

The Role of the Government in Preventing Monopolistic Practices in Lobster Seed Export Services



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ABSTRACT: One form of business activity that is prohibited in business competition law is monopolistic practices, which is a form of market control. One of the cases of monopolistic practices is related to lobster seed export services involving the freight forwarder company PT ACK. This research aims to study the role of the government in preventing monopolistic practices as well as the responsibility of freight forwarder companies that commit such monopolistic practices. This research uses a normative juridical research method. The results of this study show that the role of the government, namely KPPU, has not been maximised in preventing the monopoly of lobster seed exports. KPPU has conducted a study with several parties related to lobster seed exports and found no regulations that designate only one company that can export. However, the fact is that in the field, only PT ACK can export. The company that committed monopolistic practices has been found guilty of violating Article 17 of Law Number 5 of 1999 in KPPU Decision Number 04/KPPU-I/2021 and bears the responsibility of terminating its business activities and seizing assets for the state.

KEYWORDS: Monopolistic Practices, Freight Forwarders, Business Competition

INTRODUCTION

One of the uses of freight forwarder services in Indonesia is to export lobster seeds. On May 4, 2020, former Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Edhy Prabowo stipulated Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 12 of 2020 (Permen KP 12/2020), which legally permits the release of lobster seeds. Permen KP 12/2020 was formulated to preserve fishery resources, increase people's prosperity, distribute cultivation technology, develop investment, increase state foreign exchange, and develop lobster, crab and crab cultivation.¹ According to Edhy Prabowo, the granting of an export permit for lobster seeds aims to improve the economic welfare of fishermen who have lost their livelihood due to the issuance of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 56 of 2016 (Permen KP No. 56/2016) which prohibits taking lobster seeds both for sale and for cultivation.

In the current global market era, there are many forms of business in similar fields. Such conditions raise the potential for business competition among business operators. The unfair competition carried out by the initiators of these businesses can cause negative impacts, both for people who run businesses and consumers of services or business products concerned and have a bad influence on the national economy. Fraud by a business actor when carrying out his business activities can lead to restrictions on some or several other business actors, which causes losses and even the death of the other business actor's business.²

Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (UU No. 5 of 1999) was stipulated by the government to ensure legal certainty and create a fair business competition climate. This law aims to create healthy business conditions through applicable regulations, as well as to create effective and efficient business activities.³ Because that's the purpose of making Law No. 5 of 1999 is not only burdensome on the aspect of competition between business actors but also includes protection for consumers in the country.⁴

Practice is one of several things prohibited in Law No. 5 of 1999. Monopolistic practices cause buyers to inevitably buy products from the only business actor in a business field at prices determined by the business actor concerned who has control.⁵ In

¹Peraturan Menteri Kelautan dan Perikanan Republik Indonesia Nomor 12 Tahun 2020 tentang Pengelolaan Lobster (Panulirus Spp.), Kepiting (Scylla Spp.), Dan Rajungan (Portunus Spp.) Di Wilayah Negara Republik Indonesia

²Mustafa Kamal Rokan, 2012, *Hukum Persaingan Usaha Teori dan Praktiknya di Indonesia Cetakan ke-2*, Raja Grafindo Persada, Jakarta.

³Tariq Hidayat Pangestu, 2020, Analisis Yuridis Praktik Diskriminasi Dalam Penjualan Kargo Angkutan Udara (Studi Kasus Putusan KPPU Nomor 7/KPPU-I/2020), *Jurnal Persaingan Usaha*, Vol. 02.

⁴Putu Putri Nugraha dan A. A Gede Agung Dharmakusuma, 2016, *Perlindungan Hukum Usaha Mikro, Kecil Dan Menengah Dalam Pelaksanaan Kemitraan Dari Perspektif Undang-Undang No 5 Tahun 1999*, Kertha Semaya: *Journal Ilmu Hukum*, Vol. 4 No. 2.

