

Business Agreements That Cause Unfair Business Competition

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Abstract

In today's business world, there are actually many agreements that contain unfair elements against parties whose economic or social weaknesses are weaker on the pretext of maintaining unfair business competition. However, it cannot be denied that behind these business practices there are various kinds of competition. which is not healthy. This writing uses a normative juridical legal research method (normative research) with descriptive analytical research specifications that use secondary data. The data collection procedures are in the form of documentation of notes or quotations, searching legal literature, books and others related to problem identification both offline. and online which are then analyzed through the content analysis method (centent analysis method) with a focus on the problem of how the elements of a business agreement cause unfair business competition and how the responsibility of business actors to business agreements that cause unfair business competition. Whereas some elements of the agreement that cause unfair business competition are agreements to control the production and or marketing of goods and or services which may result in monopolistic practices and unfair business competition, an agreement that sets the price for a good and or service that must be paid by consumers or customers in the same relevant market.

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A. Introduction

The development of business competition law in Indonesia was not very encouraging, it could even be said to be very bad when Indonesia was still under the New Order Regime Government. At that time, monopolistic practices and unfair business competition were very fertile in the Indonesian business world due to practices of collusion, corruption and nepotism that occurred between business circles and government bureaucrats.¹ The existence of trade activities can be indicated by the movement of the economic wheels of the community and the business world. In its current development, in line with the increasing price of daily necessities while the level of income of workers is relatively fixed, of course it makes the trade process more promising than being an employee or worker.²

In business activities, business competition can be ensured among business actors. Business actors will try to create, package, and market products owned by both goods / services as best as possible so that consumers are interested and purchased. The benefits of this business competition are an effective way to achieve optimal utilization of resources Business competition can have positive implications, on the contrary, can become negative if run with negative behavior and economic system.³

It has been argued that business competition can indeed help improve the quality of a product of goods and / or services produced by a business actor, at a price affordable to consumers, so it is not an exaggeration to say that fair business competition is considered a catalyst towards industrial

¹ Rachmadi Usman, *Hukum Persaingan Usaha Di Indonesia*, Jakarta: Sinar Grafika, (2013), p.1-4.

² Ajeng Chita Sekarsari, "Analisis terhadap Persaingan Usaha Tidak Sehat Pada Pekara No. 10/KPPU-L/2009 Mengenai Penetapan Komisi dan Perjanjian yang Dilarang Dalam Undang-Undang Nomor 5 Tahun 1999" *Solusi Jurnal* 1, No. 1 (2015): p.1.

³ Mustafa Kamal Rokan, *Hukum Persaingan Usaha (Teori dan Praktiknya di Indonesia)*, Jakarta: PT. Raja Grafindo, (2010). p. 1.

development, business, and economics in general.⁴ Business actors must create a business activity that can lead to positive things, because it will have an impact on the national denomination where the national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining balance of progress and national economic unity as regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia.

The occurrence of unfair business competition and monopolistic practices due to an agreement, in which an agreement is an act of one or more business actors to bind themselves to one or more other business actors with any name, both written and unwritten as stated in Article 1 of the Law. Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Unfair business competition carried out by business actors may result in market domination, in which a business actor controls the whole or part of the market for the production or market of goods or services, rejects or hinders the business actor from carrying out the same business activities in the market, or terminates the business of its competitors in the market. relevant market, causing unfair business competition as mentioned in Article 19 of Law No. 5/1999.

Not only market control but unfair business competition through an agreement can result in a dominant position where the dominant position is regulated in Article 25 of Law Number 5 Year 1999 stipulating that business actors are prohibited from using a dominant position either directly or indirectly to determine trading terms with the aim of to prevent and / or prevent consumers from obtaining competitive goods and or services, both in terms of price and quality, then prevent other business actors who have the potential to become competitors from entering the relevant market and one business actor or business group controls 50% or more of the market share of one type of goods and or certain services. In today's business world, there are actually many agreements that contain elements that are less fair to parties whose economic or social weakness is weaker on the pretext of maintaining unfair business competition. However, it cannot be denied that behind these business practices there are various kinds of competition that not healthy.⁵

