

Cartel Performed by Airlines (Study of Kppu's Decision Number: 15/Kppu-I/2019)



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ABSTRACT: The case regarding the cartel contained in the KPPU's Decision Number: 15/KPPU-I/2019 which was carried out jointly by PT Garuda Indonesia (Persero), Tbk, PT Citilink Indonesia, PT Sriwijaya Air, PT NAM Air, PT Batik Air, PT Lion Mentari, and PT Wings Abadi. The Reported Parties are alleged to have violated the provisions of Article 5 and Article 11 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition by increasing the price of airline tickets. The data collection technique in this research is using the library research method. While the analysis technique carried out on the legal materials that have been collected by the author will be done deductively. The results of the study indicate that KPPU is only an administrative institution, so that KPPU can only impose administrative sanctions and is not authorized to impose criminal sanctions or civil sanctions. The KPPU Assembly has also decided that the business actors are guilty, but the KPPU Assembly has not imposed any sanctions on the mistakes of the business actors. The absence of sanctions imposed on cartel actors can make the perpetrators repeat their actions and in this case consumers will be harmed again.

KEYWORDS: KPPU, Cartel, Business Competition

INTRODUCTION

One of the cases regarding the cartel is contained in the KPPU's Decision Number: 15/KPPU-I/2019 which was carried out jointly by PT Garuda Indonesia (Persero), Tbk, PT Citilink Indonesia, PT Sriwijaya Air, PT NAM Air, PT Batik Air, PT Lion Mentari, and PT Wings Abadi. The Reported Parties are alleged to have violated the provisions of Article 5 and Article 11 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition by increasing the price of airline tickets.

The existence of an anomaly in airline ticket prices after the peak season in December 2018 to mid-January 2019 and the increasing concentration of the market, has initiated the Business Competition Supervisory Commission of the Republic of Indonesia to collect data and/or information on whether or not there is an alleged violation of Law Number 5 of 1999 which carried out by business actors engaged in scheduled commercial air transportation services for domestic economy class passengers.

After further examination at the KPPU trial, it turned out that the business actors were legally proven to have committed cartel actions and had violated the provisions contained in Article 5 and Article 11 of Law Number 5 of 1999. The KPPU Assembly has also decided that these business actors guilty. However, the problem is that there are no sanctions imposed on these business actors.

In its decision, the KPPU Assembly only stated that the business actors had violated the provisions in Law Number 5 of 1999, but did not impose any sanctions on the business actors. Even though it is known, from the cartel's actions, consumers have been harmed due to the high price of flight tickets. However, the KPPU Council still does not impose any sanctions on business actors.

PROBLEM FORMULATION

1. What are the provisions for imposing sanctions that can be carried out by KPPU?
2. What is the decision of KPPU in Case Number 15/KPPU-I/2019?

RESEARCH METHOD

The data collection technique in this study uses library research which is carried out by examining various secondary data sources in the form of books, journals, legislation and other legal writings related to the research discussion. The analysis technique carried out on legal materials that have been collected by the author will be carried out deductively, namely by drawing conclusions from a general problem to the concrete problems faced. This is done to answer the legal issues in this research.

THEORITICAL FRAMEWORK

Theory of Legal Protection, Protection provided by law is an act or effort to protect the community from arbitrary actions by the authorities or other parties that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings.¹

Business Competition Theory Competition is always defined as an individual act of selfishness. With selfishness, someone who competes can justify any means to prosper or satisfy himself. Unfair business competition is the impact of business competition practices. The condition of business competition in some respects also has negative aspects, one of which is when a competition is carried out by dishonest economic actors, contrary to the public interest. The extreme risk of this competition is of course the possibility of unfair competition because competition is considered as an opportunity to get rid of competitors in any way.²

RESEARCH RUSULTS AND DISCUSSION

KPPU is the right institution to resolve business competition issues that have a multifunctional role and expertise so that they are considered capable of resolving and accelerating the process of handling cases. KPPU has a very broad authority covering the executive, judicial, legislative, and consultative areas. Although KPPU has a special law enforcement function, namely business competition law, it does not mean that this commission is a special judicial institution. KPPU is only an administrative institution, so that KPPU can only impose administrative sanctions and is not authorized to impose criminal sanctions or civil sanctions.³

With regard to the KPPU's Decision in Case Number 15/KPPU-I/2019 which is a case regarding a cartel that was jointly carried out by PT Garuda Indonesia (Persero), Tbk, PT Citilink Indonesia, PT Sriwijaya Air, PT NAM Air, PT Batik Air, PT Lion Mentari, and PT Wings Abadi. The Reported Parties are alleged to have violated the provisions of Article 5 and Article 11 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition..

