

## INDICATIONS OF UNFAIR BUSINESS COMPETITION IN DETERMINING AIRCRAFT RATES ASSOCIATED WITH LAW NUMBER 5 OF 1999 CONCERNING MONOPOLY AND UNFAIR BUSINESS COMPETITION (CASE STUDY OF KPPU KANWIL IV SURABAYA)

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**Abstract**— This study intends to find out the legal norms for the behavior of airlines in setting very low prices for scheduled domestic commercial airline tickets with the aim of eliminating competitors in the same class and the same route based on the perspective of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, and describes the obstacles experienced by the Commission for the Supervision of Business Competition (KPPU) which has the authority to supervise and investigate this case. This study uses the Juridical Empirical Research method and concludes that by eliminating the rules regarding the requirements for adding flight frequencies that can be carried out by airlines on one route, it creates gaps for airlines with a larger fleet advantage to be able to carry out selling and loss practices, namely by setting fares lower than its competitors but with a greater number of flying frequencies causing a decrease in the competitiveness of these routes, this is clearly not in accordance with the rule of reason for the issuance of the Law on Anti-Monopolistic Practices which aims to increase competition in the market and pay attention to the balance between business actors and the constraints experienced by KPPU as the competent authority in this case is that there are no rules regarding the option of forced summons that can be carried out by the KPPU in order to present the reported party in the framework of investigating a case which results in a delay in completing the case.

**Keywords**— Monopoly, Predatory Pricing, Tariff

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## I. INTRODUCTION

Competition between airlines occurs in line with the increasing number of airlines that fill the domestic aviation industry. In addition, domestic tourism is now rising again after almost 2 years of being affected by the Covid-19 pandemic which has caused the tourism sector to be completely paralyzed. This causes people's interest in traveling long distances by using airplanes to increase. Airlines are also competing to improve services and reactivate all of their fleet strength to be able to accommodate the high number of passengers on certain routes which are favorite destinations for the public so that the number of enthusiasts is high. However, to be able to realize this, there are many obstacles that must be faced by the airlines, especially the availability of the fleet because not all airlines have sufficient fleets to be able to increase the number of departures [1]. On routes that data have a high number of enthusiasts, apart from that amid soaring world oil prices which have an impact on rising aircraft fuel prices, namely avtur, causing high aircraft costs (operational costs) which are increasingly burdensome for airlines. Having a large fleet strength, they only need to think about how the costs (operational costs) can be covered without the need to think about procuring the number of fleets. That means they could logically charge a slightly lower price than competing airlines on the same route. They only need to increase the number of departures so that they can attract more passengers and be able to cover the margin or price difference that they charge lower than their competing airlines.

This difference in conditions then makes airlines, which in fact have a limited fleet, unable to compete in the aviation industry because in setting prices they are unable to provide prices that are even lower below the operational costs that they have calculated. This inability to compete with other airlines will certainly have an impact on business competition in the aviation industry because its competitors will be eliminated from competition, causing market share to be controlled by only one company and will have an impact on pricing in the future because the public as consumers have no other choice because only airlines exist. An airline serving flights on that route. The government has actually anticipated this possibility so that it does not occur considering that the impact is not good on business competition, especially in the domestic aviation industry, through Minister of Transportation Decree No. KM 25/2008 concerning requirements for additional flight capacity and frequency that can be carried out

by airline companies on one route [2]. In KM 25/2008 in terms of increasing the capacity and frequency of flights on one route, this can only be done if the average occupancy level of the airline is already high and the addition of capacity or frequency must not cause the occupancy rate to decrease. For example, for main routes with very dense density and served by more than one airline, such as Jakarta-Medan, additional flight capacity and frequency can only be carried out when the average occupancy rate has reached 80 percent for 6 months. The addition of capacity and frequency must also not cause the occupancy rate to be lower than 70 percent.