Based on the description of the sentence above, the main problem can be drawn, namely how the elements of a business agreement that cause unfair business competition and the responsibility of business actors for business agreements that cause unfair business competition. This writing uses normative juridical legal research methods (normative research), namely legal research conducted by examining library materials or secondary data.⁶ The research specification in this paper is descriptive analytical research. Descriptive is to show the comparison or relationship of a set of data with another set of data, and its purpose is to provide an overview, study, explain and analyze.⁷

According to the type and nature of the research, the data source used in this paper is secondary data consisting of primary legal materials in the form of; in the form of; The 1945 Constitution of the Republic of Indonesia, Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, Civil Code, Criminal Code. Secondary legal materials consist of books, scientific journals, papers and scientific articles that can provide an explanation of primary legal materials. Tertiary legal materials; in the form of a Big Indonesian Dictionary. The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotations, search for legal literature, books and others related to the identification of problems in this research by offline or online. Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion.⁸

B. Discussion

1. Elements of Business Agreements That Cause Unfair Business Competition

Every action performed by someone will result in the result of his actions, the result itself is the end result or the result of an event. The consequences that are done by someone can have legal consequences where the legal consequences are the results arising from the events and consequences

⁴ Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha Di Indonesia*, Jakarta: Kencana, (2009), p. 23.

⁵ Susanti Adi Nugroho, *Hukum Persaingan Usaha Di Indonesia*, Jakarta: Kencana, (2012), p. 107.

⁶ Seokanto dan Sri Muji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Rajawali Pers, (2003), p. 15.

⁷ Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, (1996), p. 63.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, (2011), p. 171.

that occur. According to Munir Faudy, acts against the law are a collection of legal principles that aim to control or regulate hazardous behavior, to give responsibility for a loss that arises from social interactions, and to provide compensation to victims with an appropriate lawsuit.⁹ The element of deliberate action in the act against the law is considered to exist if the deliberate act has caused certain consequences to the victim's physical and / or mental or property, even though it has not been deliberate to injure (physically or mentally) the victim.¹⁰

Based on Article 1 Number 10 of Law no. 5/1999 defines: "The relevant market is a market related to a certain marketing coverage or area by business actors for the same or similar goods and or services or substitutes for the said goods and or services". Van Bemmelen and Van Hattum have put forward the adage "no punishment without error" and Rutten has tried to apply this adage in the civil field by arguing that there is no accountability for the consequences of his actions which are against the law without error or as stated by Meyers that illegal acts require an error (een onrechtmatige daad verlangt schuld).¹¹

The resulting legal effect is something that must be accepted by that person, such as the legal effect of an agreement entered into by a business actor. The meaning of acts violating the law in that article, today has been interpreted in a broad sense, namely committing an act or contradicting the rights of other people or contradicting either with decency or with an attitude of conscience that must be heeded in the association of life with other people or objects.¹² According to the provisions of the Law, the lawful reason in an agreement is when the agreement is not prohibited by Law, does not violate the decency and general order or the fulfillment of the objective conditions of an agreement in the form of a question or a particular matter and the object of the agreement is not prohibited.

Even though there is a Law on the Prohibition of Monopolistic Practices and Unfair Business Competition, it must be realized that this does not mean that with this Law business practices will run according to what was desired when this law was established. It is called this because every law has loopholes that can be exploited by parties who want to seek profit and may even commit violations of the law. This kind of reality is not especially so in the last decade the advancement of technology has been so fast. Therefore, business people also take advantage of sophisticated technology services in managing their business. In this case, the possibility of violation of the law, moreover, the legal provisions regarding electronic transactions do not yet exist in this country.¹³

If this happens, if there is a party who feels aggrieved due to the actions of the other party, there are signs given by the law that those who feel they have been harmed can claim their rights. Normatively in Article 1365 of the Civil Code, it is stated that "Every act violating the law that brings harm to others, obliges the person who due to his wrongdoing the loss to compensate the loss".

