

EFFECTIVENESS OF LAW ENFORCEMENT CASE BY THE CARTEL COMMISSION HONDA AND YAMAHA BASED ON JUSTICE PANCASILA

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Abstract

This research aims to reconstruct the effectiveness of law enforcement by the Commission in a cartel case Honda and Yamaha justice based on Pancasila. The first reaserch discuss about the effectiveness of the Business Competition Supervisory Commission (KPPU) in law enforcement justice cartel cases Pancasila. Both reconstruct the article in Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition for law enforcement effectiveness. This research is a doctrinal approach of legislation and research . Study shows the first enforcement by the Commission is not operating effectively. The imposition of administrative sanctions from the Commission do not have permanent legal force, where they opened a space for parties reported to object to the level of the Supreme Court (MA). The process to obtain permanent legal force very long whereas 73% of MA won the Commission's decision. Both to achieve effective enforcement, it is necessary to expand the authority of the Commission, which sanctions the administration carried out by the Commission are final or not opened space object. Agae ensure the Commission's decision is fair, then there needs to be a power-sharing within the Commission to establish the field of internal controls.

Keywords: Effectiveness of Law Enforcement, Competition, Justice Pancasila.

1. INTRODUCTION

A. Background

Indonesia is currently the automotive world increasingly characterized by rapidly increasing transportation needs, especially motorcycles are almost evenly distributed throughout Indonesia. Along with the growth of the automotive companies are competing to gain market share resulting inevitability of competition among them. Therefore a business competition law enforcement that purpose can be found in Article 3 of the Law Antitrust and Unfair Competition

which implies that the enforcement of competition law is to increase social welfare, prevent monopolistic practices and / or unfair competition, as well as provide sanctions against the offenders. The Commission as a supervisory agency of business competition has an important role in law enforcement¹.

Over the last decade the number of Indonesia's middle class meningkat. Data World Bank menyebutkan, the number of middle class in 2002 only 7% of the total population. Spike significant occurred in 2017 to 22%². In 2018 and then increased to 50 million, or approximately 30% of the total population. Predicted Indonesian middle class will reach 143 million people or more than 50 percent of the total population in 2050³,

Central Statistics Agency (BPS), the middle class accounted for at least 45% of total domestic consumption. The main characteristic of this class is high relative income, consumption behavior which tends to be oriented to meet the needs of the secondary, even tertiary, including the need for private vehicle ownership, either a motorcycle or a car. So naturally if the number of vehicle sales in Indonesia experienced a dramatic surge in the number of years lastly. Data Indonesian Motorcycle Industry Association (AISI) said, throughout 2018 recorded 6,383,108 units of motorcycles sold⁴, National automotive industry is one of five priority development of the manufacturing sector by the government.

Business competition in the automotive market is not only happening in the global market but also in markets national. Competition in the market and market mechanisms to establish some kind of market as perfectly competitive market (perfect competition market), the market monopoly, oligopoly, and the dominant position. Perfect competition is a market structure that will ensure the realization of the activities of producing goods and services are very high efisensinya. The businesses do not compete well can create a distorted market⁵. Sebagaimana in Case Number. 217 / Pdt.Sus-KPPU / 2019, in the case of Yamaha-Honda cartel in motorcycle sales scooter 110-125. Yamaha and Honda found guilty and had to pay compensation.

Law enforcement prohibition of monopolistic practices and unfair business competition has a very complex issue, this has implications for the ineffectiveness of the duties and authority mandated by Law No. 5 of 1999 concerning Prohibition

¹Apetriyas Zihaningrum, *Penegakan Hukum Persekongkolan Tender Berdasarkan Undang- Undang Nomor 5 Tahun 199 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat*, Privat Law Jurnal No 4 Volume 1 January- June 2016, Univesitas Negeri Sebelas Maret, Surakarta, p. 112.

² Report released by World Bank 2018. p. 66.

³ <https://beritagar.id/artikel/telatah/geliat-dan-prospek-industri-otomotif-nasional>. accessed on 22 November 2019.

