

Jurisdiction Overview of Unfair Business Competition Between Online Shops During The Covid - 19 Pandemic

Putu Sekarwangi Saraswati¹, I Nengah Susrama²

Author Emails

sekarwangisaraswati@gmail.com

Abstract. Technological developments have made a shift in customer behavior throughout the world including Indonesia, one of which is marked by the growth of e-commerce worldwide which is experiencing a significant increase. This indicates that people around the world are starting to move from shopping offline to shopping online. In Indonesia, the prohibition of unfair business competition has been regulated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No. 5 of 1999). However, under these conditions, business actors take advantage of the momentum by conducting unfair competition between business actors. Moreover, it is related to the government's policy regarding the Covid-19 outbreak, which must implement Social Distancing, where one of these policies emphasizes the community to avoid activities that are mass gatherings, so online shopping is one of the community's efforts to implement social distancing.

Keywords : Technology, e-commerce, unfair business competition, covid-19.

INTRODUCTION

Background

Technological developments have made a shift in customer behaviour around the world including Indonesia, one of which is marked by the growth of e-commerce worldwide which is experiencing a significant increase. This indicates that people around the world are starting to move from offline shopping to online shopping. In this digital age with technological advances, who is not familiar with online shopping. Almost most people have taken advantage of today's technological sophistication. The need for online shopping is accommodated by the many e-commerce that have sprung up, starting from Tokopedia, Shopee, Blibli, Bukalapak, Lazada, and many more. Especially at this time, with the spread of the Corona Virus Disease 2019 pandemic or better known as Covid-19. For your knowledge, Covid-19 is a disease virus that was first discovered in China and has spread throughout the world. The World Health Organization (WHO) confirmed it is a global pandemic of the new coronavirus that causes the disease known as Covid-19 that has spread to at least 177 countries and territories, killing more than 17,000 people and infecting more than 390,000. The chronology of the spread of the virus begins on December 31, 2019. China notified WHO of several unusual cases of pneumonia in Wuhan, a port city of 11 million people in central Hubei province.

The virus was initially still unknown. Some of those infected worked at the city's Huanan Seafood Wholesale Market, which was closed on January 1, 2020 As health experts work to identify the virus amid growing concerns, the number of infections exceeds 40 cases.¹ The spread of Covid-19 in Indonesia too every day it is also increasing, until now, suspect Covid-19 has been found in 18 provinces ¹. Due to panic in the community, the price of health products such as hand sanitizers rose unnaturally. Viewed in online shops or online stores, the price of hand sanitizers has increased many times from the normal price.² The prices of several hand sanitizer brands have skyrocketed on several e-commerce platforms such as Lazada, Bukalapak, Blibli, Shopee, and Tokopedia. For example, the price of hand sanitizers such as the Dettol and Nuvo brands in 50 ml packages, which are usually sold for approx. ten thousand of rupiah in stalls, are now in shopping centres and online shops setting very unreasonable prices. Now it is priced at Rp. 49,000 to 70,000 IDR. The hand sanitizer traders in e-commerce also have an average of five stars, which means that their sales reputation is well known, aka not an impromptu health product seller. As is known, in addition to hand sanitizers, other health products that have experienced a price spike are masks. Due to panic in the community, masks are hard to find

on the market. In addition, if available, the price has skyrocketed many times over. The price of masks that sell several e-commerce platforms has soared more than 10 times the price in normal conditions. In Indonesia, the prohibition of unfair business competition has been regulated in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law No. 5 of 1999). However, under these conditions, business actors take advantage of the momentum by conducting unfair competition between business actors. Medical devices such as masks and hand sanitizers are difficult to find due to the large number of consumer requests, so these online business actors take advantage of this situation by selling goods at unreasonable prices. Moreover, it is related to the government's policy regarding the Covid-19 outbreak, which must implement Social Distancing, where one of these policies emphasizes the community to avoid activities that are mass gatherings, so online shopping is one of the community's efforts to implement social distancing. So here the author is interested in researching problems related to unfair business competition by online shop businesses.