The following will describe the elements of the agreement that cause unfair business competition:

- 1) An agreement to control the production and or marketing of goods and or services which may result in monopolistic practices and unfair business competition;
- 2) An agreement that sets the price for a good and or service that must be paid by the consumer or customer in the same relevant market;
- 3) An agreement that results in one buyer having to pay a price different from the price paid by another buyer for the same goods and / or fees;
- 4) An agreement that makes a price fixing below market, which may result in unfair business competition;
- 5) An agreement which contains the conditions that the recipient of the goods and or services will not sell or re-supply the goods and or services that he has received, at a price lower than the agreed price in accordance with the contents of the agreement between the two parties so that it may result in unfair business competition;
- 6) An agreement that aims to divide the marketing area or market allocation for goods and or services so as to result in monopolistic practices and unfair business competition;
- 7) An agreement that aims to prevent other business actors from doing the same thing, both for the domestic market and for the foreign market;

⁹ Munir Fuady, *Perbuatan Melawan Hukum*, Bandung: PT. Citra Aditya Bakti, (2002), p. 3.

¹⁰ Rosa Agustina, *Perbuatan Melawan Hukum*, Jakarta: Program Pascasarjana FHUI, (2003), p. 48.

¹¹ Moegni Djojodirjo, *Perbuatan Melawan Hukum*, Jakarta: Pradnya Paramita, (1982), p. 68.

¹² Sentosa sembiring, *Hukum Dagang*, Jakarta: PT. Citra Aditya Bakti, (2008), p. 236.

¹³ Sentosa sembiring, *Ibid.*, p. 237.

- 8) An agreement with the intention of refusing to sell any goods and or services from other business actors resulting in said act:
 - a. Damage or may be suspected of causing harm to other business actors; or
 - b. Limit other business actors in selling or buying any goods and or services from the relevant market;
- 9) An agreement with the aim of influencing prices by regulating the production and or marketing of goods and or services, which may result in monopolistic practices and unfair business competition;
- 10) A cooperation agreement to form a combined company or larger company, while maintaining and maintaining the viability of each company or member company, which aims to control the production and or marketing of goods and or services, so, may result in unfair business competition. healthy;
- 11) An agreement that aims to jointly control the purchase or receipt of supplies in order to control prices for goods and or services in the relevant market, which may result in monopolistic practices and unfair business competition;
- 12) An agreement that contains the requirements that the party receiving the goods and or services will only order or not re-supply the goods or services to certain parties and / or at certain places;
- 13) An agreement that states that the party receiving certain goods and or services must be willing to buy other goods and or services from the supplying business actor;
- 14) An agreement that provides a certain price or discount on goods and or services, provided that the business actor receiving the goods and or services from the supplying business actor:
 - a. Must be willing to buy other goods and or services from the supplying business actor; or
 - b. Will not buy the same or similar goods and or services from other business actors who are competitors of the supplying business actor;
- 15) Agreements made with other parties abroad that contain provisions that may result in monopolistic practices and unfair business competition;

2. Business Actor's Responsibilities for Business Agreements That Cause Unfair Business Competition

The business world in Indonesia is currently developing without limits so that it is able to break through various dimensions of life and human economic behavior. The existence of competition in the business world provides many benefits for life, but to avoid the negative side of competition it is necessary to make clear rules, so that competition can run well so that small business actors can continue to run businesses in addition to business actors. large numbers can still run their business. It is the main goal of every business actor to be able to develop his business as much as possible or to be the best in his business field. This objective will encourage every business actor to undertake or improve its performance and competitiveness through innovation and efficiency so that it is superior to its competitors. If successful, the business actor will gain a strong position or have a dominant position and have significant market power in the relevant market.

However, not a few business actors in conducting their business activities conduct unfair competition or what is better known as unfair business competition. Unfair business competition carried out by business actors has consequences that affect other business actors, as a result of unfair business competition resulting in legal consequences whereby the business actor in carrying out his business activities that causes losses must be held responsible for the actions he has committed. Talking about responsibility, it will not be separated who is responsible for an act to whom the act can be accounted for and whether everyone who commits an act where the consequences of his actions cause harm to the person can be held accountable by the maker. Not all people who have committed an act where the result of that action can be held accountable to him. For example, a person who is not in his right mind commits an act that results in harm to others, even the consequences of an act can kill another person's life. towards that person, the result of the actions he has done cannot be held accountable to him. As stated in article 44 Paragraph (1) of the Criminal Procedure Code which states that anyone who does something because of an act that cannot be held accountable to him because of his lack of sense or because of illness changes his mind should not be punished.

