

P-ISSN : 2337-9251
E-ISSN : 2957-9094

JHR

Jurnal Hukum Replik

Volume 11 No. 1 Maret 2023



Published by:

FACULTY OF LAW

UNIVERSITAS MUHAMMADIYAH TANGERANG

DAFTAR ISI

A FACILE STUDY OF THE STATUTORY CHALLENGES CONCERNING CUSTOMARY PRACTICE OF INTESTATE SUCCESSION IN NIGERIA

Paul Atagamen Aidonojie, Oaihimore Idemudia Edetalehn..... 1-11

HUMAN RIGHTS AND DATA PROTECTION IN THE DIGITAL FINANCIAL ECOSYSTEM

Hidayatulloh 12-28

WOMEN AND POLITICS: STRATEGIES IN OPTIMIZING WOMEN'S REPRESENTATION IN BANTEN PROVINCE LEGISLATIVE ELECTION POLITICS 2024

Muhammad Asmawi, Lathifah Sandra Devi..... 29-38

THE PRINCIPLE OF NON-DISCRIMINATION AS A FORM OF PROTECTION FOR UNDERAGE CHILDREN VICTIMS OF NARCOTICS AND PSYCHOTROPIC CRIMES

Ida Ayu Rosida, Rifda Ayu Akmalia, Sonia Amelia, Ega Permatadani, Anang Dony
Irawan..... 39-52

ADOPTED CHILDREN AND HEIRS IN INHERITANCE LAW PROBLEMS: Court Judgment Number 161/Pdt.G/2021/PN.Kln and Court Judgment Number 876/Pdt.G/2019/PN.Sby Analysis

Tashya Panji Nugraha, Naufal Fachri, Kelik Wardiono, Marisa Kurnianingsih 53-67

THE EFFECTIVENESS OF THE BUSINESS COMPETITION SUPERVISORY COMMISSION IN HANDLING CASES OF ALLEGED UNFAIR BUSINESS COMPETITION CONDUCTED BY PT AERO CITRA CARGO

Wike Nopianti, Deny Guntara, Muhamad Abas 68-80

IMPLEMENTATION OF REGULATION OF THE MINISTER OF MANPOWER NUMBER 6 OF 2020 CONCERNING THE IMPLEMENTATION OF DOMESTIC APPRECIATION IN KARAWANG, WEST JAVA

Listiono, Deny Guntara, Muhamad Abas 81-93

CONSUMER PROTECTION AGAINST WITHDRAWAL OF MOTOR VEHICLES BASED ON FIDUCIAN COLLATERAL

Jannus Manurung, Yuniar Rahmatiar, Muhamad Abas..... 94-104

**ABUSE OF AUTHORITY BY THE REGIONAL GOVERNMENT FOR THE
CONSTRUCTION OF NATIONAL ROADS**

Ahmad Munir, Luthfie Octavian, Sugiran Try Wibowo, Bagus Teguh Santoso
..... 105-120

**THE EFFECTIVENESS OF THE BUSINESS COMPETITION
SUPERVISORY COMMISSION IN HANDLING CASES OF ALLEGED
UNFAIR BUSINESS COMPETITION CONDUCTED BY PT AERO CITRA
CARGO**

Wike Nopianti¹, Deny Guntara², Muhamad Abas³

Jl. HS. Ronggo Waluyo, Puseurjaya, Telukjambe Timur, Karawang, Jawa Barat 41361

* Correspondence email: muhamad.abas@ubpkarawang.ac.id

Abstract

Allegations of a monopoly on the export of apparent lobster seeds originated from a case of corruption in evident lobster seeds committed by former Minister of Maritime Affairs and Fisheries Edhy Prabowo. In the indictment filed by the Public Prosecutor, Edhy allegedly founded and managed the Aero Citra Kargo Limited Liability Company as a shell company to collect profits from the export of apparent lobster seeds. At that time, the Business Competition Supervisory Commission suspected that the Aero Citra Kargo Limited Liability Company violated 17 and 24 of Law Number 5 of 1999. This study aimed to determine the effectiveness of the Business Competition Supervisory Commission in handling cases of alleged unfair business competition carried out by the Aero Citra Kargo Limited Liability Company. And to find out the considerations of the Commission Council for the Supervision of Business Competition in deciding Case Number 04/Commission for the Supervision of Business Competition-I/2021. This scientific research uses normative qualitative research methods. The author uses a normative juridical strategy in this approach. The Commission for the Supervision of Business Competition has played an influential role in cases of unfair business competition/monopoly practices, especially in cases of unfair business competition for export shipping services for Clear Lobster Seeds carried out by Aero Citra Kargo Limited Liability Company, the Commission Council has correctly determined decision dictum based on facts, judgment, analysis, and conclusion. The Commission Council only provides sanctions in the form of stopping activities carried out by the Aero Citra Cargo Limited Liability Company, which following the legal basis, namely Law No. 5 of 1999