The case began when the price of economy class airline tickets for domestic scheduled commercial air transportation in early 2019 was felt by the public to be still quite high even though the peak season had ended. The public considers the high ticket prices during peak season to be reasonable, because in general there is an increase in public demand (demand). Generally, peak seasons occur several times in a calendar year such as Eid al-Fitr, school holidays, Christmas and New Year holidays and long weekend, weekend and Chinese New Year holidays. Airfare prices during peak season are usually higher than airplane prices during low season. However, usually after the peak season ends, flight ticket prices will return to normal.

December 2017 to mid-January 2018 is included in the peak season. During this period, the price of airline tickets tends to rise (higher) but will return to normal when entering the low season. This condition experienced an anomaly, especially when compared to the same period in December 2018 to mid-January 2019. After the peak season ended, namely the second week of January 2019, people still felt the high price of airline tickets. This condition lasted for a long time, until the government asked airlines to lower ticket prices, because it had caused unrest in the community as consumers.

The increase in air ticket prices that occurred was deemed irrational because aviation fuel prices had actually decreased since November 2018 (when compared to prices before November 2018), even though the aviation fuel had a significant contribution to airline production costs. Then also, there are problems regarding the market structure which is a market condition that provides guidance on aspects that have an important influence on the behavior of business actors and market performance, including the number of sellers and buyers, barriers to entry and exit from the market, product diversity, distribution system, and control of market share.⁴

In this case, the market structure in the domestic scheduled commercial air transportation service industry tends to be concentrated on a few airlines, moreover, the market concentration was even higher when the Garuda Group conducted Operational Cooperation and/or Management Cooperation with Sriwijaya Group in the November 2018 period. Furthermore, it also triggers the suspicion of a cartel in the relevant market.

After further examination at the KPPU trial, it turned out that the business actors were legally proven to have committed cartel actions and had violated the provisions contained in Article 5 and Article 11 of Law Number 5 of 1999. The KPPU Assembly has also decided that these business actors guilty. So that in its decision, KPPU decides the case by:

¹ Setiono, *Supremasi Hukum*, (Surakarta: UNS, 2004), hlm. 3.

² Galuh Puspaningrum, *Hukum Persaingan Usaha: Perjanjian dan Kegiatan Yang Dilarang dalam Hukum Persaingan Usaha di Indonesia* (Yogyakarta : Aswaja Pressindo, 2013), hal. 71

³ Susanti Adi Nugroho, *Hukum Persaingan Usaha di Indonesia, Dalam Teori dan Praktek Serta Penerapan Hukumnya*, (Jakarta, Kencana Prenada Media Group, 2012), hal. 20

⁴ Article 1 paragraph (11) of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition

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1. To declare that the Reported Party I, Reported Party I, Reported Party II, Reported Party IV, Reported Party V, Reported Party VI, and Reported Party VI were legally and convincingly proven to have violated Article 5 of Law Number 5 of 1999;
2. To declare that the Reported Party I, Reported Party I, Reported Party II, Reported Party IV, Reported Party V, Reported Party VI, and Reported Party VI were not proven to have violated Article 11 of Law Number 5 of 1999;
3. Order the Reported Party I, Reported Party I, Reported Party II, Reported IV, Reported Party V, Reported VI, and Reported VI to notify in writing to the Business Competition Supervisory Commission before taking any business actor policies that will affect the business competition map, ticket prices paid by consumers, and the public for 2 (two) years since this decision has permanent legal force.

The problem contained in the decision is regarding the absence of sanctions imposed on these business actors. The absence of sanctions imposed on cartel actors can make the perpetrators repeat their actions. So in this case the consumer will be harmed again. In addition, in the absence of sanctions imposed, there is a legal uncertainty in the case.

CONCLUSSIONS

Based on the explanation above, it can be seen that KPPU is only an administrative institution, so that KPPU can only impose administrative sanctions and is not authorized to impose criminal sanctions or civil sanctions. Furthermore, regarding the KPPU's Decision in Case Number 15/KPPU-I/2019, it is stated that the business actors are proven to have legally committed cartel actions and have violated the provisions contained in Article 5 and Article 11 of Law Number 5 of 1999. The KPPU Assembly has also decided that the business actors are guilty, but the KPPU Assembly does not impose sanctions on the mistakes of the business actors. The absence of sanctions imposed on cartel actors can make the perpetrators repeat their actions and in this case consumers will be harmed again.

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