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LEGAL ASPECTS OF BUSINESS COMPETITION ON ELECTRONIC COMMERCE

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ABSTRACT

In Indonesia, electronic commerce can be said to be very developed. In 2007 there was a case which can be said to be the first case of electronic commerce. The data can be seen based on studies and suggestion that was carried out by the Business Competition Supervisory Commission (KPPU) on the case of the MoU between the Government of Indonesia and Microsoft (KPPU Report, 2007). This study was written to determine the implementation of the rules of business competition law and the policy of the KPPU in the field of business competition in relation to electronic commerce. In this study two approaches were used, namely the normative approach. The data in this study are mainly obtained from library research, especially on primary legal materials in the field of business competition. The data analysis used is qualitative method. This is closely related to research which can be categorized by normative legal research that approach is more abstract-theoretical. the results of the study show that the e-commerce business sector still does not lead to anti-business competition practices even though it still enters the surveillance radar. This may be due to electronic commerce itself is a new form of trade.

Keywords : E-commerce, Business Competition, and Policy

INTRODUCTION

The rapid development of electronic commerce in Indonesia is unavoidable. Indonesia has Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. Based on the mandate of the law, then the Business Competition Supervisory Commission (KPPU) was born. The presence of KPPU is expected to be able to be a watchdog or supervisor in trade traffic or business activities throughout Indonesia.

The phenomenon regarding individual electronic commerce arises due to the development of advanced science and technology. Electronic commerce itself can be interpreted as the process of buying and selling a trading object through electronic media. This results that the seller and the buyer not making transactions face-to-face. Parties who sell goods through electronic media can indirectly be classified as those who carry out business activities. Until now, the number of people who use electronic media to run a business is increasing every day. KPPU as described above, namely the duty to supervise business competition activities has an obligation to supervise business activities conducted electronically.

Based on this background, the researcher is pleased to conduct research related to the KPPU and the *a quo* electronic trading phenomenon. The formulation of the problem that will be the object of discussion in this study are: a) Is the implementation of various business competition law provisions / rules in the Business Competition Supervisory Commission (KPPU) that are related to electronic commerce in accordance with the rules of business competition law? b) How is the implementation of the Business Competition Supervisory Commission (KPPU) policy in electronic commerce, and what obstacles are faced?

With this research, researcher hope that the results of the research can provide a positive contribution in the academic world with regard to business competition law and can provide an overview of the conditions in the field in relation to electronic commerce.

LITERATURE REVIEW

Previous research which has been conducted can be traced through several scientific journals. Although the issue of business competition in electronic commerce is relatively new, however, there has been a fairly comprehensive discussion that has been done before, although it can be said that it is not much. For example, a study conducted by Nugroho which was included in the Journal of Business Competition in 2010. The research was entitled The Strategy of Bundling/Tying as an Abuse of Dominance Effort: Case Study of the Application of Tying/Bundling Strategies by Microsoft. Through the results of this study, Nugroho wanted to explain that the legal practices applied in the European Union that prosecute Microsoft for failing to practice Bundling/Tying is an act of violating the principles of business competition, so Nugroho then tries to pull into the Indonesian laws concerning business competition will the same thing also apply, it turns out according to Nugroho the practice carried out by Microsoft in Bundling/Tying is abuse of dominance and also up to predatory pricing.

RESEARCH METHOD

This type of research belongs to normative-empirical legal research. The problem approach is carried out in a juridical-normative manner by reviewing laws and regulations which related directly or indirectly to the issue under study (Soerjono Soekanto:2001). The data used in the study consists of two types, namely primary data and secondary data. Primary data is data derived from direct studies in the field. In this study, field studies were carried out at KPPU and data were obtained through an interview mechanism for several people who were selected purposively. Secondary data is data derived from literature search, in this case regarding formal legal documents or other literatures that are supportive in this study.

FINDINGS AND DISCUSSION

As a government organ, KPPU as well as other organs has the duty and authority to carry out its functions. The duties of KPPU which are directly related to trade affairs or business activities include: evaluating agreements that can result in monopolistic practices and or unfair business competition; conduct an assessment of business activities and or actions of business actors that can result in monopolistic practices and or unfair business competition; conduct an assessment of the presence or absence of abuse of dominant position which may result in monopolistic practices and or unfair business competition; take action in accordance with the authority of the Commission.