⁴<https://www.aisi.or.id/statistic/> accessed on 22 November 2019.

⁵Mustafa Kamal Rokan, *Hukum Persaingan Usaha Teori dan Praktiknya di Indonesia*, Rajagrafindo Persada, Depok, 2017, p. 14.

of Monopolistic Practices and Unfair Competition. An example of a monopoly cartel salt that occurred in North Sumatra that there are seven (7) business operators, PT Garam, PT Budiono, and PT Garindo which acts as a supplier of major salt called and belonging to the group G3 and PT Graha Mutual, PT Sumatera Palm, Anchor Waja UD and UD Source ocean called called and incorporated in the G-4 acts as a distribution of salt in North Sumatra. Of practices conducted by seven (7) business actor violates some article in Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Competition, namely Article 4 (prohibition oligopoly), Article 5, Article 6 (prohibition pricing), and Article 11 (prohibition of cartels). Such practices can not be justified because it was not appropriate and objective of this legislation is to safeguard public interest and improve the efficiency of the national economy, to create a conducive business climate, to prevent monopolistic practices and or unfair competition posed by businesses, creation of effectiveness and efficiency in business activities⁶, To supervise the implementation of this Act established the Business Competition Supervisory Commission (KPPU), which is an independent agency free from the influence and control of the Government and other parties and is directly responsible to the President.

Previous studies of⁷ Zihaningrum in the case tender conspiracy explained that the Commission has limited authority in the application of sanctions. Sanctions imposed only to businesses, whereas the third party involved should also dropped sanksi. Rekomendation of study in order to expand the authority of the Commission to reach a third party does not attempt healthy. Inside of competition in dispute study comparing the Commission with similar institutions in the United States the Federal Trade Commission (FTC). Explained that it is necessary to expand the law enforcement authority of the Commission in the case of unfair competition by providing authority to the Commission to conduct an investigation and enforcement wiretaps in law⁸ Simbolon in the study of the legal status of the Commission found inter alia that the first district court judge in capacity is still much less understanding of the substance of competition. Both the

⁶ Rizal Aji Pratama, *Pengaturan Monopoli Kartel oleh Pelaku Usaha Dalam Persaingan Usaha Garam; Suatu Kajian Putusan KPPU No. 10/KPPU/L/2005*, Jurnal Ius Constituendum Vol. 3 No. 2. 2018, Semarang, University, Semarang, p. 225. DOI: <http://dx.doi.org/10.26623/jic.v3i2.1041>

⁷ Apetriyas Zihaningrum, *op.cit.* p. 108.

⁸ Aldo Maulana Randa, *Analisa Penegakan Hukum Persaingan Usaha yang dilakukan oleh Komisi Persaingan Usaha (KPPU) ditinjau dari Perbandingan Kewenangan Penegakan Hukum Persaingan Usaha yang dilakukan oleh Federal Trade Commission di Amerika Serikat*, Fakultas Hukum Universitas Indonesia, 2015, Jakarta, p. 2-3.

Commission assigned the positive assessment since has provided input to the government related to the alignment of competition policy⁹.

Previous studies linked to the Commission's limited authority in law enforcement cases healthy. While business competition novelty in this research is the researcher recommends the expansion of the authority of the Commission in deciding cases unfair competition until the end of the level. Basic considerations of the expansion of the Commission because the Commission's authority have adequate capacity while the District Court's limited capacity to understand the problems of competition.

In some cases the Commission has requested feedback by the Government related to the problems they face, especially those that have indicated the presence of unfair competition in the sector is now the Commission. To get a good place in the enforcement of competition law which the 73% strengthening of the Commission by the Supreme Court case .This is proof that the Commission could be trusted in the enforcement of competition law¹⁰, The Commission as the regulatory agencies have contributed a great competition both from the legal and economic aspects of Indonesia.