Keywords: Effectiveness, Monopolistic Practices, export

INTRODUCTION

Monopoly practice is a problem that becomes the main concern in every discussion on forming business competition law (Usman, 2022). Monopoly is not a crime or against the law if it is obtained reasonably and does not violate it.(Malinda, 2015) Therefore monopoly itself is not necessarily prohibited by competition law from using its power in the relevant market, which can be called monopoly practices or monopolizing/monopolizing (Puspitasari, 2017). A company is said to have carried out a monopoly if it is necessary for the business to have the power to expel or shut down other companies. The second condition is that the business actor has done or intends to do so (Lubis et al., 2017).

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

The definition of monopoly is always associated with a monopoly from an economic perspective, but monopoly from a legal view is also often used in the literature (Hawley, 2015). The perfect competition market can be placed on one side and, simultaneously, is called the extreme side, and the monopoly position is the reverse side of the perfect competition market. Based on Article 1 number 1 of Law No. 5 of 1999, what is meant by monopoly is Control over the production and or marketing of goods and or over the use of services if the term monopoly only includes a market structure with one supplier or receiver in the relevant market and bearing in mind the small number of monopoly types in real/real economic terms, then the provisions of Article 1 number 1 Law No. 5 of 1999 are not so meaningful and less important.(Lubis et al., 2017)

The elements of monopoly in Article 17 of Law No. 5 of 1999 are as follows: carrying out acts of control or a product, committing acts of marketing a product, such power can result in monopolistic practices, and such command can result in unfair business competition practices (Rifa'i, 2016). To prove the elements of monopoly, some criteria must be met. There are no substitute products, and it is difficult for other business actors to enter the competitive market for the same effect due to high barriers to entry (Susanto et al., 2019). The other business actors are business actors who have the significant competitive ability in the relevant market (Makka, 2021). Or one group of business actors has controlled more than 50% of the market share for a type of product (Fauzi, 2021).

Article 17 of Law No. 5 of 1999 prohibits monopoly by the rule of reason, which means that a trust will be banned if the monopoly can damage competition significantly and with consideration that the cartel will eventually result in monopolistic practices (Aryono, 2022; Tarigan, 2021). The difference between Law No. 5 of 1999 and the Sherman Act prohibits all forms of monopoly as a percentage, while Law No. 5 of 1999 only prohibits monopoly practices (Usman, 2022). However, in training and the field, many business actors still carry out monopolistic practices, such as the Aero Citra Kargo Limited Liability Company, which is suspected of carrying out monopolistic practices related to clear lobster seeds.

Allegations of a monopoly on the export of evident lobster seeds originated from a case of corruption in apparent lobster seeds carried out by the former Minister of Maritime Affairs and Fisheries, Edhy Prabowo. In the indictment filed by the Public Prosecutor, Edhy is said to have founded and managed the Aero Citra Kargo

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

Limited Liability Company as a shell company to accommodate profits from lobster seed export services. The Commission for the Supervision of Business Competition has begun to sniff out monopoly practices by the Aero Citra Kargo Limited Liability Company concerning the export of apparent lobster seeds since the end of 2020. At that time, the Business Competition Supervisory Commission suspected that the Aero Citra Kargo Limited Liability Company violated Articles 17 and 24 of Law Number 5 of 1999.

Aero Citra Kargo Limited Liability Company is a company engaged in the field of Transportation Management Services for Export Delivery of Clear Lobster Seeds, which is suspected of violating Article 17 of Law No. 5 of 1999; Aero Citra Kargo Limited Liability Company provides transportation management service rates (cargo/logistics services) for export shipments Clear Lobster Seeds are calculated by the number of Clear Lobster Seeds per head, whereby Aero Citra Kargo Limited Liability Company export shipping costs for Clear Lobster Seeds are IDR. 2,300.00 (two thousand three hundred). The price includes charter flight, warehouse rental, kade, regulated agent, handling, trucking in the Jakarta area, and door-to-port insurance. However, the Aero Citra Cargo Limited Liability Company was reduced to Rp. 1,800.00 (one thousand eight hundred) for each Clear Lobster Seed after several prospective exporters filed objections to the price set by the cargo Aero Citra Limited Liability Company.

