



LEGAL REFORM (TRADE) SPECIAL STUDY ON THE NEED FOR THE ANTI MONOPOLY ACT OR UNFAIR BUSINESS COMPETITION POST THE JOB CREATION LAW

Enjum Jumhana¹, Achmad Nashrudin Priatna²

^{1,2}Universitas Bina Bangsa, Indonesia

Email: jumhanad@gmail.com, nashrudin.achmad@gmail.com

Abstract

The business world is inseparable from fair and reasonable competition in business activities, so there is no central economic power for certain business sectors while remaining obedient to existing laws and regulations. Law Science does not see chaos but rather as a component of a system with a bond of legal principles. As a legal system, it contains orders and rules which constitute a unified whole of parts or elements that are interrelated to one another. In principle, in order to obtain maximum revenue, the business area is normal behavior as long as there are no monopolistic practices, but in reality, it is always colored by the power of unfair competition groups. Therefore it is not easy to interpret the meaning and causes of monopolistic practices which are the implementation of Law No.5 of 1999 which are directly re-lated to business activities as well as the economy of a nation.

Keywords: *Competition, business and power, certainty.*

INTRODUCTION

The Business Competition Law or Law No.5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, was born in the Era of the President of the Republic of Indonesia to the 3rd (three) Mr. Prof. BJ Habibie exactly 22 years ago. Developments in law and economics (business) are oriented towards unity consisting of elements that interact with each other and work together to achieve goals. Unity is applied to parts of juridical elements such as regulations, asana, and legal understanding. In unity there is no desire for conflict, opposition or contradiction between parts. If there is a conflict, it is immediately resolved within the system itself and is not allowed to drag on. if article 33 of the 1945 Constitution which is the constitutional basis for the existence of economic democracy, then the principle of kinship that is guessed in it should not be translated as the principle of "family" so that it is feared by society, which gives birth to economic inequality and inequality, ultimately has an impact on welfare. did not materialize. For this reason, democracy and opportunities for business actors must be active in the production process. marketing of goods and services, in a healthy business climate, to encourage the growth of a broad fair market. To prevent the above from happening, the Indonesian Government has issued an Anti-Monopoly Law which was in effect 22 years ago. Ini is a topic of discussion and concern among legal experts regarding the substance and dismissal ones as long as the behavior does not give rise to monopolistic practices and unfair business competition.

Reform demands (law) arise more due to conflicts of interest and conflicts of value. The substance of conflicts of interest concerns disputes over matters of a factual nature and conflicts of the value of its coverage on disagreements with social objects, this is reflected in the spirit of community renewal (Aubert in *The Journal of Conflict Resolution* Vol.VII,1963: Nindyo Pramono, 1998). Implementing Law No.5 of 1999 is

not easy in the business world and the current economic situation where the way to interpret the view of the notion of monopoly, conspiracy, dominant position, sell loss and so on. Likewise, the formulation definition related to market structure and market share region (geographic), whether local, regional or even international.

Friedman (1977) distinguishes as realistic conflicts, and non-realistic conflicts. Realistic conflict stems from a frustration at not meeting demands that may benefit the person concerned. Such conflicts are objected to discontent, whereas non-realistic conflicts do not originate from the goals of antagonistic rivals, but rather the need to defuse tensions, at least from one of the parties (Cotser, 1956). It can be seen that the gaps in various unhealthy business fields have been manifestly leading to monopolies (markets) in the economic sector, production, distribution and so on, which are the accumulation of conflations and problems.

According to Roscoe Pound (1940), to resolve, avoid conflicts or demands for reform (law) requires a *de facto* element regarding the need for *recognition* of the type of claim and *demand* which he called interest, expressed in the form of law is made by the framers of the law and judicial institutions. This is where the Law creates a safe and peaceful conflict resolution (Bredmeier in Hampstead and Freeman, 1986).