The purpose of this study is an extension of authority based on Law No. 48 of 2009 on Judicial Power, Article 2 (4) describes the principle is simple, fast and low cost is a principle of justice that most fundamental of the implementation of services and the administration of justice that leads the principle and the principle of effective and efficient¹¹, So with the expansion of the authority of the Commission's principles of justice in the form of simple, quick and low cost can be achieved. This study elaborates on the authority of the Commission, in particular will highlight the "Effectiveness of Law Enforcement by the Commission On Cartel Case Honda and Yamaha Justice Value Based Pancasila".

B. Formulation of the problem

How Reconstruction Law Enforcement Effectiveness By Commission On Cartel Case Honda and Yamaha Pancasila-Based Justice?

C. Research methods

This study is a doctrinal study, which examined the legislation and regulations and the Supreme Court decision regarding the case of kartel. Reaserch

⁹ Alum Simbolon, *Kedudukan Hukum Komisi Pengawas Persaingan Usaha, Melaksanakan Wewenang Penegakan Hukum Persaingan Usaha*, Mimbar Hukum Vol 24 No 3, October 2012, Gadjahmada University, 2012, Yogyakarta, p. 539-540. DOI: <https://doi.org/10.22146/jmh.16123>

¹⁰ <http://www.dpr.go.id/doksileg/proses1/RJ1-20170427-101602-9088.pdf> accessed on 15 November 2019.

¹¹ Sidik Sunaryo, Dalam M. Usrin, *Analisis Yuridis Asas Peradilan Sederhana Cepat dan Biaya Ringan dalam Sistem Peradilan Pidana*, Jurnal SOLUSI, Volume 16 No 1, January 2018, Faculty of Law University of Palembang, Palembang, p. 60-65. DOI: <https://doi.org/10.36546/solusi.v16i1.96>

prescriptive analysis is to analyze the legal norms, values and concepts by using the approach of legislation (statute approach) and the approach of the case (case approach). Using secondary data source that comes from the law of primary, secondary and tertiary literature. Analysis collected through studies conducted by legal interpretation.

II. DISCUSSION

A. Unfair Competition Practices In The Motorcycle Industry Type Scooter Matic 110-125 Cc

Cartel cases done by. Astra Honda Motor (Reported 1) and PT. Yamaha Indonesia Motor (Reported 2). Terlapor 1 and Party 2 is a manufacturer of two-wheeled motor vehicle which conducts its business activities in Indonesia and joined as a member Asosiasi Indonesian Motorcycle Industries (AISI) reported. Terlapor 1 and 2 do not deal in a joint venture or a treaty-based laws and regulations. Testament begins with a meeting between the President Director of PT. Astra Honda Motor (Reported 1), and President Director of PT. Yamaha Indonesia Motor Manufacturing (Reported 2) where the meeting be discussed and it was agreed that the reported 1 will follow the selling price of motor scooter matic 110-125 CC 2 is reported.

Through the investigation, the Commission decided that the Party 1 and Party 2 has violated the Act - Act No. 5 of 1999 on Prohibition of Monopoly and Unhealthy Competition, in particular Article 5 (1) that businesses are prohibited from making agreements with business competitors to set prices above goods and or services to be paid by the consumer or customer in the same relevant market.

Cartel agreement carried out by the reported 1 and 2 have been reported hurt consumers, because consumers do not have alternative purchase automatic scooter type motorcycle 110-125 CC. Reported 1 and 2 control 80% market share for this type of vehicle. Indonesian Decree KPPU number 4-KPPU-1-2016 states reported 1 and 2 problem. Each parties involved in cartel cases received fines that depend on large size his role as the parties in the case of Raw Tobacco cartel in Spain¹², In cartel cases this 110-125cc automatic motor scooter, Party 1 is obliged to pay a fine of up to 25 billion and reported 2 shall pay a fine of some 22.5 billion. Reported 1 and 2 objected to the Commission's decision to file a complaint through North. Jakarta Decree District Court North Jakarta District Court rejected the objection

¹²Goncalo Miguel Banha Coelho, *Smoke Without Fire; The Spanish Raw Tobacco Cartel Cases*, *European Journal of Risk Regulation*, 2010, p. 6. In this case the Commission handed down different fines to the cartel consisting of 5 companies: Deltafina (EUR 11.880.000), Cetarsa (EUR 3.631.500), WWTE (EUR 1.822.500), Argoexpansion (EUR 2.592.000) and Taes (EUR 108.000 Deltafina was hit by the biggest fine for being considered a cartel leader.