However, in the latest Minister of Transportation Regulation through PM 35/2021 this provision has been removed, which means that each airline can add flight capacity and frequency to one route without regard to market conditions and the conditions of other airlines, this can then result in an unequal and slow war between airlines. but surely there will be a monopoly on the route. The abolition of flight frequency provisions will affect price competition where companies with larger fleets will be more willing to set ticket prices below their competitors even though they are both implementing a Low Cost Carrier (LCC) strategy due to the large number of their fleets compared to their competitors. Although the government has issued regulations regarding the lower limit and upper limit rates for airplane tickets through the Minister of Transportation Regulation (Permenhub) No. 20/2019, but this also has not been able to minimize price competition because companies with limited fleets experience greater difficulties related to aircraft operations that have to go back and forth [3]. Considering that at this time the high price of avtur which is aircraft fuel because the route with departures has a high passenger occupancy followed by a high occupancy in the opposite direction, this then becomes a separate obstacle for companies with limited fleets.

Setting prices below this average can be said to be a predatory pricing practice (practice of selling at a loss) with the aim of killing competitors. Predatory pricing itself is killing competitors by sacrificing profits aimed at reducing competition and afterward trying to gain monopoly profits by setting prices above competitors' prices (monopoly price) for a certain period of time after competitors are eliminated from the market. Due to the high interest of the Indonesian people in terms of air transportation, this is what motivated the writer to be interested in raising the title "INDICATIONS OF UNFAIR BUSINESS COMPETITION IN DETERMINING AIRLINER RATES ASSOCIATED WITH LAW NUMBER 5 OF 1999 CONCERNING MONOPOLY AND UNFAIR BUSINESS COMPETITION (CASE STUDY KPPU KANWIL IV SURABAYA)" to serve as

educational material for the people of Indonesia about the importance of this issue to pay attention to because if the Indonesian air transportation industry is already controlled by just one company, the public will have no other choice and will have an impact on unilateral determination of tariffs which can be detrimental to society.

## II. METHOD

This research is a type of normative-empirical research. It is a research method which in this case combines elements of normative law which are then supported by additional data or empirical elements, or it is called field research, which examines the existence of applicable legal provisions and what happens in reality in society. In this study the authors used normative research methods to analyze the first problem formulation, while to answer the second problem formulation the authors used empirical research methods through the interview method [4]. This empirical research was conducted to find legal facts about what happened in the community who were also directly or indirectly affected by the enforcement of the practice of selling at a loss on flight tickets within the jurisdiction of the Business Competition Supervisory Commission (KPPU) Kanwil IV Surabaya, hereinafter referred to as KPPU Kanwil IV . The use of empirical juridical methods in this thesis research, namely the results of the collection and discovery of data and information through field studies at KPPU Regional Office IV which is the target and research object used in answering the problems in this study, is then tested on accurate facts found in society [5]. Thus the truth in a study is able to provide input for interested parties.

## III. RESULT AND DISCUSSION

### 1. Regulations Related to Predatory Pricing in the Perspective of Business Competition

According to economic theory, predatory pricing is a situation in which a business actor sets a selling price for the goods or services he produces below the average total cost. Business actors only become profitable if they fix the selling price of goods and services produced above the average total cost, or at least according to the cost of production.

In accordance with Law no. 5 of 1999 concerning Anti-Monopoly, then in 2000 the KPPU was formed as an independent institution, namely based on this Law the KPPU was given the authority to supervise the implementation of the Law. One of the tasks of KPPU listed in

Article 35 is to prepare instructions and publications related to the implementation of Law No. 5 of 1999 concerning Anti Monopoly [6]. Article 20 Law no. 5 of 1999 concerning Anti Monopoly stipulates that:

"Business actors are prohibited from supplying goods and or services by selling at a loss or setting very low prices with the intention of eliminating or killing their competitors' businesses in the relevant market so that it can result in monopolistic practices and or unfair business competition". Business actors can be said to have the potential to sell at a loss if they have fulfilled the elements listed in Article 20 of Law no. 5 of 1999 concerning Anti Monopoly [7]. Basically KPPU has stipulated Regulation No. 6 of 2011 concerning Guidelines for Article 20 of Law no. 5 of 1999 concerning Anti Monopoly. Formulation of Article 20 of Law no. 5 of 1999 concerning Anti-Monopoly in the KPPU regulation, the elements can be described as follows:

#### 1) Elements of Business Actors

Article 1 paragraph 5 of Law No. 5 of 1999 defines business actors as follows: "business actors are any individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, both individually and jointly through agreements, carry out various business activities in the economic field.

#### 2) Elements of Supply

In Article 15 paragraph 1 Law No. 5 of 1999 states that: "the meaning of supply is to provide supplies, both goods and services, in the activities of buying and selling, leasing, and leasing".