So it must be understood first that business competition naturally must exist and be allowed to live in life for business people. With healthy competition, scattered market forces will be created, open not controlled by one or a group of certain business people. Things that need to be prohibited or regulated in a law are unhealthy, fraudulent, unnatural (*oneerlijke concurrentie, omtoeelaatbare mededinging or onrechmatige mededenging, unfair competition*) that can give rise to monopoly. In the realm of an uncontrolled capitalist economic system, it tends to give birth to managerial cartels that are very dominant, resulting in hindering trade mechanisms, for example giving birth to price fixing actions, restrictions on marketing areas, price discrimination against certain areas, *tying contracts, mergers, and accusations, inside trading and interlocking directirates* (devotion, 1998, Fuady, 1994). In globalization, the legal and economic fields of the government seek to protect business actors from monopolies and unfair business competition, with the issuance of laws and regulations such as Law No. 5 of 1999 the following changes to the anti-monopoly rules after the Job Creation Law by not discriminating between domestic business actors and or businesses from foreign business actors or foreign business actors.

RESULT AND DISCUSSION

Monopoly Issues in terms of Business Law

Business Monopoly according to Black (1983) is: "*a privilege or peculiar advantage vested this one or more persons or companies, consisting in the exclusive right (of power) to carry on a particular business or trade, manufatur on a particular article, or control the sale of the whole supply of particularcommodity . A market structure is where only a few firms dominate the total sales of a product or service*".

So a monopoly is a special or special right attached to one person and company, in the form of an exclusive power to run a certain business, specifically manage good, controlling the entire sale of a particular commodity. The form of market structure in which only a small number of companies control the total sales of a product of goods and services. Monopoli in the definition is the existence of special rights to the power (power) of a person, a group of people or a company, who with power or Its special rights allow the subject of the law to carry out business or business in trade, manufacturing and control over the negotiation of all or half of its commodities. This impacts the market share where all sales, some products, whether goods or services,

are controlled by several companies.

Why monopoly practices are prohibited, among other things, because in monopoly there are negative effects, for example (Fuady:1994):

1. Due to the absence of competition, prices can lead to high cost of goods. This will impact the emergence of inflation, thereby harming the wider community.
2. There is a high profit (*excess profit*) for monopoly actors, because it is an institution of injustice of price.
3. Exploitation, this can happen to labor in the form of wages, even more so to the community, because with a limited product, there is no suffrage of the consumer to the product.
4. Waste, because monopolists will charge consumers the *average cost* of their products.
5. *Entry barrier*, Monopolists can control a broad market, making it difficult for other companies to enter the company, which in turn will limit and close small businesses.
6. The existence of differences in profits and the army of goods from monopolists.
7. The practice of monopoly business is also contrary to the UUD 1945 to Pancasila and article 33 of the 1945 Constitution of the Republic of Indonesia, namely the principle of joint business, with the principle of kinship and as much as possible for the prosperity of the people.

In other words, business competition will give rise to business competition, competition itself comes from *English*, which means competition itself or competing activities, matches, and competitions. Competition is when organizations or individuals race to achieve desired goals such as consumers, market share, survey rankings, or resources needed

Legal restrictions on monopoly relate to such special rights' material and formal aspects. The material aspect is in the form of the formulation of legal rules that limit how large and how wide (*possession*) of each person and from several people or business entities or the company may have rights and powers over the production and distribution of goods and services. Such a substance can be formulated in a special law, but it must be understood when considering norms, especially those related to consistency and the principle of synchronization. Due to the monopolization of a certain product of goods or services, it is an act that willfully (*willfully*) take over the rights and or business entities of other people's companies to create a monopolistic power K.

In order to limit monopolization between material legal rules and ceremonial law is equally important. Material legal rules that are not implemented are less meaningful because they are mere political will. Formal aspects related to formulating repressive legal rules to prevent and resolve various disputes that will arise due to monopolization. Issues about the form and pattern and the need for legal regulation of these rights and powers begin to appear, when connected with the concept of risk-based freedom of business or *The Online System Submission* (OSS) is clear between private and public and the free market of trade or business laws in other words that have an impact on economic democracy.

The legal regulation of monopoly practices is based on development and rational considerations. All the practical aspects that occur are meaningful inputs to interpret all thoughts, especially in the arrangement of monopolies:

First, the idea that monopoly can undermine the harmonization of personal development both legally and economically, for these circles monopoly is condemned. The conclusion was based on a survey conducted in 1956, sixty years after the enactment of the Clayton Act, a new anti-Trust law that replaced the

Sherman Act in The United States was established in 1914 (Gellhorn:1986). The purpose of the Clayton Act is to prohibit anti-competitive practices, such as those mentioned above, namely price *discrimination*, *tying contracts*, anti-competitive *corporate mergers* and *Interlocking directorates*. His philosophy is to abolish harmful monopolies. An action is declared contrary to the provisions of the Clayton Act whether the act substantively tends to reduce competition (Bakti:1998).