/2017/PN.JKT.Utr163/PDt.G/KPPU number of applicants (Reported 1 and 2). Applicant objection (Reported 1 and 2) appealed to the Supreme Court Agung. Decision Court No. 217 / PDT Sus / KPPU / 2019 rejected the applicant's cassation (reported 1 and 2). The judicial process spent three years to get a decision that is legally binding.

B. Competition In view Postner And Justice Pancasila

Interest establishment of Law No. 5 of 1999 on Business of competition as stated in Article 3 that safeguard public interest and protect consumers, fostering a healthy climate effort, guaranteeing the same attempted opportunity for everyone, preventing practice cult of monopoly and business competition healthy incurred by businesses, creating efefititas and efficiency in business activities in order to improve people's welfare.

Interest establishment competition law, in line with the thinking of Richard Postner that put forward in his Economy Analysis of Law. Gagasan Posner on the principle of efficiency is influenced by the utilitarian theory of Jeremy Bentham prioritizing usability principle or expediency.

One important principle is the principle of economic efficiency, as well as being one of the objectives of the Competition Act effort. According to Posner involvement of law must be seen in terms of value (value), usefulness (utility), and efficiency (efficiency). Posner defines efisiensi "... the allocation of resources in which value is maximized"¹³ Posner defines efficiency as "conditions where resources are allocated so that its value (value) is maximized". In the economic analysis, the efficiency in this case focused on ethical criteria in the context of social decisions (social decision making) concerning public welfare arrangements. Posner efficiency in the glass eye associated with increasing one's wealth without causing any damages to the other party.

The emphasis of the theory Postner is efficiency must be placed in ethical criteria in decisions concerning the welfare Public. In this context, Posner consider one aspect of justice that includes not just distributive justice and corrective. Posner pressing the "Pareto improvement" in which the purpose of the rule of law can provide valuable input for justice and social welfare¹⁴,

Legal arrangements for the attainment of justice raised by Posner, in line with the idea that Gustav Radbruch returned values of justice as the crown of every ordinance law. Hi looked Sein and sollen, material and form as two sides of one coin, the material filling the form, and shape protect the contents, this

¹³Murni, *Analisis Ekonomi Terhadap Persaingan Usaha Dalam Undang- Undang.Nomor 5 Tahun 1999*, Jurnal Arena Hukum, Volume 6 Nomor 1, April 2002, Faculty of Law, University of Brawijaya, 2002, Malang. p. 23. DOI <https://doi.org/10.21776/ub.arenahukum.2012.00501.3>

¹⁴ *Ibid.* p. 26.

phrase depicts Radbruch theory of law and justice. The value of justice is "material" that should be the content of the rule of law, while the rule of law is a "form" which should protect the values of justice¹⁵.

John Rawls¹⁶ states that the principle of social justice is a floor for the distribution of the prospects for getting goods principal. Needs covers basic fundamental rights, freedom, power, authority, opportunity, income and welfare. Principles of justice have to do two things first principle of justice must give a fair assessment about the absence of concrete institutions and institutional practices. Both principles of fairness should guide us in develop policies and laws to correct the injustice in the basic structure of a particular society.

Speaking of justice in Indonesia can not be separated from Pancasila. Pancasila as a way of life is a value system covers all values are arranged systematically - hierarchical, starting from the value of the Godhead to Social Justice.

Soerjanto Puspwardoyo¹⁷ declare Pancasila as the national ideology can provide basic provisions on the formation of the legal system in Indonesia, namely: a) The legal system was developed based on the values of Pancasila as the source. Orientation Pancasila who crave human life fair atmosphere and sejahaterah. b) The legal system shows its significance as far as justice. c) The legal system has the function to maintain the dynamics of the life of the nation. d) The legal system guarantees a process of self realization for the citizens of the nation in the development process.