Formulation Of The Problem

What is the juridical review regarding business competition that occurs in online shops during the covid-19 pandemic?

Objectives and Benefits

To find out the direction of scientific studies, the research objectives must be clear and in accordance with the problems to be described or problems that need to be solved through a method or strategy. Research objectives must also be in accordance with the focus and problem. The main purpose of this research is to find out how Law No. 5 Year 1999 regulates business competition that occurs in online shops. And specifically, this research aims to explain the President's policies in regulating society to maintain economic conditions.

Method

1. Type of Reseach

This research uses normative methods or library research, which is a research that examines document studies, which uses secondary data such as legislation and opinions of scholars.

2. Source of Legal Materials

The study used the Normative Research Method. Normative legal research using primary, secondary, and tertiary legal materials includes:

- a. Primary data as the main data is the 1945 Constitution, especially Article 28G paragraph (1) which reads "Everyone has the right to personal protection, family, and honour, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear." to do or not to do something which is a human right".
- b. Secondary Legal Materials, namely legal materials that can provide explanations for primary legal materials, which can be in the form of draft legislation - invitations, research results, text books, scientific journals, newspapers), brochures, and internet news, as well as webinars with resource persons. and themes that match the research title. Related to this research, sources from the literature are used such as books related to the issues discussed, namely the Law of Monopoly and Unfair Competition.
- c. Tertiary legal materials are non-legal materials used to explain both primary legal materials and secondary legal materials, such as dictionaries, encyclopaedias, lexicon, and others.

3. Legal Materials Collections Techniques

Literature study by examining the laws and regulations of books, scientific magazines, journals, results of previous research, articles, indexes, and encyclopaedias related to the material being studied.

RESULT & DISCUSSION

Handling Online Shop Business Competition Based on Law no. 5 Year 1999

Instruments that regulate business competition signs have been packaged in the Competition Law. In Indonesia, the means of social control (tool of social control) against monopolistic practices and unfair business competition is provided for in Law no. 5 Year 1999. The regulation also serves as a tool of social engineering aimed at increasing the efficiency of the national economy, creating a conducive business climate through the regulation of fair business competition, and trying to create effectiveness and efficiency in business activities. In every competition, there will always be two or more parties involved to outperform each other and there is a will between them to achieve the same goal. The promulgation of Law no. 5 Year 1999 aims to provide legal certainty and protection for all business actors through restrictions to prevent monopolistic practices and other unfair business competition so that it is expected to create a conducive business climate, in which every business actor can compete fairly and fairly.²

The definition of business competition is not implicitly stated in Law no. 5 Year 1999, but this Law only provides an understanding of unfair business competition. In Article 1 paragraph (6) of Law no. 5 Year 1999 explains the meaning of unfair competition, namely competition between business actors in carrying out production and or marketing activities of goods and or services carried out in a dishonest or unlawful manner or hindering business competition. Unfair business competition is the impact of business competition practices. The existence of business competition can also bring a negative side, this can happen if there are dishonest economic actors so that it interferes with the public interest. This can also have implications for the occurrence of fraudulent practices (unfair competition) because competition is considered as an opportunity to get rid of competitors in any way. At this time buying and selling is not limited to being done conventionally, but many buying, and selling are done online (online shopping). In online buying and selling, consumers can buy goods or services from the seller only through the internet without having to meet face to face.³ Along with the development of technology, it has implications for changes in people's shopping habits. The increasing daily business experienced by everyone makes online buying and selling transactions grow and begin to replace conventional buying and selling transactions.⁴ The large selection of online stores and available 24 hours a day also makes it easier for people to choose the best price and quality just by accessing the internet from anywhere. Business activities that are influenced by technological developments provide new innovations in facilitating the buying and selling system between sellers and buyers. Along with the development of technology, it also has an impact in the field of business to create a new model of business activity in practice known as buying and selling online, which is generally known as "online shopping".