It follows that, monopoly power can be felt because of its consequences on two things, namely the direct repercussions it causes and the monopoly itself has the potential to be abused (..... *monopoly power is feared both because of its consequences and potential for abuse*). Potentially, monopoly is feared to be abused, abuse of monopolistic power brings consequences to *market power* related to the ability to determine prices and limit output goods and services and *market share*. Such a monopoly arrangement was aimed at: "... *a weapon to restrain abuse rather than to destroy the monopolistic power giving rise to the abuse*". (Friedman:1960).

Second, the idea of deifying (*ennobled*) monopoly. This group is said that monopolies have many functions. This function according to Berle (1954) is among others as a quasi-diplomacy in building international relations and according to Lilienthal (1953) specifically monopoly carried out by mega business is considered as a social institution that promotes individualism and human freedom "*(as a social institution than promoting human freedom and individualism)*". Monopoly is essentially the result of a process. Therefore, monopoly is a social institution that allows the development of individual human beings.

The substance of the legal arrangement in such circumstances, not by prohibiting monopolies but such arrangements to remedy the abuse of economic power by empowering and guaranteeing similar rights. From other business groups, sectors are free in the economy (producers, wholesalers or retailers) based on the principle of balance, honesty and fairness (*countervailing power principle*). Empowerment of groups or business partners with a variety of products, synergy between sectors and economic fields is an institutional mechanism to form a counter-force. At the same time preventing the abuse of power and monopolistic economic power K.

The Legal Regulation of monopoly, the substance of which has been influenced by both the thinker and the idea above. Both of them show the fact that monopoly is an inevitable business phenomenon. It is therefore very important to understand the monopoly of history, utilization and how it works.

Finally, Law No. 5 of 1999 cannot be separated from the monetary crisis which then continued to the economic crisis that hit Indonesia in 1997, where the government at that time was so weak. Through competition or business law, the government tried to protect healthy competition between business actors in the market. The presence of the Act, in the growth of economic improvement has given meaning to changes in business development to be healthier than before. Trust of business actors in the development of a more competitive business in all types of business products created by business actors themselves in order to realize the welfare of citizens who do business by the economy based on Pancasila and the 1945 Constitution of the Republic of Indonesia; and everyone who does business in Indonesia must be in a situation of healthy and reasonable competition, providing guarantees of a sustainable opportunity for every business actor, regardless of the size of the business scale of Indonesian citizens.

Law No.5 of 1999 is very important to review and refine, because it still leaves behind the problems experienced in implementing the trade sector. Many problems are

experienced in implementing law No.5 of 1999, for example in matters related to the understanding of business actors, organizations or institutions that have the authority to carry out enforcement of competition laws can be well managed, both by their institutions and by human resources, so that they do not have an impact on the effect of the performance of duties and authorities contained in the laws and regulations cannot be carried out by the parties. (domestic business people and business people abroad who have carried out a *sales contract* so as not to cause business disputes (*commercial disputes*)).

The *idil* foundation is a form of the concept of a welfare state in which the state guarantees the welfare of its people by making all efforts for the maximum purpose of people's prosperity. just like a system of basic norms that provide a constitutional foundation for achieving the goals of national and state life. any interpretation of the provisions in the articles contained therein must refer to the purpose of the *hdiup* as outlined in the Preamble to the 1945 Constitution. As amended by Law No. 5 of 1999, the Prohibition of Mono-pOil Practices and Unfair Business Competition needs to change, and is adjusted to development of the current situation in the business / business world. For this reason, the government through Law number 11 of 2020 concerning job creation (Job Creation Law) changed several substantial items including

1. Institutions and procedures for filing Objections.

Article 44 paragraph (2), Business actors can file objections to the Commercial Court no later than 14 (fourteen) days after receiving the notification of the decision.

Article 45 paragraph (3), Provisions regarding the procedure for examination in the Commercial Court and the Supreme Court of the Republic of Indonesia are carried out by the provisions of the laws and regulations.

Initially, in Law number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Anti-Monopoly Law), objections were submitted to the State Judiciary after The 14 days reported received a decision from the Business Competition Supervisory Commission (KPPU).

However, from the article above, the submission of objections is no longer to the District Court but to the Commercial Court. Because the procedure for checking and the period changed to follow the procedures of the Commercial Court.