⁵Muhamad Sadi Is, 2016, *Hukum Persaingan Usaha di Indonesia (Sebagai Upaya Penguatan Lembaga Komisi Pengawas Persaingan Usaha KPPU)*, Setara Press, Malang, p. 46

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a monopoly market condition, the business actor in power can determine the number of goods and services sold himself depending on the profit to be achieved by the business actor so that a price can be applied to obtain the highest profit.

Cases of monopoly practice activities were found in lobster seed export activities carried out by *freight forwarder companies* that provide lobster seed export services, namely PT. ACK where in this case, PT. ACK is a company that acts as a *forwarder* for lobster seeds, which exports from Indonesia. This case was started from research initiated by KPPU in which the assumption of violation of Article 17 of Law No. 5 of 1999 in lobster seed export services by PT. ACK, which will then be brought to the Commission Council Session stage. The facts can be known based on the trial that PT. ACK is the only company that has participated in the outreach program, so there is no replacement company for managing the export of clear lobster seeds abroad. Since the issuance of Permen KP 12/2020 until November 25 2020, PT. ACK is counted as the only company engaged in seed export lobster. It is also known that PT. ACK dominates the freight market, which is more than 50 %, which has an impact on the position of PT. ACK in monopolising the service market for managing the export of lobster seeds by plane to countries such as Vietnam, Taiwan and Hong Kong from June to November 2020.⁶

The power owned by PT. ACK makes it so free to determine or set prices that inevitably have to be accepted by business actors wishing to export lobster seeds abroad. This creates a monopolistic market structure that creates a state of business competition unhealthy. For his actions, PT. ACK was proven guilty of violating Article 17 of the Law. No. 5 of 1999 for carrying out the unfair business competition in the management of lobster seed export services, which has been stipulated in KPPU Decision Number 04/KPPU-I/ 2021.⁷

The policy of permitting the export of lobster seeds, which has a good aim for the welfare of the people's economy, on the other hand, opens loopholes for the emergence of unfair business competition activities. This policy was abused by a *freight forwarder company*, namely PT. ACK to carry out monopoly practices. The unfair business competition carried out by these companies will have a negative impact, both for other business actors as well as consumers as users and influence the national economy. Based on the description of the background above, the author has an interest in conducting an assessment of how the role of the government in preventing the occurrence of monopolistic practices in lobster seed export services by freight forwarder companies *and* the responsibility of *freight forwarder companies* that have been proven to practice monopoly practices in lobster seed export services.

RESEARCH METHODS

This legal research was carried out using a normative juridical method, meaning that this research focuses on the rules or provisions contained in positive law. The data ⁸The source used in this study is a secondary legal data source, which is obtained from the results of a literature search and a review of various literature materials. ⁹Secondary legal data sources consist of primary, secondary, and tertiary legal materials. The technique used to collect data is a literature study (*Library Research*). After collecting the data, it is analysed descriptively qualitatively, namely analysing the data obtained to create conclusions as a form of research results presented in the form of logical sentence descriptions. The use of this method aims to obtain a detailed, in-depth and thorough explanation of the legal issues under study so that from the analysis technique an inductive logic is obtained for normative research which is a way of thinking that departs from various forms of knowledge that are specific/certain in nature which are assembled to emerge general conclusions.¹⁰

RESULT AND DISCUSSION

1. The Government's Role in Preventing the Occurrence of Monopolistic Practices of Lobster Seed Export Services by Freight Forwarder Companies

The government has established Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition to enforce laws that can create legal certainty in business competition in Indonesia with the aim of creating fair business competition. Law enforcement, supervision, and the implementation of business competition are handed over to KPPU in addition to the police, prosecutors, and judiciary. Law enforcement against violations of business competition law must first be carried out through the KPPU. Only after that it is given to the police investigating officer so that it can then be brought to court if the business actor does not have good faith in carrying out the Decision handed down by the KPPU. As stipulated in Article 1 number 18 of Law no. 5 of 1999, the Commission for the Supervision of Business Competition acts as an institution established to monitor business actors so that they do not try to monopolise or carry out the unfair competition in carrying out their business activities.¹¹

It is known that the KPPU's stance on the lobster seed export issue is to conduct a study with several related parties since July 2020 with several institutions, namely the Association of Indonesian Marine and Fishery Entrepreneurs (APKPI), Indonesian Marine

⁶KPPU PRESS Release No. 33/KPPU-PR/VI/2022 K PPU Decides PT. ACK Violates Law 5/1999 in Case of Export of Clear Lobster Seeds.