During the Regulation of the Minister of Maritime Affairs and Fisheries Number 2 of 2020, the Aero Citra cargo Limited Liability Company dominates the sale of export services for Clear Lobster Seeds in Indonesia, where the Aero Citra Kargo Limited Liability Company controls the sale of these services as many as 1,759 delivery frequencies totaling 42,545,066 Clear Lobster Seeds or around 99%. Since the enactment of Minister of Maritime Affairs and Fisheries Regulation Number 2 of 2020 until November 19, 2020, Aero Citra Kargo Limited Liability Company dominates the market for transportation management services related to the delivery of Clear Lobster Seeds in Indonesia..

In this case, it is proven that the Limited Liability Company. Aero Citra Kargo violated Article 17 of Law No. 5 of 1999, in which the Aero Citra Kargo Limited Liability Company factually proved that 98.71% of the management services for the export of apparent lobster seeds for destinations outside the territory of the Republic of Indonesia controlled more than 50% market share of export management services

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

for Clear Lobster Seeds using air transportation for destinations outside the part of the Republic of Indonesia to Vietnam, Taiwan, and Hong Kong in the June-November 2020 period..

As for the decision of the Commission Council of the Business Competition Supervisory Commission, which stipulates that the Aero Citra Kargo Limited Liability Company is subject to an administrative fine, the maximum penalty is IDR 1 billion to IDR 2.5 billion according to Law No. 5 of 1999. The fine imposed by the Business Competition Supervisory Commission is a warning tool for business actors to run a healthy business. But for, high-class companies will not be worried because the percentage of fines is tiny compared to the total value of the business and assets. However, sometimes the decisions of the Commission for the Supervision of Business Competition do not deter business actors from engaging in unfair business competition/monopoly practices because the fines include a relatively small nominal value for high-class business actors and do not provide a deterrent effect on business actors.

Based on the description above, the problems in this study are 1. how effective is the Commission for the Supervision of Business Competition in handling cases of alleged unfair business competition conducted by the Aero Citra Kargo Limited Liability Company? 2. What are the considerations of the Business Competition Supervisory Commission Council in making a decision on Case Number 04/U-I/2021 Business Competition Supervisory Commission?

RESEARCH METHODS

This scientific research uses normative qualitative research methods. The author uses a normative juridical strategy in this approach. The author uses this approach because the primary data that is applied is secondary data, namely library research, and supporting data includes legal journals, articles, legal studies, and online media. The specifications of this study are analytical and descriptive (Efendi et al., 2016). Based on a normative juridical approach, the selection of this specification aims to provide an overview of the existing problems. One method of studying scientific responsibility from a legal perspective on the judicial decision-making process, which in this case includes arguments and logical reasons, is the method of legal reasoning.

The data that has been found is then analyzed qualitatively using this method. as a justification for a decision made by a judge regarding the law.

ANALYSIS AND DISCUSSION

The usefulness of the law is essential to its purpose of the law. Regarding the purpose of law itself, it is known that its purpose defines it, and that which has the goal is the human being himself. Law is one of the tools to achieve goals in social and state life. The purpose of law can be seen in its function to protect human interests if we look at the process of law in the definition of usefulness according to utility theory, namely to guarantee as much happiness as possible for humans (Ridwansyah, 2016).

This theory aims to create benefits in producing the most incredible pleasure or happiness. So according to Utrecht, the theory suggests three things: it does not provide a place to consider tangible things as somewhat as possible, it only pays attention to valuable items, and because of that, the content is general, and this theory is very individualistic and does not give a feeling of a person's law.

Unfair business competition, according to Article 1 letter f of Law no. 5 of 1999, namely "Unfair business competition/monopoly practice is business competition carried out by business actors in carrying out production and or marketing activities of goods and or services that are carried out dishonestly or unlawfully or impede business competition".

Indonesia currently has an institution authorized to carry out and supervise the enforcement of laws and regulations, namely the business competition law Act 5/1999, the Commission for the Supervision of Business Competition. The role of the Commission for the Supervision of Business Competition is crucial in maintaining the economic stability of fair business competition in Indonesia. With the existence of an institution that handles fair business competition, it is hoped that various practices that can kill small community businesses in the interests of certain parties and other unhealthy business practices will decrease (Sumadi, 2017).