Describe cartel cases of denial of justice by the perpetrator kartel. Principle profit as much as possible as the concept of efficiency is not laid out in terms of ethics in order to address the sense of justice of the largest groups in terms of consumers and the country as a party to harmed. Kartel an injury against any form of value -the value Pancasila. As justice in a sovereign state and is based on Pancasila, Indonesia via its laws guarantee freedom to every individual or legal entity in economic activity for profit. However the profit obtained should not cause harm to the other party in this context consumer. Economy is based on Pancasila aimed at creating economic growth for the achievement of a prosperous society, just and prosperous.

¹⁵Tanya Bernard L., Simanjutak Yoan N., Hage Markus Y., *Teori Hukum; Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, 2013, p. 116 – 117.

¹⁶Rawls Jhon, *A Theory of Justice-Teori Keadilan; Dasar- Dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial Dalam Masyarakat*, Pustaka Pelajar, Yogyakarta, 2019, p.116-117.

¹⁷ Soerjanto Puspo Wardoyo, *Filsafat Pancasila Sebuah Pendekatan Sosio – Budaya*, LPSP dan PT Gramedia, 1998, Jakarta, p. 18.

C. Enforcement by the Commission On Cartel Case Honda and Yamaha

The presence of the Commission as state representasi given the authority and responsibility in maintaining market dynamics in order to stay in tune with the direction and developing Pancasila. Authority principles for the settlement of disputes, the Commission must carry out its function of creating a dispute resolution mechanism of competition businesses. Enforcement by the Commission is a process and the efforts for the establishment of or the functioning of legal norms significantly as a code of conduct in traffic or legal relationships in the life of society and state.

According Sudikno Mertokusumo¹⁸ in principle, the law enforcement process still refers to the basic values contained in the law, such as justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), and the benefit of law (*zweckmassigkeit*), three elements that must be met in the process of law enforcement as well as a primary goal law enforcement.

Principal law enforcement lies in factors that influence. Factor of these factors have a neutral meaning, so that a positive or negative impact lies in the content the factors. Related with our law enforcement can refer to *konsp* offered by Lawrence Friedman. Lawrence M Friedman¹⁹ divide the legal system into three parts: (1) Substance Law (Legal Substance) determines whether or not the law was implemented, (2) Structure of the Law (Legal Structure), the products produced by those who are in a legal system that includes decision they spend, the new rules that they set (3) Culture law (Legal Culture), considers that the human attitude towards the legal birth through belief systems, values, ideas, and he expressed hope that evolved into one in which²⁰.

Effectiveness of law enforcement is an important requirement. Clearence J Diaz Fatten five conditions for the effectiveness of the law include: 1) Easy to whether the meaning or the issue of the rules - the rules were captured 2) The extent whether or not others in the community who knows the rules in question 3) The efficiency and effectiveness of the mobilization of the rule - the rule of law achieved with the help of: a) Apparatus administration aware of its obligation to involve himself in the business of mobilization thus b) the citizens feel involved and feel the need to participate in the process of

¹⁸Riski Dyas dan Munawar Kholil, *Analisis Yuridis Penegakan Hukum Persekongkolan Tender Menurut Undang- Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat*. Privat Law Jurnal Volume V, Nomor 2 Juli – Desember 2017. Universitas Sebelas Maret, Surakarta, p. 79.

¹⁹ Lawrence M.Friedman, *Sistim Hukum Perspektif Ilmu Sosial*, Nusa Media, Bandung, Cetakan VIII, 2017, p. 33.

²⁰ *Ibid*, p. 34.

mobilization of law 4) the existence of the dispute settlement mechanism that not only must be easily accessible and accessible by every citizen²¹.