2. Affirmation of the order of termination of the activities of business actors.

Article 47 paragraph (2) letter c, Order to business actors to stop activities that are proven to cause monopolistic practices, cause unfair business competition , and harm society as referred to in Article 17, Article 18, Article 19, Article 20, Article 21, Article 22, Article 23, Article 24, Article 26, and Article 27.

In the Anti-Monopoly Act, there is no full explanation of which articles are included in the termination of this activity. It is said that it is too biased, so in the Job Creation Law it is affirmed to include the article above.

3. Removal of maximum penalty restrictions

Article 47 paragraph (2) letter g, Imposition of a fine of at least Rp.1,000,000,000.00 (one billion rupiah) Whereas previously the fine was set to a maximum of Rp.25,000,000,000.00 (twenty-five billion rupiah) .

4. Basic Criminal Trimming

The Job Creation Law **only regulates the major crime for violations of article 41**, a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah) or a maximum imprisonment of 1 (one) year as a substitute for a fine . The Previous One was subject to a principal penalty for violations of other articles. In addition, the fine is set at a low palin of Rp: 1,000,000,000.00 (one billion rupiah) and a substitute fine of

confinement for a maximum of 3 months.

5. Additional criminal removed

In the Anti-Monopoly Law, additional criminal penalties are regulated by revocation of business licenses, prohibition of occupying the position of directors or commissioners for at least 2 years and a maximum of 5 (five) year or cessation of activities. However, additional criminal penalties are removed entirely in the Job Creation Law.

So there are 5 (five) items of changes to the anti-monopoly rules after the Job Creation Law is passed, namely institutions and procedures for submitting objections, affirmation of orders to stop business actors' activities, removal The maximum limit of fines, principal criminal trimming and additional criminal offences removed.

Norms of legal regulation against monopoly.

In discussing legal norms, Kelsen (1973) distinguishes between prescriptive and descriptive norms. It is said that : " ... the *legal norms enacted* by the law creating *authorities, are prescriptive*; the rules of law formulated by the science of law are *descriptive*. *It is importance that the term 'legal rule' or 'rule of law' be employed here in a descriptive sense*". From Kelsen's opinion above, it can be understood that prescriptive norms are legal norms set by law-forming authorities , while descriptive norms are rules the laws formulated by science in terms of monopolies are very broad, one of which Gellhorn (1986) presents as follows "... *to assure a competitive economy and perfect market...*". This proposition is based on the belief that through perfect competition producers will try their best in satisfying the needs of their consumers at an affordable price Although the available resources are relatively limited, it can provide the greatest benefit for consumer satisfaction. Healthy competition behavior is reflected in the structure of a healthy market (*perfect competition*).

According to Gellhorn (1986) furthermore, the characteristics of the *perilaku* are: (1). There are a large number of *buyers and sellers*; (2). The quantity and price of market products are not contrived, determined by the purchases and sales made by a small number of traders and sellers that affect the quantity of trade on a overall (*The quantity of the markets products brought by any buyer or sold by any seller is so small relative to the total quantity trade that changes in these quantities leave market price unaffected*); (3). All-round products are the same; every buyer has no reason to put a particular seller first, and vice versa (*The product is homogenous; there is no reason for any buyer to prefer a particular seller and vice versa*); (4). All buyers and sellers obtain complete information *about the prices in the market and the nature of the good sold*); (5). *There is complete freedom of entry into and exit out of the market*.

A description of the characteristics or structure of the market as stated by Gellhorn above, in which the proposition contains general truth, at least the proposition can be used as a guideline to explain monopoly and a scientific principle that directs preventive and repressive measures. Based on such reasoning, then the prescriptive norms of monopoly regulation are:

1. Foundation of scientific rules and principles

The assertion of the relationship between facts repeatedly corroborated by scientific investigation and those that exist in general and are carefully accepted by scientists in their field is a scientific expectation . Rules are often interpreted as predictive and universal statements. Although it is also recognized that differences in legal systems , political systems, socio-cultural, geographical and so on also affect the legal profile of monopoly regulation in Indonesia.