There are 2 (two) types of online shopping or buying and selling, including online shops and online marketplaces, online shops are digital stores created online to market products from business actors, and online marketplaces are internet sites created to collect several online store which is then made into one container, namely a website that aims to become a market that can be accessed by prospective buyers online. In Indonesia itself, there are many business actors in the field of online shopping such as Tokopedia, Lazada, Blibli, Bukalapak and many others which part of the use of technological developments are. In buying and selling online, a separate system is applied in carrying out the sale and purchase agreement, but the system created does not reduce the elements that exist in buying and selling in general which is regulated in Article 1457 Burgerlijk Wetboek which has the definition "sale and purchase is an agreement". which binds the seller promises to deliver an item (zaak) and the other party acting as the buyer commits himself to promise to pay the price. As with buying and selling in general, in this online buying and selling system there are sellers and buyers who offer and buy goods who then agree with each other for the seller to hand over the goods to his ownership and the buyer to pay a certain price, the difference in which is only in the process. payment and real delivery of goods that are the object of sale and purchase only.

The legal relationship that occurs between business actors and consumers is a reciprocal relationship due to buying and selling transactions. Business actors have an obligation to deliver goods after receiving their rights in the form of payments from consumers. Meanwhile, consumers have an obligation to pay a sum of money and receive their rights in the form of goods or services. Consumers can search for products provided in online stores. Consumers who have chosen the product will then make payments electronically, then contact bank services.⁵ After the payment process is complete, the consumer simply waits for the ordered goods to arrive. Buyers and sellers have digital evidence to maintain their respective trust and security.⁸ In Law no. 5 Year 1999 there is the principle of rule of reason and per se illegal (Per se Violations or Perse Rule). The principles of rule of reason and per se illegal applied in the field of business competition law are used to assess whether an activity or agreement carried out by business actors has or has the potential to violate the Business Competition Law. The principle of rule of reason and per se illegal is an adoption of United States law.

In the Sherman Act 1980 – Antitrust Law first implemented the principles of the rule of reason (1911) and *per se* illegal (in 1899) in the decision of the Supreme Court. Article 17 of Law no. 5 Year 1999 explains that business actors are prohibited from exercising control over the production and or marketing of goods and or services that may result in monopolistic practices and or unfair business competition. Provisions in Law no. 5 Year 1999 emphasizes more on the consequences of monopolistic actions, thus using the principle of rule of reason, namely by considering whether actions taken by business actors result in monopolistic practices or hinder unfair business competition.⁶ The interpretation carried out by the Business Competition Supervisory Commission (KPPU) in Law no. 5 Year 1999 to determine an agreement or prohibited activity is included in the category of rule of reason and *per se* illegal based on editorial analysis or sentences contained in each article of the Act. This can be seen when comparing certain articles that are included in the rule of reason category. The alternative application of the two principles is left to the KPPU as stated in Article 35 of Law no. 5 Year 1999. Basically, KPPU's duties include, among others, evaluating all agreements and or activities that may result in monopolistic practices and unfair business competition. The use of the two alternative approaches has the same goal, namely how the actions of business actors do not hinder competition, resulting in a loss of efficiency, which in turn causes losses to consumers. While the purpose of the establishment of Law no. 5 Year 1999, among others, is to create efficiency in business activities and improve people's welfare. Business actors who have a dominant position tend to be able to manipulate the market by conducting monopolies and unfair business competition in the form of limiting the market. This will imply that it will be difficult for other traders to compete in the same market because business actors who have a dominant position will distort the market.⁷