The Commission for the Supervision of Business Competition has the authority to prohibit the continuation of a business activity or the circulation of a product which, based on monitoring and supervision, is deemed to be deviant and detrimental through an order, the Commission for the Supervision of Business Competition can temporarily stop an activity to prevent the spread of the negative impacts that arise (cease and desist orders) (Lubis et al., 2017).

As the author described above, the theory of benefits and policies of the Business Competition Supervisory Commission in deciding on a case or case of unfair business competition is related to ensuring happiness that impresses as many people as possible and providing a sense of benefit to humans.

1. The effectiveness of the Business Competition Supervisory Commission in handling cases of alleged unfair business competition committed by the Aero Citra Kargo Limited Liability Company

The Commission for the Supervision of Business Competition was formed by Law No. 5 of 1999, and the Commission for the Supervision of Business Competition was formed on June 7, 2000, after one year of the ratification of the Law. The Commission for the Supervision of Business Competition is given the tasks in Article 35 of Law No. 5 of 1999. The authority of the Commission for the Supervision of Business Competition is stipulated in Articles 36 and 47 of Law No. 5 of 1999. Still, within its powers and duties, the Commission for the Supervision of Business Competition experiences many constraints because the authority of Business Competition Supervisory Commission and the responsibilities of the Business Competition Supervisory Commission are currently only limited to preventing and enforcing business competition law. It appears that the Business Competition Supervisory Commission does not have the right to conduct searches to find evidence of a monopoly violation.

The Business Competition Supervisory Commission is an independent institution established to supervise business actors in carrying out their business activities so that they do not engage in monopolies and unfair business competition, and create order in business competition, also play a role in creating and maintaining a conducive business competition climate. The position of the Business Competition Supervisory Commission, he explained, is an administrative institution because the authority attached to it is the executive authority (Mulyadi & Rusydi, 2017).

The Commission for the Supervision of Business Competition is an effective law enforcement agency to resolve unfair business competition because the Commission for the Supervision of Business Competition has a multifunctional role and expertise that can accelerate a case handling process. Therefore, the Commission for the Supervision of Business Competition often becomes a concern when implementing a procedural law that is designed and planned by itself.

However, the decision of the Commission for the Supervision of Business Competition has difference from the conclusion of the panel of civil judges, where the

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

conclusion of the board of civil judges applies the principle of law and trial that is fast and low-cost, so it is necessary to have arrangements that unify the Commission for the Supervision of Business Competition as a special court under the general court, to avoid overlapping authorities relating to unfair business competition/monopoly.

Law No. 5 of 1999 explains that the authority of the Business Competition Supervisory Commission is to carry out investigations and or examinations of cases of alleged monopolistic practices and or unfair business competition reported by the public or by business actors or found by the Commission as a result of its research following the provisions this law, in the case of monopoly/unfair business competition conducted by the Aero Citra Kargo Limited Liability Company which is suspected of violating Article 17 of Law No. 5 of 1999 and violating Article 7 paragraph (1) of the Minister of Maritime Affairs and Fisheries Regulation No. 56 of 2016 which stipulates that everyone is prohibited from to sell Clear Lobster Seeds for cultivation.

The Council of the Commission for the Supervision of Business Competition succeeded in carrying out an investigation and found evidence in the form of documents in which there were documents from the Directorate General of Customs and Excise, Ministry of Finance of the Republic of Indonesia, that 98.71% of the export shipping services for clear lobster seeds were carried out by the Aero Citra Kargo Limited Liability Company, so that the Commission Council assessed that the reported party, namely Aero Citra Kargo Limited Liability Company, is the only transportation service company for the delivery of clear lobster seeds, resulting in exporters only using the services of the reported party for the delivery of clear lobster seeds in the period June-November 2020.

The Council of the Commission for the Supervision of Business Competition succeeded in carrying out an investigation and found evidence in the form of documents in which there were documents from the Directorate General of Customs and Excise, Ministry of Finance of the Republic of Indonesia, that 98.71% of the export shipping services for apparent lobster seeds were carried out by the Aero Citra Kargo Limited Liability Company, so that the Commission Council assessed that the reported party, namely Aero Citra Kargo Limited Liability Company, is the only transportation service company for the delivery of apparent lobster seeds, resulting in exporters only using the services of the reported party for the delivery of evident lobster seeds in the period June-November 2020.