2. Legal Reasoning

According to Hart as cited by Kamelus (1998) the character of legal reasoning includes: deductive reasoning, *inductive reasoning, descriptive and prescriptive theories, methods of discovery and standards of appraisal*. According to Levi as also cited by Kamelus (1998) for certain cases, such reasoning can be simplified in three steps in legal reasoning, namely: first, seeing similarities between existing events, circumstances or situations (cases); second, the legal proposition or proposition attached to the event or situation; Third, through the doctrine of precedent the descriptive proposition found in the first event, is incorporated into the legal postulate, and then applied to subsequent similar cases. The cycle mentioned above is a process that must not be interrupted. Such legal reasoning can be applied in forming law generally and more specifically in litigation.

3. The Common Law System

According to Lord (1985), Trade Law is a sepsis of the common law system derived from the customs of the trading community. At present, this view is not always acceptable. Because monopoly arrangements show the opposite characteristic, cutting the chain of trade unions that make up cartels. However, the early stages of the development of trade law reflect the habits that apply to these business people/businesses.

The judicial process not only gives birth to a form of judgment but in the form of new principles and rules, as Stone points out in Curzon (1979): "A rule or principle arises from Precedent events that are further expanded through continuous review, viewed from the point of analogy and differences concern not only the logical relationship between concepts and propositions law alone, but also viewed from the point of view of the inclusion of analogies and differences that can be maintained through what the judiciary produces in such a discourse as wisdom, any ethics, fairness, worthiness, or legal thought may be inserted".

Furthermore, the kriptive pres norms can be explained as n legal orma sourced from the products of the Institution, authorized to make laws and regulations that produce prescriptive norms or also called *statutory law*. The word "source" here is to show. First, the way of formation of laws, customs and legislation. In a broad sense including legal norms derived from jurisprudence, regulations are the implementation of laws and treaties (related to their legal form: *statutory law* i.e. *statutes* and *ordinances or regulations*).

Second, it relates to the principles in forming laws and regulations and legal norms in forming laws and regulations.

Meanwhile, according to **L Budi Kagramanto**, in his book "Prohibition of Tender Conspiracy (Perspective of Business Competition Law)", juridically the purpose of establishing a competition law as stipulated in Article 3 of Law No. 5 of 1999, namely:

1. Safeguarding the public interest and protecting consumers;
2. Fostering a healthy business climate;
3. Ensuring the certainty of equal business opportunities for everyone;
4. Prevent monopolistic practices or unfair business competition that are imposed by business actors; and
5. Creating effectiveness, efficiency of business activities to improve the national economy as an effort to improve the welfare of the people.

The provision contains substantial about prohibited acts with arising consequences and procedural provisions on enforcing competition law. Actions prohibited by competition law can be divided into two categories: *anti-competition* and *unfair competition practice*.

Monopoly in business competition

The definition of monopoly according to Article 1 paragraph (1) of Law No.5 of 1999 is: "The control of the production and marketing of goods for the use of certain services by one actor or group of business actors". Meanwhile, the definition of monopoly practice is based on the provisions of Article 1 ayat (2) of Law No. 5 The 1999 year is: "the centralization of economic power by one or more business actors resulting in the control of the production and marketing of certain goods and services that give rise to unfair competition and may be detrimental to the public interest".

Meanwhile, the central definition of economic power in Article 1 ayat (3) of Law No.5 of 1999 is "real control over the relevant market by one or more business actors so that they can determine the price of goods and services". The definition of Business Actors based on the provisions of Article 1 paragraph (5) of Law No. 5 of 1999 is "every individual or business entity, which is established, carries out activities within the jurisdiction of Indonesia, either alone or jointly through agreements, carrying out various business activities in the economic field".

According to **Sutrisno Iwantono**, the basis for the issuance of Law No. 5 of 1999 is seen from the market structure and behavior of monopoly practices where the market structure consists of 4 (four) categories, namely:

1. *Perfect Competition* or a market that competes perfectly, (with many buyers and sellers) .
2. *Monopolistic Competition*, is a perfect market structure with an differentiation
3. *Oligopoly*, only a few sellers in the market with a tendency to monopoly because in it there is collusion in the container of the cartel.
4. *Monopolistic*, the opponent of *Perfect Competition*. Here only one single seller (*single seller*) is characterized of selling products at high prices with a small amount. Consumers are exploited with a tendency to prey on other business actors.