Then with regard to the authority of the KPPU which deals directly with business activities through electronic media, that is: Receiving reports from the public and/or business actors about alleged monopolistic practices and/or unfair business competition; Conduct research on alleged business activities and or actions of business actors that can lead to monopolistic practices and or unfair business competition; Investigating and or examining cases of suspected monopolistic practices and or unfair business competition reported by the public or by business actors or presenting a good party having a linkage to the report; Requesting information from government agencies in relation to the investigation and or examination of business actors who violate the provisions of this law obtains, examines, or evaluates letters, documents, or other evidence for investigation and/or examination; Decide and determine whether or not there is a loss on the part of another business actor or community; Notifying commission decisions to business actors suspected of carrying out monopolistic practices and or unfair business competition; Impose sanctions in the form of administrative actions to business actors who violate the provisions of this Act.

The implementation of the business competition law provisions at the KPPU relating to electronic commerce can be seen in several E-commerce companies which have been proven to be included in the KPPU's monitoring radar. In carrying out its functions, KPPU has task forces (Source: Interview) . Each task force has a focus on each task. Including in the field of e-commerce, KPPU has a special task force to study the phenomenon. Here it is seen, that the KPPU's supervisory function contained in the provisions of business competition law relating to e-commerce or electronic commerce is carried out properly. This indicates that the implementation of business competition law provisions in KPPU relating to electronic commerce runs in accordance with the provisions of business competition law.

The policy of the Business Competition Supervisory Commission or KPPU in the field of electronic commerce is still in the nature of monitoring the electronic trading activities. Even though there are violations that occur it is only about consumer issues such as the items received do not match the order. And this is not included in the realm of KPPU. Regulation on e-commerce is in the realm of the Ministry of Trade. And at present the draft government regulation on trade transactions through electronic systems is currently being worked on by various stakeholders. The Business Competition Commission or KPPU considers that the e-commerce business sector still does not lead to anti-business competition practices even though it remains included in the surveillance radar. The Chairperson of KPPU, Syarkawi Rauf said that so far no company has been able to dominate the market share of e-commerce in Indonesia. All have their own users. According to him, insofar as there is no market control that can lead to anti-business competition practices, not included in the investigation by further investigators. However, the scope of the business sector is risky both in terms of the range and type of products sold. Moreover, he continued, if there are companies that sell all products and services without special segmentation. If an e-commerce company is able to make its users have a dependency, it risks risking violations (bisnis.com).

KPPU itself in its interview with the researcher stated that in carrying out the supervisory function of business competition, in general the constraints faced were related to data that was connected with evidence. In addition, another obstacle faced by the KPPU is the weakness of the authority of the KPPU in the matter of calling parties that have links in the case handled by KPPU itself. Therefore, the KPPU wants a change in regulations to strengthen KPPU as a business competition supervisory institution.

Then in terms of prevention and coercion efforts by KPPU to reduce the phenomenon of unfair business competition, the KPPU adopts the following methods: conducting research or research related to business competition in

order to map the symptoms of business competition which occur, then solve the solution. In addition, other efforts taken by the KPPU include conducting monitoring activities in the field directly. Then with regard to repressive efforts, KPPU realizes that its authority is limited, so as to cause the effect of coercion on KPPU to coordinate with other government organs to do so, one of the organs is the police.

From the explanation above, we can draw an understanding that the role of KPPU in the context of business competition in the field of electronic commerce has not yet had a definite challenge. Business competition in e-commerce is still normal. This may be due to electronic commerce itself is a new form of trade so KPPU does not have any obstacles in carrying out its functions in the field of electronic commerce.

CONCLUSION

KPPU's supervisory function contained in the provisions of business competition law relating to e-commerce or electronic commerce is carried out properly. This indicates that the implementation of business competition law provisions in KPPU relating to electronic commerce runs in accordance with the provisions of business competition law. Role of KPPU in the context of business competition in the field of electronic commerce has not yet had a definite challenge. Business competition in e-commerce is still normal. This may be due to electronic commerce itself is a new form of trade so KPPU does not have any obstacles in carrying out its functions in the field of electronic commerce.

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Data from Interview in KPPU
www.bisnis.com