Besides that, the Board of the Commission for the Supervision of Business Competition calculated the excessive margin enjoyed or earned by the Aero Citra

Kargo Limited Liability Company of 323.53%, equivalent to IDR.58,499,465,750.00. This does not include shipping costs borne by exporters from various regions. Where the price for the transportation management service for the apparent lobster seeds is more than IDR. 1,800.00/head which is an unfair price that it provides very excessive profits for the reported Aero Citra Kargo Limited Liability Company.

It can be concluded that the Council of the Commission for the Supervision of Business Competition has proven that the reported party, in the case of unfair business competition/monopoly practices, carried out by the Aero Citra Kargo Limited Liability Company where the informed party violated Article 17 of Law No. 5 of 1999 harmed the welfare of the market as a whole so that the authors conclude that the Commission for the Supervision of Business Competition has played an influential role in cases of unfair business competition/monopoly practices, especially in cases of unfair business competition for export shipping services for Clear Lobster Seeds carried out by the Aero Citra Kargo Limited Liability Company.

The commission assembly imposed administrative sanctions on the Aero Citra Kargo Limited Liability Company based on Article 47 paragraph (2) of Law No. 5 of 1999, which set an administrative fine of at least IDR. 10% of the value of transportation management services for the export of Clear Lobster Seeds for departures from Indonesian territory to Vietnam, Hong Kong, and Taiwan in the June-November period in the amount of IDR 7,658,111,880.00. From administrative fines imposed by the Commission Council to provide a deterrent effect on business actors who carry out monopolistic practices so that the role of the Business Competition Supervisory Commission provides effectiveness following the mandate of Law No. 5 of 1999.

2. Considerations of the Commission Council of the Business Competition Supervisory Commission in deciding on Case Number 04/Business Competition Supervisory Commission-I/2021

The Assembly of the Commission for the Supervision of Business Competition is essential in deciding a case of unfair business competition/monopoly practices. Based on Law No. 5 of 1999, the Commission for the Supervision of Business Competition has the authority to impose administrative sanctions on business actors who violate the provisions of Law No. 5 of 1999.

In PP Number 44 of 2021, the Business Competition Supervisory Commission has the authority to impose administrative sanctions against business actors who

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

carry out monopoly practices. These administrative sanctions can be cumulative or alternative decisions depending on the commission's considerations by looking at the situation and conditions of the case. However, the Business Competition Supervisory Commission issued new rules regarding the imposition of sanctions. The Business Competition Supervisory Commission issued technical regulations regarding fines and compensation as stated in the Decision of the Business Competition Supervisory Commission No. Article 47 of Law No. 5 of 1999.

Law No. 5 of 1999 The Commission Council may impose sanctions in the form of stopping activities that are proven to have given rise to monopolistic practices that cause unfair business competition or are detrimental to society by imposing a fine of at least IDR. 1,000,000,000.00 considers the existing provisions regulated in the Regulation Government Number 44 of 2021.

The Commission Council's considerations in Decision Number 04/Commission for the Supervision of Business Competition-I/2021 stated that the reported party, namely the Aero Citra Kargo Limited Liability Company, was legally proven to have violated Article 17 of Law No. 5 of 1999, where the actions of the reported party lawfully hindered business competition because it closed competitor's access to enter the market, the informed action was carried out unlawfully and hindered business competition, the reported party controlled the production/marketing of goods or services, and the registered party was proven to have concentrated economic power which resulted in mastery over the marketing of certain services and the ability to set excessive prices resulting in unfair business competition and detrimental to the public interest. Thus the elements of unfair business competition/monopoly practices and violations of Article 17 of Law No. 5 of 1999 have been legally proven by the Commission Council.

In Article 47 paragraph (1) Law No. 5 of 1999 as amended by Law Number 11 of 2020 concerning Job Creation (Law No. 11 of 2020) jo. Article 6 Paragraph (1) Government Regulation of the Republic of Indonesia Number 44 of 2021 concerning Implementation Prohibition of Monopolistic Practices and Unfair Business Competition (Government Regulation Number 44 of 2021) The Commission Council has the authority to impose sanctions in the form of administrative actions for business actors who violate the provisions of Law No. 5 of 1999. The Commission Council imposes administrative fines on the Aero Citra Kargo Limited Liability

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

Company, which has proven to have violated Article 17 of Law No. 5 of 1999 by stopping the reported activities and imposing a fine.