The forms of activities of business actors who have a dominant position in limiting the market include limiting the circulation or supply of goods in the market, discriminatory practices, selling at a loss so as to damage the market price, up to entry barriers. The absence of an entry barrier will result in the market losing its competitive power and a conducive competitive climate. The occurrence of monopolistic practices in the market can also harm consumers because the dominant position of market participants will make it easy to control prices. In this position, the higher the market share of a company, the greater the potential loss experienced in the competition because everything will depend on the activities of the owner of market power. Owners of market power will easily determine the rise and fall of prices to kill the market share of other traders. If there are traders who sell high prices, the same goods will be sold at lower prices, as well as if other traders sell at very low prices so as not to lose, the market ruler will also still sell below the lowest price. Business competition is not limited to conventional transactions, so there is a need for regulations that determine the prohibition of monopolies and unfair business competition practices in the scope of electronic transactions. To accommodate this, it is necessary to apply strict prohibitions and sanctions on the actions of business actors that can hinder trade and result in reduced competition in carrying out economic activities.⁸ The existence of these arrangements can be embodied in the amendments to Law no. 5 Year 1999 so as to include the prohibition of monopolistic practices and unfair business competition in the e-commerce industry. Article 1 number 5 of Law no. 5 Year 1999 states that "business actor is every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through an agreement, conducting various business activities within the jurisdiction of the Republic of Indonesia". economics." Based on the regulation, there is still a gap for business actors who carry out business activities outside the territory of Indonesia to escape from the supervision of the KPPU so that with the amendment of Law no. 5 Year 1999, it is hoped that the authority possessed by KPPU will also include supervision of business actors outside the territory of Indonesia. With a clear regulation, the actions of online business actors that cause monopolistic practices and unfair business competition can be stopped and the interests of consumers will be protected.

The spread of the Covid-19 virus in Indonesia is increasingly widespread. With the spread of this virus, the government issued policies. These policies include local lockdown and social distancing policies. In the implementation of the local lockdown policy, it is still only applied in a few areas. For example, in the area of Tegal, Central Java. The Tegal City Government and the Tegal Resort Police carried out a local lockdown by closing the north coast lane that crossed Tegal City, access to Tegal Square, and turning off some of the protocol street lights to limit vehicles that would enter Tegal city, as well as prevent crowds on the road to prevent the spread of covid-19. With this policy, guard posts are formed at every entry into the city. The guard posts will be filled by a joint team from the army, police, and local government officials. According to Josua Pardede, head of economics at Permata bank, lockdown can be defined as an effort to close access to and from an area by restricting citizens' access to public spaces, cancelling teaching and learning activities and quarantining an area in order to reduce the spread of the virus to an area. However, considering the spread of COVID-19 has spread, this lockdown policy tends to be ineffective and counter-productive.⁹ Finance Minister Sri Mulyani Indrawati assessed that this step could make the pace of the economy even more difficult. The reason is, with the self-distancing policy, which limits people's movement due to the corona virus, the level of public consumption can drop sharply. This lockdown will have an impact on the economy, especially Indonesia, it will be difficult to

implement a complete lockdown, considering that our country's economy is very low. Meanwhile in Indonesia, if the level of consumption decreases, the growth of several economic supporting indicators will begin to fall. Understandably, the national economy is very dependent on the rate of public consumption, which now amounts to 260 million people. Lockdown will severely hit Indonesia's economy in the short term. This is because the city with the most cases of the corona virus is Jakarta, which is the centre of government, business and trade in Indonesia. So, the government is rethinking if the overall lockdown policy is carried out. All that can be done is that local lockdowns are not complete, only to reduce the volume of people's movements for activities.