Unfair Business Competition UsaHa Actors

The definition of monopoly according to Article 1 paragraph (6) of Law No.5 of 1999 is to determine: "Unfair Competition between business actors in carrying out production activities, marketing of goods and services is carried out dishonestly or unlawfully or hinders business competition". Business competition consists of, among others: Oligopoly, Pricing, Area Division, Boycott, Cartel, *Trust*, Oligopsoni, Vertical Integration, Closed Treaty, and Agreements with Foreign Parties. Thus, based on the provisions above, unfair competition can be carried out by the business actors themselves, in producing goods and services; and marketing goods and or services. It is currently subject to Article 3 of Law No.5 of 1999. The purpose of the Prohibition of Monopoly Practices and Unfair Business Competition is to maintain national economic interests to improve the welfare of the people, create a conducive business climate, (Tutiek Retnowato :2016). Through the Job Creation Law, it is hoped that creating a more conducive business climate will make it easier for micro and small and medium enterprises (MSMEs) to start and run their businesses qualified.

The business competition sector is a sector that is amended through Law No. 11 of 2020 concerning Job Creation, and through its derivative rules as an implementer of monopolistic practices and unfair business competition. (PP No.4 Year 2021), in the rules further regulates the provisions of sanctions and fines. The Government Regulation also includes provisions regarding examining objections and appeals to the decision of the Business Competition Supervisory Commission (KPPU) on how it impacts the business sector.

Examples of cases in unhealthy business competition that are rampant in the national business world include monopoly practices carried out by national

companies (BUMN) PT Pertamina carrying out monopolistic practices in selling aircraft avtur materials, based on Article 17, 50 letter a and article 51 of Law No. 5 of 1999. In KPPU regulation Number 11 of 2011 concerning Guidelines, Article 17 (Monopoly Practice) of PT Pertamina has controlled more than 50% of avtur sales in Indonesia, so Pertamina has abuse of monopoly power over the high price of avtur, abag of sales of avtur fuel then structurally the market has been judged to be detrimental to the public and aviation industry.

Likewise, the case of business competition against Google and its subsidiaries that are alleged to have abused dominant positions, conditional sales and discriminatory practices in the distribution of applications digitally in Indonesia, monopolistic practices include violations of Law No. 5 T of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. Through the Business Competition Supervisory Commission (KPPU) against Google and its subsidiaries, it has violated its dominant position, over conditional sales and discrimination practices in distribution of digital applications in Indonesia, KPPU made the decision. It is indicated that Google and its subsidiaries in its policy have mandated the use of *Google Pay Billing* (GPB) in various types of applications. The various types of applications charged include applications that offer subscriptions such as education, music fitness and or video and applications that offer digital items that can be used in games or games.

In addition, applications that provide content or expediency such as ad-free versions of applications; and those that offer cloud software and services such as data storage services, productivity applications and others. The GPB usage policy requires that applications downloaded from the google play store must use GPB as a transaction method and the content provider or application developer is required meet the conditions in the *Google Pay Billing* <https://bit.ly/bacaokezone>,

The following others (KPPU) imposed penalties on Gojek companies or PT Aplikasi Karya Anak Bangsa, because Gojek was late in submitting notices related to the acquisition of PT Global Locket Sejahtera (Locket.com). In the case decision with regster number 30/KPPU-M/2020, Gojek was declared to have violated the provisions of article 29 of Law No.5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. In addition, Gojek company also violates article 5 of Government Regulation 57 of 2010 concerning Merger or Amalgamation of Business Entities and Taking Company Shares, resulting in Practice Monopoly and Unfair Business Competition.

The process of granting sanctions based on the decision of the relevant kppu and law enforcement officers who are assigned based on appeals to the District Court, such as some sanctions that can be imposed By KPPU to business actors who carry out monopolistic practices and entrepreneurs in unfair business competition, namely:

1. Administrative **Actions**.

- Determination of cancellation of the agreement, or
- Orders to businesses to stop vertical integration; or
- Orders to **business** actors to stop activities **that** are proven to **cause** monopolistic practices **and or** cause unfair business competition and or that can harm the community; or
- Order to businesses to stop Abuse of Dominant Position, atw
- Determination of cancellation **of** the merger **and** amalgamation of a business entity or company and takeover **of** shares; or
- Determination of payment of indemnity; or
- Imposition in the form of fines **as** low as Rp. **1.000.000.000,- (one m iliar rupiah)** and setinggi-tinggi Rp.25.000.000.000,- (twenty-five m iliar rupiah).