The judiciary as an institution created by the legal system to function as a fair means of dispute resolution through the judicial process that is simple, fast and inexpensive²², Act No. 48 of 2009 on Judicial Power, Article 2 (4) describes the principle is simple, fast and low cost is the most fundamental principle of justice that the implementation of services and the administration of justice that led to the principle and the principle of effective and efficient²³,

Simple interpreted as a process that is straightforward, uncomplicated, clear, straightforward, non-interpretible, easy. understand, easy to do, easy to implement, systematic, concrete both in seeking justice standpoint, as well as in law enforcement standpoint. Fast, should be interpreted as a strategic effort to make the justice system as an institution that can ensure the accomplishment / achievement of justice in law enforcement quickly by seeking justice, juridical considerations, accuracy, precision, and considerations that guarantee *sosilogis* sense of justice was also considered. This principle includes the fast in the process, rapid results, and fast in the evaluation of the performance and productivity of the judicial institution²⁴, "Justice delayed is justice denied", as an expression of British politician William Gladstone to illustrate the importance of the principle of speedy trial. The process of the settlement of protracted means tantamount to a disregard for the justice system itself phrase "Justice delayed is justice denied" has been a rallying cry for reform of the law born of context than the courts or the government in resolving legal issues.

Referring to the principles of justice *cepan* simple and low cost, we can conclude that the judicial process for cases Cartel Honda and Yamaha have not been in line with these principles. The judicial process becomes ineffective, spent a very long time ie for 3 years. While the decision handed down by the Supreme Court upheld the ruling of the Commission. Other data showed that 75% of cases of competition, in a ruling by the Supreme Court was won by the Commission. This condition indicates that the Commission as an institution has adequate capacity so as to carry out their duties properly in the resolution of the case competition. Becomes ineffective when it opened space to appeal to the Supreme Court for the imposition of administrative sanction by the Commission, while the Supreme Court decided together with the Commission.²⁵ Competition law expert Andi Fahmi Lubis and Dita Wiradiputra

²¹ Gunarto, *ibid.* p. 308.

²² Muhammad Alim, *Sekilas Tentang :Peradilan Sederhana, Cepat Dan Biaya Ringan, Varia Peradilan* Number 305, Mahkamah Agung, 2011, Jakarta. No. 305, p. 5.

²³ Sidik Sunaryo, *op.cit.* p. 60-65.

²⁴ *Ibid.* p. 35.

²⁵ Aldo Maulana Randa, *ibid.* p. 23.

stated that it is important to amend the Law No. 5 of 1999 to strengthen the Commission's institution. The proposed amendments include the institutional strengthening and expansion of the authority of the Commission to simplify the process to obtain the Commission's case.

D. Reconstruction Law Enforcement Commission On Cartel Case Honda and Yamaha Pancasila Values-Based Justice

At the cartel Case Number 04 / KPPU-1/2016 concerning the Commission's Decision and proceed with the process of law to the Supreme Court Case Number 217-K / Pdt.Sus-KPPU / 2019 of Cassation Decision takes an extremely long time for about 3 years. But in the end the result of the Supreme Court ruling is identical with the Commission's decision. This condition reflects that the judicial process becomes ineffective. Therefore, we propose that the final decision is administrtaif sanctions made by the Commission to meet the principle of justice that is simple, fast and inexpensive, in accordance 2 paragraph 4 Law No. 48 Year 2009 on Judicial Power.

The results of this study to formulate reconstruction article as follows:

1. Reconstruction of Legal Norms

Effectiveness of Law Enforcement by the Commission On Cartel Case Honda and Yamaha Pancasila Values-Based Justice

No	Before Reconstructed	Weakness	After Reconstructed
1	<p>Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition: Article 44</p> <p>(1) Within 30 (thirty) days from the businesses receiving notification of the decision of the Commission as referred to in Article 43 paragraph (4), businesses required to implement the decision and submit their implementation reports to the Commission.</p> <p>(2) Business operators may appeal to the District Court no later than 14 (fourteen) days after</p>	<p>Supposedly accordance with Law 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition:</p> <p>That with a market share of more than 75 percent, the cartel is categorized as an oligopoly which means articles that used will vary with the implications on the implementation of different articles.</p> <p>Article 44 paragraph (2) - (5) be deleted because according to the theory of the effectiveness of this article makes the proceedings became long, this condition is</p>	<p>Law No. 5 of 1999 on the Commission</p> <p>Article 44</p> <p>(1) Within 30 (thirty) days from the businesses receiving notification of the decision of the Commission as referred to in Article 43 paragraph (4), businesses required to implement the decision and submit their implementation reports to the Commission.</p> <p>In paragraph (2) - (5) be deleted.</p>