To deal with the increasingly widespread Corona virus outbreak, the government recommends the public to implement social distancing or social restrictions. In which to carry out the overall lockdown policy, there are still many factors such as the economy which is more important. Social distancing is one of the steps to prevent and control Corona virus infection by encouraging healthy people to limit visits to crowded places and direct contact with other people. Now, the term social distancing has been replaced by physical distancing by the government. When implementing social distancing, a person is not allowed to shake hands and maintain a distance of at least 1 (one) meter when interacting with other people, especially with people who are sick or at high risk of suffering from COVID-19.¹⁰ In addition, there are several examples of the implementation of social distancing that are commonly carried out, namely:

- a. Work from home
- b. Online home learning for school students and college students
- c. Postpone gatherings or events that are attended by many people, such as conferences, seminars, and meetings, or do so online via video conferencing or teleconference;
- d. Not visiting people who are sick, but simply by telephone or video call. Social distancing policies implemented by the government have a negative impact on the country's economy.

This happened in line with the decline in the level of public consumption due to the pandemic which in turn had an impact on inequality in the pace of the economy. In addition, the decline in the rupiah exchange rate due to the pandemic that has decreased market performance so that this will automatically reduce the rate of buying and selling in the community which will threaten the wheels of the community's economy.

CLOSING

Conclusion

The occurrence of the COVID-19 pandemic has resulted in online shop businesses now also carrying out price spikes which have resulted in business competition between online business actors. This is contrary to Law no. 5 Year 1999 which stipulates that business actors are prohibited from exercising control over the production and or marketing of goods and or services which may result in monopolistic practices and or unfair business competition. The purpose of the establishment of Law no. 5 Year 1999, among others, is to create efficiency in business activities and improve people's welfare because if no restrictions are imposed, business actors with dominant positions will be able to easily carry out monopolies and unfair business competition. The policies that have been issued by the government regarding social distancing have had a negative impact on the country's economy. As the level of consumption declines, this results in inequality in several indicators in the pace of the economy. World economic growth which also declined due to global supply chains, declining world demand, and weak economic actors also contributed to the instability of the Indonesian economy.

Suggestions

There is a need for strict assessment and supervision from the KPPU in accordance with Article 35 of Law no. 5 Year 1999, in which KPPU's duties include evaluating all agreements and or activities that may result in monopolistic practices and unfair business competition and the need for various government considerations and solutions due to the implementation of Social Distancing/Physical Distancing and Local Lockdown in order to maintain economic stability for a country.

REFERENCE

1. Hermansyah, 2008. Principles of Business Competition Law in Indonesia, Kencana, Jakarta, 2008, p. 1
2. Hatta Isnaini Wahyu Utomo, "The Existence of the Notary and Notary Deeds within Private Procedural Law in the Industrial Revolution era 4.0", International Journal of Innovation, Creativity and Change, Volume 10, Issue 3, 2019, p. 130
3. Sari 2020. "Online Shop Theory Foundation", 2015. Accessed March 24, 2020

4. Ayudha D. Prayoga, et.al., Business Competition and the Laws Governing It in Indonesia, ELIPS Project, Jakarta, 2000, p. 53.
5. I Putu Agus Eka Pratama, E-commerce, E-business, and Mobile Commerce, Bandung, Informatics, 2015, p.7-
6. Elyta Ras Ginting, Indonesian Anti-monopoly Law - Analysis and Comparison of Law no. 5 of 1999, Citra Aditya, Bandung, 2011, p. 16.
7. Endang Purwaningsih, Business Law, Ghalia Indonesia, Bogor, 2015, p. 68.
8. Hatta Isnaini Wahyu Utomo, "The Position of Honorary Council of Notary in Coaching Indonesian Notaries", Journal of Law, Policy and Globalization, Vol. 92 (2019), p. 126. DOI: 10.7176/JLPG/92-12
9. Ahmad Naufal Dzulfaroh, List of Indonesian regions that apply local lockdown, <https://economy.okezone.com/read/2020/03/17/20/2184741/lockdown-atau-social-distancing-mana-yang-lahan-aman- for the mi-Indonesian economy>, Accessed March 14, 2020
10. Ginting, Elyta Ras. Indonesia's Anti-monopoly Law - Analysis and Comparison of Law no. 5 of 1999, , Citra Aditya, Bandung, 2011