2. Basic Criminal.

- The provision of basic criminal sanctions **is given by the specified** article that is violated by the **threat of a** fine or imprisonment instead of a fine.

3. Business License **Revocation**.

- Prohibition of business actors who have been proven **to** have violated Law No.5 **of** 1999 to occupy the position of directors or commissioners for at least 2 (two) years and forever 5 (five) years; or
- Termination of certain activities or actions that cause losses to the other party.

Functions of the Business Competition Supervisory Commission (KPPU)

Some of the theoretical approaches of legal experts in fields related to unfair **business** competition include:

1. Menurut **L. Budi Kagramanto** consists of 4 (four) kinds, namely:

1. *Relevant Market* (related markets);

The market is closely related to measurement, and this is one of the important tasks of analyzing the existence of the level of competition of the market in question.

2. *Market Power* ;

To find out the strength of the market, very closely with business actors, in this market strength is determined based on the market share they control.

3. *Barrier to entry* ;

The *barrier to entry* for business actors is a serious problem in order to carry out their business activities smoothly.

4. *Pricing strategy* ;

In the approach, price is a benchmark for observing, whether or not there are allegations of violations of Law No. 5 of 1999, this regulation serves as an instrument of supervision of potential violations, price restrictions, price discrimination, selling losses, price slams, cartels, oligopsony, *resale price maintenance*. which is done by business actors in determining prices and price levels in certain market areas.

2. According to **Syamsul Maarif**, although there are many similarities with those in the United States, the *standard rule of reason* in Law No. 5 of 1999 has two aspects, namely:

1. The impact aspects, are:

- a. Hindering competition
- b. Harm the public interest or harm society

2. Aspects of the way.

Law No.5 of 1999 specifies that an agreement or business activity can be considered anti-competitive, it is prohibited if the agreement is made or the agreement is carried out dishonestly or unlawfully. These two aspects, namely the impact and method aspects, are elements of unfair business competition.

3. According to **Arie Siswanto**, there is a repressive and preventive approach. The repressive approach directly provides *legal consequences* both criminally, civilly, and administratively. Meanwhile, the preventive approach is intended to keep business actors from taking steps that violate the provisions of business competition, thus arising from repressive legal consequences. As for the preventive approach, it is manifested in various activities, including:
 - a. Consultation; Sarana which is often provided by competition law is intended so that interactively business actors obtain clarification whether the steps taken violate competition law or not.
 - b. Recommendations; As competition law enforcement organs consider that there has been a violation of competition, some states authorize law enforcement organs to make recommendations.
 - c. Exemption permit; that is, being able to carry out anti-competitive actions based on certain considerations.
 - d. Ad; is a means for *the competition authority* to practically review implementations that can potentially interfere with business competition.

Implementing an effective *competition* policy is formed from positive synergy with the competitive authority of a country and is able to increase the success of the rules as the foundation of business competition policy followed by the establishment of the KPPU. Based on the provisions of Article 1 number 18 of Law No.5 of 1999, "The Business Competition Supervisory Commission is a commission established to supervise businesses in carrying out their business activities so as not to carry out monopolies and unfair business competition".

CONCLUSION

From the process of making this scientific paper can be drawn several conclusions as follows:

1. After analyzing discussion after discussion and existing examples, it can be concluded with changes to the Job Creation Law related to changes in several items of the articles, Government Regulation instead of Law Number 2 of 2022 concerning Job Creation, is to provide legal certainty in order to create a conducive investment climate while encouraging the growth of jobs. The issuance of Perppu is carried out by considering the needs in anticipating global conditions related to economy and geopolitics. Baims to carry out the mandate of Article 33 paragraph (4) of the 1945 Constitution states that the national economy is organized based on economic democracy with the principles of togetherness and cooperation, efficiency and justice.
2. Compliance of the business world and business entities with Law Number 5 of 1995 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. Business Competition Issues, where competition in the Indonesian territory still requires supervision from various parties, especially stakeholders. Because certain individuals are still playing unfair business competition, upper-middle-class entrepreneurs which greatly affect the economic stability of a nation including the community economy or the legal actors themselves, because the spread of community needs is uneven to business actors, especially lower-middle-class entrepreneurs who are still restrained by the power of entrepreneurs who have large capital. In addition to the preceding, unfair business competition actions impact the Indonesian people who are consumers directly harmed, in this case the role of the KPPU is needed as a control over business actors.

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