In Decision Number 04/Commission for the Supervision of Business Competition-I/2021, the Commission Council considered imposing a fine on the Aero Citra Kargo Limited Liability Company, taking into account the excessive margin enjoyed by the reported party of 323.53% or the equivalent of IDR. 58,499,465,750.00, Assembly The Commission is also considering calculating the number of fines under the provisions of the law at a maximum of 10% of the total sales in the relevant market during the period when the violation against the law occurred based on the provisions of Article 12 Government Regulation Number 44 of 2021 jo. Article 8 Regulations of the Commission for the Supervision of Business Competition Number 2 of 2021. Then the imposition of a 10% fine sanction determined by the Panel of Judges to the Aero Citra Kargo Limited Liability Company is based on the sales value of the export management services for Clear Lobster Seeds using air transportation to leave the territory of the Republic of Indonesia to Vietnam, Hong Kong, and Taiwan on June-November 2020 period, for IDR 7,658,111,880.00.

Under the provisions of Article 14 of Government Regulation Number 44 of 2021, jo. Article 2 of the Commission for the Supervision of Business Competition Regulation Number 2 of 2021, the Commission Council must consider the reported party to pay administrative fines based on the sales value and the level of violation multiplied by the number of years of the breach. The Commission for the Supervision of Business Competition also considers the company's scale, the type of violation, the combined market share of the business actor, the geographic coverage of the breach, and whether or not the offense has been committed. With the provisions that have been described, the Commission Council considers that the Aero Citra Kargo Limited Liability Company cannot pay sanctions in the form of fines as calculated by the Commission Council.

Therefore, according to the author's analysis, the Business Competition Supervisory Commission Council was correct in adopting the decision based on the provisions of Article 12 of Government Regulation Number 44 of 2021 jo. Article 8 of Business Competition Supervisory Commission Regulation Number 2 of 2021 states that the imposition of fines must be based on sales value, the level of violations, multiplied by the number of years of violations and the scale of the company, based on the author's analysis of Decision Number 04/Commission for the Supervision of

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

Business Competition-I/2021 that Bank Central Asia's account in the name of Aero Citra Kargo Limited Liability Company as the reported party had Rp.8,7774 in cash. The state has confiscated IDR. 507,218.00, and Bank BNI account on behalf of the President Director of Aero Citra Kargo Limited Liability Company with an amount of IDR 3,443,466,293.00 has been seized for the state listed in decision Number 28/Pid-Sus-TPK/2021/ PN.Jkt.Pst criminal act of corruption on the export of apparent lobster seeds. And based on Warehouse data from the Directorate of Tax Data and Information, the Directorate General of Taxes stated that the reported tax for the Aero Citra Kargo Limited Liability Company in 2019 was sales and net profit of IDR.0.00.

According to the author, the commission assembly has correctly determined the mandate of the decision where Aero Citra Kargo Limited Liability Company should have received a fine of Rp. 7 billion, but because of the scale of the company and also the corruption case that dragged the reported company's assets all confiscated for the state, the registered party could not pay in the form of fines that had been calculated by the Commission Council, based on the facts, assessment, analysis, and conclusions the Commission Council gave sanctions in the form of termination of activities carried out by the Aero Citra Kargo Limited Liability Company following the legal basis, namely Law No. 5 of 1999.

CONCLUSION

It can be concluded that the Council of the Commission for the Supervision of Business Competition has proven that the reported party, in the case of unfair business competition/monopoly practices, carried out by the Aero Citra Kargo Limited Liability Company where the informed party violated Article 17 of Law No. 5 of 1999 harmed the welfare of the market as a whole so that the authors conclude that the Commission for the Supervision of Business Competition has played an influential role in cases of unfair business competition/monopoly practices, especially in cases of unfair business competition for export shipping services for Clear Lobster Seeds carried out by the Aero Citra Kargo Limited Liability Company.