Thus it is acceptable because an insane person is not aware of the consequences of what he has done. And because the reason is less than perfect, it causes a person to be considered inadequate in

carrying out a law such as to make an agreement with another party or in other legal actions. Even that responsibility will be removed even if someone has committed an unlawful act. Responsibility is also defined as a condition that is obliged to bear everything, responsibility arises if there is a party who feels aggrieved as a result of the action he has committed. Responsibility can give rise to legal responsibility, where legal responsibility is a situation that occurs because of an obligation that must be fulfilled but not fulfilled, making other parties feel aggrieved or the responsibility arises because of an illegal act. If the business actor is proven to have violated the provisions of Law no. 5/1999 The Business Competition Supervisory Commission as the commission that oversees the implementation of this Law has the authority to impose sanctions in the form of administrative actions against business actors. Apart from these administrative actions, sanctions for violations of Law no. 5/1999 imposed 2 criminal sanctions, namely the main criminal sanctions and additional penalties that must be implemented by business actors.

Fines are defined as fines are efforts to take advantage of business actors resulting from anti-competitive actions. In addition, fines are also intended to discourage business actors from taking similar actions or being imitated by other potential offenders. In order for the deterrent effect to be effective, economically the stipulated fines must be able to signal or at least be perceived by the offender as an expected cost that is far greater than the expected benefit from his actions in violating the law of business competition.¹⁴

Administratively, the payment of fines is deposited by the offender to the state, the business actor who is responsible for paying the fine to the state treasury. In determining the amount of fines, KPPU takes two steps, namely: Determining the amount of value; Make adjustments by increasing or decreasing the amount of the basic value.

In a business activity, business competition is a common thing, with competition, each business actor shows the advantages of each product that they have. However, as seen from the problems that have been described, it creates unfair business competition as a result of activities carried out by business actors. Every action that is carried out has an effect that does not only affect the competing business actor but also the result of the act and results in legal consequences. The legal consequence then must be held accountable by the party who commits the act the responsibility that must be carried out by the business actor. The objective of the responsibility of business actors towards the market is to achieve fair business competition and not to cause unfair business competition in which unfair business competition can harm many parties. Apart from the competing business actors, it is also the consumers who cannot choose the goods and / or services to be used.

C. Conclusion

Some elements of the agreement that cause unfair business competition are agreements to control the production and or marketing of goods and or services that can result in monopolistic practices and unfair business competition, agreements that determine the price for goods and or services that must be paid by consumers or customers. in the same relevant market, an agreement that results in one buyer having to pay a price that is different from the price that must be paid by another buyer for the same goods and / or currency, an agreement that makes a price fixing below the market, which may result in unfair business competition , An agreement which contains the conditions that the recipient of the goods and or services will not sell or re-supply the goods and or services he has received, at a price lower than the agreed price in accordance with the contents of the agreement between the two parties so that it may result in business competition. unhealthy, Agreement which aims to divide the marketing area or market allocation of goods and or services so as to result in monopolistic practices and unfair business competition, Agreement which aims to prevent other business actors from doing the same thing, both for domestic market purposes and overseas market.

Talking about responsibility, it will not be separated who is responsible for an act to whom the act can be accounted for and whether everyone who commits an act where the consequences of his actions cause harm to the person can be held accountable by the maker. Responsibility is also defined as a condition that is obliged to bear everything, responsibility arises if there is a party who feels aggrieved as a result of the action he has committed. Responsibility can give rise to legal responsibility, where legal responsibility is a situation that occurs because of an obligation that must be fulfilled but not

¹⁴ Susanti Adi Nugroho, *Loc.Cit.*, p. 582.

fulfilled, making other parties feel aggrieved or the responsibility arises because of an illegal act. If the business actor is proven to have violated the provisions of Law no. 5/1999 The Business Competition Supervisory Commission as the commission that oversees the implementation of this Law has the authority to impose sanctions in the form of administrative actions against business actors. Apart from these administrative actions, sanctions for violations of Law no. 5/1999 imposed 2 criminal sanctions, namely the main criminal sanctions and additional penalties that must be implemented by business actors.

It is hoped that with the legal consequences that result in unfair business competition, the business climate in Indonesia should be maintained in an orderly and safe manner, and avoid unfair business competition practices. With the penalties given by the KPPU against unfair business competition actors, it is hoped that the business climate in Indonesia will be more secure and avoid unhealthy business practices that can prevent business opponents from developing their business, this is what is prohibited. by laws and regulations.

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