<p>receiving notice of the decision.</p> <p>(3) Entrepreneurs who do not file an objection within the period referred to in paragraph (2) are deemed to accept the Commission's decision.</p> <p>(4) if the provisions referred to in paragraph (1) and (2) not run by business operators, the Commission shall refer the decision to the investigator to do the investigation in accordance with the provisions of the legislation in force.</p> <p>(5) Commission Decision referred to in Article 43 paragraph (4) is sufficient preliminary evidence for investigators to conduct investigations.</p>	<p>actually incompatible with the principle of organizing power kehakinam: justice that is simple, fast and inexpensive. This principle is expressly mentioned in Article 2 (4) of Law No. 48 Year 2009 on Judicial Power. Simple means of examination and settlement is done in a way that is effective and efficient. Fast principle, the principle of universal, related to the completion time is not protracted. Quick principle is known adage delay justice, justice denied, meaning the slow judicial process would not give justice to the parties. The principle implies lighter cost of court fees can reach the community.</p>	
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2. Reconstruction of Value Law

- a) In Article 44 Paragraph (2) to (5) of Law Number 5 of 1999 removed with consideration: according to the theory of the effectiveness of this article makes the proceedings became long, this has actually not in line with the principle of organizing the judicial power: the judiciary that is simple, fast and low cost. This principle is expressly mentioned in Article 2 (4) of Law No. 48 Year 2009 on Judicial Power. Simple means of examination and settlement is done in a way that is effective and efficient. Fast principle, the principle of universal, related to the completion time is not protracted. Quick principle is known adage delay justice, justice denied, meaning the slow judicial process would not give justice to the parties. The principle implies lighter cost of court fees can reach the community.
- b) The addition of article about the Commission's division of authority. In Indonesia, the Commission should blaze authority in competition law enforcement process to ensure a fair verdict. For that we need an additional division within the Commission established separate and have a much higher position than the law enforcement division.

III. CONCLUSION

The first mechanism for resolution of the problems in the Law of the Republic of Indonesia Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Competition is not healthy, especially in Article 44 paragraph (4) and (5) can be interpreted that if businesses do not execute the decision of the Commission then the Commission the verdict handed to investigators to do an investigation and eventually will follow the dispute resolution process such as litigation in general, which would be time consuming and lengthy process. It is very contradiction with the ideal destination establishment Law of the Republic of Indonesia Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition which simplifies the process and shorten the time of settlement of disputes.

To achieve the ideal goal, should some of the provisions in the Law of the Republic of Indonesia Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition the first to be eliminated in part, plus most notably chapter adds KPPU. Subtraction Article authority duly carried out mainly against Article 44 paragraph (4) and (5) which resulted in the Commission's decision into a legal product that is final and binding on the businesses. Both the addition of sub-structure of supervision of the implementation tasks of the Commission as a function of avoiding abuse of authority of the Commission.

BIBLIOGRAPHY

Books

- Bernard L Tanya., Simanjutak Yoan N., Hage Mark Y, the Legal Theory; *Human tongue Trails Strategy and Generation Space*, Matter to V, Genta Publishing 2013, Yogyakarta,
- John Rawls's A Theory of Justice-Theory of Justice; *Basic base- Political philosophy to Achieve Social Welfare Within the Community*, Student Library, 2019, Yogyakarta,
- Hikmanto Juwana, et al, *Role of Judiciary In Dealing Case Competition. Partnership for Business Competition*, 2003, Jakarta,
- Lawrence M.Friedman. *Legal System Perspective Social Science*, Molds VIII, Nusa Media, 2017. Bandung
- Mustafa Kamal Rokan, *Competition Law Theory and Practice in Indonesia*, the third Prints RajaGrafindo Persada, 2017, Depok
- Soerjanto Puspo Ward, *Philosophy Pancasila A Socio Cultural Approach*, OESD, PT Gramedia, 1998, Jakarta .