In Decision Number 04/Commission for the Supervision of Business Competition-I/2021, the Commission Council considered imposing a fine on Aero Citra Kargo Limited Liability Company considering the excessive margin enjoyed by the reported party of 323.53% or the equivalent of IDR.58,499,465,750.00. Then the

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

imposition of a 10% fine sanction determined by the Panel of Judges to Aero Citra Kargo Limited Liability Company is based on the sales value of export management services for Clear Lobster Seeds using air transportation to leave the territory of the Republic of Indonesia to Vietnam, Hong Kong and Taiwan during the Period June-November 2020, in the amount of IDR 7,658,111,880.00. With the provisions that have been described, the Commission Council considers that the Aero Citra Kargo Limited Liability Company cannot pay sanctions in the form of fines as calculated by the Commission Council. According to the author, the Commission Council has correctly determined the decision's mandate based on the facts, assessment, analysis, and conclusion. The Commission Council only provides sanctions by stopping activities carried out by the Aero Citra Kargo Limited Liability Company following the legal basis, namely Law No. 5 of 1999.

The refined calculation technique in Article 47 of Law No. 5 of 1999 needs to detail the calculation of the number of fines that the Business Competition Supervisory Commission can impose so in this case. The authors suggest that the analysis of economic losses incurred by violating business actors must be proportional to the amount stipulated and stipulated fines based on an objective basis and an element of prudence.

BIBLIOGRAPHY

- Aryono, D. S. (2022). *Kajian Yuridis Dugaan Persaingan Usaha Tidak Sehat oleh Sky Parking Dengan PT Visionet International dalam Sistem Pengelolaan Perparkiran Mall Berbasis Financial Teknologi di Kota Bandung* [PhD Thesis]. Fakultas Hukum Universitas Pasundan.
- Efendi, J., Ibrahim, J., & Rijadi, P. (2016). *Metode Penelitian Hukum: Normatif dan Empiris*.
- Fauzi, A. (2021). *Pengawasan Praktek Monopoli Sebagai Bentuk Persaingan Usaha Tidak Sehat*. *DE LEGA LATA: Jurnal Ilmu Hukum*, 6(2), 396–405.
- Hawley, E. W. (2015). *The New Deal and the problem of monopoly*. Princeton University Press.
- Lubis, A. F., Maria, A., & Anggaraini, T. (2017). *Hukum Persaingan Usaha*, KPPU.

Jurnal Hukum Replik

Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 11 No. 1 (2023)

Submit:04-Feb-2023

Revised:08-March-2023

Published:31-March-2023

- Makka, Z. (2021). Bentuk Perlindungan Hukum Pelaku Usaha Pesaing terhadap Posisi Dominan dalam Penerapan Rule of Reason. *Jurnal Persaingan Usaha*, 1(2), 5–14.
- Malinda, A. (2015). Tindak Pidana dalam Hukum Persaingan Usaha dan Penegakan Hukumnya [PhD Thesis]. Universitas Islam Indonesia.
- Mulyadi, D., & Rusydi, I. (2017). Efektivitas peran Komisi Pengawas Persaingan Usaha (KPPU) dalam penanganan kasus persaingan usaha tidak sehat. *Jurnal Ilmiah Galuh Justisi*, 5(1), 81–95.
- Puspitasari, Z. (2017). Rekonsepsi Pengecualian Monopoli Yang Diselenggarakan Oleh Badan Usaha Milik Negara Dalam Hukum Persaingan Usaha Di Indonesia. *Jurnal Panorama Hukum*, 2(2), 227–242.
- Ridwansyah, M. (2016). Mewujudkan keadilan, kepastian dan kemanfaatan hukum dalam qanun bendera dan lambang Aceh. *Jurnal Konstitusi*, 13(2), 278–298.
- Rifa'i, B. (2016). Mencermati Isi dan Visi Undang-undang Nomor 5 Tahun 1999 tentang Anti Monopoli. *Jurnal Hukum IUS QUIA IUSTUM*, 8(17), 73–86.
- Sumadi, P. S. (2017). Penegakan Hukum Persaingan Usaha (Hukum Acara Persaingan Usaha?). *Zifatama Jawara*.
- Susanto, I., Meilia, M., & Anisa, D. (2019). Persaingan usaha tidak sehat di Indonesia menurut hukum ekonomi islam dan Undang-Undang Nomor 5 Tahun 1999 tentang larangan monopoli dan persaingan usaha tidak sehat. *Syiar Iqtishadi: Journal of Islamic Economics, Finance and Banking*, 3(2), 80–101.
- Tarigan, D. I. (2021). Kajian Yuridis Pelaksanaan Pendaftaran Tanah Sistematis Lengkap Di Kabupaten Bolaang Mongondow Utara. *LEX CRIMEN*, 10(4).
- Usman, R. (2022). *Hukum persaingan usaha di Indonesia*. Sinar Grafika.