#### 3) Elements of Goods

Article 1 paragraph 16 of Law No. 5 of 1999 states that: "goods are any movable object, which can be traded, used, utilized, or exploited by consumers or business actors".

#### 4) Elements of Services

The definition of services according to Article 1 paragraph 17 of Law No. 5 of 1999 states that: "services are any services in the form of work or achievements that are traded in society to be utilized by consumers or business actors".

#### 5) Sale and Loss Element

In providing a selling price, business actors set it below production costs.

#### 6) Very Low Price Element

KPPU defines the elements as follows: “a very low price is a price set by business actors that is unreasonably low”.

#### 7) With Intent

KPPU explained that: "with intent means that the activity is carried out with a desire or purpose".

#### 8) Eliminating or Killing Elements

KPPU explained that: "eliminating or killing means removing or removing a competing business actor from the relevant market or closing his business".

#### 9) Competitor Business Elements

KPPU explains that: "business competitors are businesses of other business actors in the same relevant market".

#### 10) Elements of the Market

According to Law No. 5 of 1999 Article 1 paragraph 9 states: "the notion of a market is an economic institution where buyers and sellers, both directly and indirectly, can carry out trade transactions of goods and or services".

#### 11) Relevant Market Elements

According to Law No. 5 of 1999 Article 1 paragraph 10 states: "the meaning of the relevant market is a market related to a certain marketing area or area by business actors for the same or similar goods and or services or substitutes for said goods and or services".

#### 12) Elements of Monopolistic Practices

According to Law No. 5 of 1999 Article 1 paragraph 2 states: "monopoly practices are the concentration of economic power by one or more business actors which results in the control of the production and or marketing of certain goods and or services so that it creates unfair business competition and can harm the public interest ”.

#### 13) Elements of Unfair Business Competition

According to Law No. 5 of 1999 Article 1 paragraph 2 states: "competition between business actors in carrying out production and or marketing activities of goods and or services that are carried out in a dishonest or unlawful manner or hinder business competition".

### **1. Determination of Airfare Tickets Below Market Prices Included in Unfair Business Competition Indicators**

Determination of tariffs for scheduled commercial airlines for both propeller and jet aircraft is guided by the Lower Limit Tariff or TBB and Upper Limit Tariff (TBA) issued by the government through the Decree of the Minister of Transportation No. KM 106 of 2019 which was then revised again by issuing Ministerial Decree Number 72 of 2019 concerning Upper Limit Rates for Domestic Scheduled Commercial Air Transportation Economy Class Passengers which in one of its points provides flexibility for airline companies to set prices higher than the Upper Limit Rates (TBA) stated in the previous rules during does not exceed 35% of the stipulated Upper Limit Tariff [8]. This is in line with the rising price of aircraft fuel, namely Avtur. In addition, airline companies are also guided by the formulation set by the government through previous regulations, namely in articles 13 and 14 of the Regulation of the Minister of Transportation of the Republic of Indonesia Number 14 of 2016.

### **ARTICLE 13**

- (1) Distance Tariff is the result of multiplying the Basic Tariff with the Distance.
- (2) The basic tariff as referred to in paragraph (1) is obtained from the calculation of the basic cost per production unit plus profit.
- (3) The main costs as referred to in paragraph (2) consist of components of costs, namely:
  - a. Direct costs, consisting of fixed costs and variable costs.
  - b. Indirect costs consist of organizational costs and marketing costs.
- (4) Details of the Cost components as referred to in paragraph (2) are as listed in Appendix I which is an integral part of this Regulation.
- (5) Details of the calculation method for air transportation service fees are as listed in Appendix II which is an integral part of this Regulation.

### **ARTICLE 14**

The calculation of the Basic Tariff is based on the following principles:

- (1) The calculation of the basic costs as referred to in Article 10 paragraph (1) is the total aircraft operating costs based on full cost including a reasonable margin.
- (2) Cost component data used in the calculation, is the financial data of the Air Transport Business Entity at the time of formulating the fare by taking into account the level of accuracy, reasonableness and efficiency of the Cost and can be accounted for.
- (3) The calculation of aircraft operating costs as the basis for determining the Base Tariff and Long Distance Tariff is the operating cost of the most efficient aircraft with the largest population operated by an Air Transport Business Entity.