Journals

- Alum Simbolon, *Kedudukan Hukum Komisi Pengawas Persaingan Usaha, Melaksanakan Wewenang Penegakan Hukum Persaingan Usaha*, Mimbar Hukum Vol 24 No 3, October 2012, Gadjahmada University, 2012, Yogyakarta, p. 539-540. DOI: <https://doi.org/10.22146/jmh.16123>
- Apetriyas Zihaningrum, *Penegakan Hukum Persekongkolan Tender Berdasarkan Undang- Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat*, Privat Law Jurnal Number 4 Volume 1 January- June 2016, Univesitas Sebelas Maret, Surakarta,.
- Banha Miguel Goncalo Coelho, "Smoke Without Fire; The Spanish Raw Tobacco Cartel Cases ", European Journal of Risk Regulation 2010.
- Pure, "Economic Analysis Of Competition In Law No. 5 of 1999" Journal of Legal Clinics, Volume 6 No. 1, April 2002
- Muhammad Alim Glance: "Justice Simple, Fast and Cost of Light", Varia Justice No. 305
- Sidik Sunaryo, Dalam M. Usrin, *Analisis Yuridis Asas Peradilan Sederhana Cepat dan Biaya Ringan dalam Sistem Peradilan Pidana*, Jurnal SOLUSI, Volume 16 No 1, January 2018, Faculty of Law University of Palembang, p. 60-65. DOI: <https://doi.org/10.36546/solusi.v16i1.96>
- Murni, *Analisis Ekonomi Terhadap Persaingan Usaha Dalam Undang-Undang.Nomor 5 Tahun 1999*, Jurnal Arena Hukum, Volume 6 Nomor 1 April 2002. Faculty of Law, University of Brawijaya, 2002, Malang. DOI <https://doi.org/10.21776/ub.arenahukum.2012.00501.3>
- Riski Dyas and Munawar Kholil, "*Juridical Analysis Menurut Tender Conspiracy Law Enforcement Act Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition*". Privat Law Journal

Volume V, Number 2 July-December 2017. Universitas Sebelas Maret, 2017, Surakarta.

Rizal Aji Pratama, *Pengaturan Monopoli Kartel oleh Pelaku Usaha Dalam Persaingan Usaha Garam; Suatu Kajian Putusan KPPU No. 10/KPPU/L/2005*, Jurnal Ius Constituendum Vol. 3 No. 2. 2018, Semarang, University, Semarang, p. 225.
DOI: <http://dx.doi.org/10.26623/jic.v3i2.1041>

Constitution

Constitution of the Republic of Indonesia Year 1945
Law No. 5 of 1999 on Antitrust and Unfair Competition
Supreme Court Regulation No. 3 of 2019
Supreme Court Regulation No. 3 of 2005
Case Number 04 / KPPU-1/2016 concerning the Commission's Decision
Case Number 217-K / Pdt.Sus-KPPU / 2019 of Cassation Decision

Article

Aldo Maulana Randa, *Analisa Penegakan Hukum Persaiangan Usaha yang dilakukan oleh Komisi Persaiangan Usaha (KPPU) ditinjau dari Perbandingan Kewenangan Penegakan Hukum Persaiangan Usaha yang dilakukan oleh Federal Trade Commision di Amerika Serikat*, Faculty of Law University of Indonesia, 2015, Jakarta
Muhammad Alim, *Sekilas Tentang :Peradilan Sederhana, Cepat Dan Biaya Ringan*, Varia Peradilan Number 305, Mahkamah Agung, 2011, Jakarta.

Internet

<https://beritagar.id/artikel/telatah/geliat-dan-prospek-industri-otomotif-nasional>
accessed on 22 November 2019 At 20:00
<https://www.aisi.or.id/statistic/> accessed on 22 November 2019 at 16.00 pm
<http://www.dpr.go.id/doksileg/proses1/RJ1-20170427-101602-9088.pdf> accessed on 15 November 2019 At 17:00 pm