Competition Supervisory Commission (KPPU) is established to supervise the application of this law, the KPPU is entrusted with monitoring and preserving the continuity of business competition. Established by Presidential Decree No. 75 of 1999 on KPPU and modified by Presidential Regulation No. 80 of 2008 on KPPU, the Commission is an autonomous organization that, in theory, should be unaffected by the authority and influence of the government or other parties.

KPPU is the most responsible institution and bears the mandate of the implementation of UULPM. KPPU essentially carries the mission to ensure the functioning of the driving force of the market economy, namely the creation of effective business competition in accordance with the function of the UULPM. KPPU does not have the authority to impose criminal sanctions, because criminal sanctions remain the authority of the court. KPPU only has the authority to impose administrative sanctions, but if the administrative sanctions cannot be executed against the business actors imposed by the KPPU decision, this can be done by delegating further processes as stipulated in Article 48 of this law to the Police which leads to criminal sanctions with a note that the elements must be fulfilled and proven in court.

The UULPM, if examined further, can still cause many problems, because the arrangements regarding procedural law are unclear, giving rise to various interpretations and leading to extraordinary authority (Absolut). For this reason, even though it is still very young in terms of age, in order to be in accordance with the intent and purpose of its making, it is necessary to continue to study and monitor so that its implementation can be implemented properly and effectively. When a legislation is successfully implemented, it means that its goal has been met. Regulation of human interests is the goal of legal rules.

If the community and law enforcement adhere to and carry out the legal standards, then the law's implementation is considered successful or effective. Vague or unclear legal standards are one of the reasons that contribute to the failure of the law to be implemented, corrupt legal apparatus, or people who are not aware or obedient to the law or the facilities available to support the implementation of the law are very minimal. The foregoing can be seen in the execution of several case decisions in the KPPU used by the author as a case study, almost most of which oppose the decision so that it leads to resistance by conducting appeals in the District Court or continuing cassation efforts in the Supreme Court,

Even if there is a loophole to conduct a Judicial Review (PK) effort, it will also be pursued by the parties to the case at the KPPU.

In the implementation of the UULPM, the public and business actors consider the authority of the KPPU to be very broad and extraordinary (absolute) starting from investigation, investigation, examination, prosecution to case termination, so that the protection of business actors suspected of committing violations can hardly be separated from the legal bondage of the UULPM. With such a large task and authority, the level of success is far from expectations and what is very worrying is that it will lead to abuse of authority, which will have a detrimental impact on the wider community, therefore it is necessary to be vigilant, supervise the actions of its performance so as not to overstep, especially the institutions that select and appoint KPPU members must also be supervised so that their duties double as brokers as if they want to help and assist business actors suspected of committing violations of auction rigging which leads to extortion and exploitation as cash cows or used as cash cows.

KPPU members should also be monitored, especially the institution that elects and appoints KPPU members, so that their duties do not double as brokers, as if they want to help

and assist business actors suspected of violating the auction rigging that leads to extortion and being used as cash cows or used as ATMs, with the excuse that they can help and resolve legal entanglements or case problems with fantastic rewards.

Some of the absolute duties and authorities of the KPPU above are detrimental to business actors such as in the auction with the Build Operate Transfer system (hereinafter referred to as BOT). Build operate and transfer, abbreviated as BOT, is a financing system usually applied to large-scale government projects. Large-scale government projects in which the feasibility study of procurement of goods and equipment, financing and construction and operation, as well as the revenue or income arising from it, is handed over to another party within a certain time given the right to operate, maintain it and to take its economic benefits to cover the cost of developing the project concerned and obtain the expected profit. In the practice of construction law, there are several models of cooperation other than BOT agreements such as BOOT (build, own, operate and transfer) and or BLT (build, lease and transfer). The build-to-own system or what is commonly called a BOT agreement is an agreement between 2 (two) parties, in which one party delegates the use of its land on which a commercial building is erected by the second party (investor), and the second party has the right to operate or manage the commercial building for a certain period of time by providing a fee (or no fee) to the landowner, and the second party is obliged to return the land along with the commercial building on it in a state that can and sap be operated to the landowner after the operational period ends.

In the BOT auction, which is a wet field related to the existence of sizable funds regarding the financing of the project. The BOT auction has several investors who participated in the auction and one of them won the auction to get this BOT project and the second party is obliged to return the land along with the commercial building on it in a state that can and sap be operated to the landowner after the operational period ends. In the BOT auction, which is a wet field related to the existence of sizable funds regarding the financing of the project. The BOT auction has several investors who participated in the auction and one of them won the auction to get this BOT project.

The auction process may have the possibility of unfair business competition and monopoly in it. Therefore, KPPU has the authority to supervise and even prosecute if there is fraud in the process. KPPU may also harm business actors for its authority to supervise BOT auctions which are wet fields. In practice, it turns out that the purpose of the establishment of this law has not been achieved optimally, it can be seen in the implementation of the KPPU's authority to supervise and even prosecute if there is unfair business competition or monopoly in the BOT auction, among others in KPPU decisions, namely in Case No. 07/KPPU-L/2012, No. 16/KPPU-L/2014 and No.01/KPPU-L/2015. In these decisions, it is suspected that unfair business competition or monopoly has occurred, but sometimes the decisions are detrimental to business actors. In fact, business actors also practically help the development of government projects. Some of these decisions must be reviewed so that KPPU and business actors do not become enemies, because business actors are often disadvantaged and KPPU's authority oversees business actors so as not to conduct unfair business competition.

So based on the description above, with the hope of finding a solution and also a little discussing the revision of Law Number 5 Year 1999 which is being rolled out in the House of Representatives (DPR) and by the Business Competition Supervisory Commission (KPPU) guarantees that the draft competition law will not hamper or obstruct business activities even on the contrary, strengthening the KPPU will provide legal certainty in business, improve the investment climate in Indonesia, create economic efficiency and national productivity. The author in this research is interested in trying to summarize, explain and provide a comprehensive research picture with the title of Thesis:

B. Problem Formulation.

1. How is the absolute authority possessed by the KPPU to decide a case that may harm Business Actors?
2. How is the KPPU judicial concept different from the judicial power in Indonesia?
3. How are violations related to auctions with the Build Operate Transfer (BOT) system stated in the contents of Decisions No. 07/KPPU-L/2012, No. 16/KPPU-L/2014, and 01/KPPU-L/2015 that can be prosecuted by.

CONCLUSION

The Business Competition Supervisory Commission (KPPU) plays an important role in maintaining fair business competition in Indonesia. However, the absolute authority possessed by KPPU risks creating imbalances in the law enforcement process, especially if it is not accompanied by adequate supervision and accountability mechanisms. Based on the analysis of three KPPU decisions in BOT tender cases, it is found that there are weaknesses in regulations that can cause legal uncertainty for business actors. Thus, regulatory reform is needed through the revision of Law Number 5 Year 1999 to clarify legal procedures, strengthen guarantees of legal protection, and increase public confidence in the performance of KPPU.

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