- (4) The charging of aircraft operating costs in calculating the Basic Fares for economy class air transportation using jet aircraft is set at 95% of the total operating costs; And
- (5) Cost per unit (cost per unit), namely the cost per passenger obtained from the total operating cost of an aircraft with a loading factor of 32 is 65% (sixty five percent) for jet aircraft and 70% (seventy percent) for propeller aircraft .

From these regulations which become a reference for airline companies to determine the amount of fare for a route they will serve, so even if one airline charges a lower fare than the price that can be offered by other airlines as long as it does not violate the provisions of these rules, it remains will be permitted, in this case for example the Jakarta-Makassar route is served by several airlines, namely Lion, Citilink and Air Asia where the three airlines come from three different company groups with different numbers of units they have [9].

### **1. Authority, Duties and Implementation of KPPU Supervision**

As mandated by Law no. 5 of 1999, KPPU has very broad authority, covering executive, judicial, legislative and consultative areas. Therefore this institution is said to have consultative, judicial, legislative, executive authority. However, in terms of carrying out its functions, this institution has overlapping authorities, because it can act as an investigator (investigator function), investigator examiner, prosecutor (prosecuting function), adjudicator (adjudication) and also a consultative function (consultative function) [10].

Thus the supervision, implementation and enforcement of business competition law in Indonesia is handed over to an institution called the KPPU, in addition to the police, prosecutors and judiciary. Supervision and enforcement of violations of business competition law must be carried out first through the KPPU, then after that it can be submitted to police investigators to be forwarded to the court if the business actor is not willing to carry out the decision that has been handed down by the KPPU.

KPPU is an independent institution, in which in handling, deciding or conducting an investigation of a case cannot be influenced by any party, both the government and other parties who have conflicts of interest, even though in carrying out their powers and duties they are responsible to the president. KPPU is also a quasi-judicial institution that has executive authority in relation to business competition cases.

According to the provisions of article 1 number 18 of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, what is meant by the



Commission for the Supervision of Business Competition is “a commission established to supervise business actors in carrying out their business activities so that they do not engage in monopolistic practices and/or unfair business competition [11].

In his position as supervisor, Law no. 5 of 1999 Article 36 and Article 47 have given special authority to the Commission. Broadly speaking, the authority of the Commission can be divided into 2, namely active authority and passive authority.

What is meant by active authority is the authority given to the Commission through research. The commission has the authority to conduct research on markets, activities and dominant positions. The Commission also has the authority to carry out investigations, conclude the results of investigations and/or examinations, summon business actors, summon and attend witnesses, request investigators' assistance, request information from government agencies, obtain and examine documents and other evidence, decide and determine and impose sanctions. administrative.

As for passive authority, receiving reports from the public or from business actors regarding allegations of monopolistic practices and/or unfair business competition. The supervisory commission conducts an examination in two stages, namely a preliminary examination and a follow-up examination. Preliminary examination is carried out if:

- a) There are reports from parties who feel aggrieved.
- b) Initiative of the Supervisory Commission itself if there is an allegation that there has been a violation of the Anti-Monopoly Law.

The scope of KPPU's authority is very broad, because there is an element of administrative authority, there is an element of quasi-legislative power, and an element of quasi-judicial power. In the future, if the three powers are in an institution, it will cause many problems, both in terms of balance and in terms of implementation practices. However, the authority of KPPU is only limited to purely administrative authority. Even so, there is authority similar to that of an investigative agency, prosecution agency, even a decision-making agency, but this is only for the purpose of imposing administrative law, nothing more than that.

## **1. Obstacles in the Implementation of Supervision in Relation to the Case of Determining Domestic Airline Ticket Prices**

Based on the results of an interview with Mr. as a representative for advocacy and study by Regional Office IV in carrying out supervisory functions and duties, especially in

the case of Domestic Aircraft Ticket Price Fixing, it is suspected that there are several obstacles, one of which is that the Business Competition Supervisory Commission is not a special judicial institution, p. this makes the Commission for the Supervision of Business Competition free from coercive measures which causes several obstacles, including: Not being able to search or confiscate documents related to alleged violations being investigated; Unable to wiretapping; Cannot force the Reported Party who refuses to comply with the Business Competition Supervisory Commission summons; Regarding the provision of fake documents by the Reported Party; Regarding the false testimony submitted by the Reported Party.

In order to overcome the obstacles experienced by the Business Competition Supervisory Commission, the Business Competition Supervisory Commission entered into a Memorandum of Understanding, among others with POLRI (MOU), the National Land Agency/Ministry of ATR, Ministries and State Institutions which are stakeholders so that these obstacles can be minimized. Although the Business Competition Supervisory Commission is at the forefront in resolving allegations of violations of business competition law, the authority possessed by the Business Competition Supervisory Commission is limited to conducting investigations and making decisions. Based on the decision of the Business Competition Supervisory Commission, parties who do not accept may submit an objection to the District Court (Based on Law Number 11 of 2020 concerning Job Creation, the objection is submitted to the Commercial Court) [12].

He stated that in this case the reported parties were absent several times from summons in the investigation process, making it difficult for investigators to develop the case and obtain information, besides that the author also dug up some information which was then answered by him, namely regarding the Decision of the Commission for the Supervision of Business Competition, namely:

Concerning the Legal Force of KPPU's Decision: If there is no objection to the Business Competition Supervisory Commission's Decision, the Business Competition Supervisory Commission's Decision has permanent legal force and thereafter within 30 days of receiving notification of the Decision.

#### IV. CONCLUSION

With the abolition of the rules regarding the provision of additional schedules and flight frequencies, it creates gaps for airlines with more fleet units to increase the amount of production, in this case the availability of airplane tickets, which is then followed by setting prices that are lower than competitors on the same route and class, causing the ability to compete down and have the potential to dominate the market/market on the route where this is not in accordance with the principle of the Anti-Monopoly Law which reads "Business actors in Indonesia carry out their business activities based on economic democracy by taking into account the balance between the interests of business actors and the public interest." What is stated in article 2 of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

KPPU in an effort to carry out its duties and functions as a supervisory agency in the business competition law environment in Indonesia, although it is given a wide enough authority including consultative, judicial, legislative, executive authority does not necessarily facilitate the KPPU's task, this institution often has difficulties because they do not have efforts force, especially for the reported party who is absent from summons in the context of investigating and developing cases so that this then causes a long time to resolve a case.

#### REFERENCES

- [1] Fahmi Lubis, Andi, dkk. 2009. *Hukum Persaingan Usaha Antar Teks & Konteks*, Jakarta : ROV Creative Media.
- [2] Margono, Suyud. 2009. *Hukum Praktik Monopoli dan Persaingan Usaha Tidak Sehat*, Jakarta, PT Sinar Grafika.
- [3] Adi Nugroho, Susanti. 2012. *Hukum Persaingan Usaha di Indonesia* Jakarta : Kencana Prenada Media Group.
- [4] Binoto Nadapdap, *Hukum Acara Persaingan Usaha*, Jala Permata Aksara, Jakarta, 2009.
- [5] Kamal, Mustafa Rokan. 2010. *Hukum Persaingan Usaha (Teori dan Praktiknya di Indonesia)*, Jakarta: PT Rajagrafindo Persada
- [6] Citrawinda, Cita. 2019. *Hukum Persaingan Usaha*. Surabaya : CV Jakad Media Publishing.
- [7] Agustino. 2008. *Dasar-Dasar Kebijakan Publik*. Bandung : Alfabeta.
- [8] Kamal, Mustafa Rokan, *Hukum Persaingan Usaha Teori dan Prakteknya di Indonesia*, PT Raja Grafindo Persada, Jakarta, 2010

- [9] Bruggink, J.J.H. 1996. *Refleksi Tentang Hukum Pengertian Dasar Dalam Teori Hukum*, Bandung : PT. Citra Aditya Bakti.
- [10] Asyhadie, Zaeni. 2012. *Hukum Bisnis Prinsip dan Pelaksanaannya di Indonesia*. Jakarta : PT Raja Grafindo.
- [11] Fahmi, Andi Lubis, dkk. 2017. *Buku Teks Hukum Persaingan Usaha. Edisi. II. Komisi Pengawas Persaingan Usaha*. Jakarta : KPPU.
- [12] Henry Champbell Black, *Black's Law Dictionary*, St. Paul, Minn, West Publishing Co, 1990.