⁷Putusan Komisi Pengawas Persaingan Usaha Nomor: 04/KPPU-I/2021

⁸Johnny Ibrahim, 2013, *Teori dan Metodologi Penelitian Hukum Normatif*, Banyumedia Publishing, Malang, p. 295.

⁹Mukti Fajar and Yulianto Achmad, 2015, *Dualisme Penelitian Hukum Normatif dan Empris*, Student Library, Yogyakarta, p. 156.

¹⁰Djam'an Satori and Aan Komariah, 2012, *Metodologi Penelitian Kualitatif*, Alfabeta, Bandung, p. 22.

¹¹Undang-Undang No. 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat..

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Fish Cultivation Association (ABILINDO), Fish Quarantine Agency, Quality Control and Safety of Fishery Products (BKIPM), Directorate General of Capture Fisheries and the Directorate General of Aquaculture (Ministry of Maritime Affairs and Fisheries) and the initiators of the goods delivery business. From the above study, it can be seen that there is no government policy that only refers to one business cultivator in *the freight forwarder sector* in providing lobster seed export services by KPPU.¹² However, in practice in the field, there has been a monopoly market structure where KPPU initially realised that the activity of sending lobster seeds only applies to Soekarno Hatta Airport, Jakarta. By exporting seeds through only one airport, it will cause inefficiencies in shipping costs and increase the impact that business actors must bear. Suppose the six recommended airports can be used properly to export lobster seeds abroad. In that case, the costs incurred by exporters will be lower, and the lobster seeds will be received at the destination country in fresher conditions which will also provide benefits for exporters. Therefore, from this matter, KPPU conducts research on initiative cases.

Jan Michiel Otto said that legal certainty occurs in a situation where one of them is the application of the rule of law by the government.¹³ In accordance with this, KPPU responded to the case above by deciding to conduct an initiative case study on alleged monopolistic practices in lobster seed exporting cargo services since November 10 2020, to obtain various forms of evidence for alleged monopolistic practices in these export services. The case research initiated by KPPU has been regulated in Article 2 letter b of KPPU Regulation No. 1 of 2019. Research on this case can be started with the approval of the commission meeting. The implementation of the settlement of the case is based on the commission's initiative to examine allegations of violations of the law in the form of studies, research results, minutes or conclusions from meetings held by the commission, incomplete reports received, various sources from the news media, as well as various other forms of information that can be accounted for, in which the acquisition of data or information is based on the provisions of Article 10 of KPPU Regulation No. 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition.¹⁴

The role of KPPU in preventing monopolistic practices in lobster seed export services by *freight forwarders* is not optimal because researchers think that there is a delay in KPPU realising the monopolistic practices carried out by PT. ACK. The KPPU has an important role in realising the value of legal certainty in business competition. As explained by Sudikno Mertokusumo, legal certainty is a guarantee that the applicable legal rules have been well manifested and in this legal certainty, there is the presence of the party authorised to regulate the law through statutory rules so that the provisions in question have a legal element that can guarantee that the law. These laws are rules that must be obeyed. In Sudikno Mertokusumo's opinion, the competent authority, namely the KPPU, must maximise its role in realising a climate of healthy domestic business competition.

After the case of the monopolistic practice of exporting lobster seeds, during the era of the Ministry of Maritime Affairs and Fisheries Sakti Wahyu Trenggono, the policy of exporting lobster seeds again became a ban as stipulated in Permen KP No. 16/2022 concerning Amendments to the Regulation of the Minister of Maritime Affairs and Fisheries Number 17 of 2021. This prohibition is contained in detail in Article 18, paragraphs (1) and (2), which basically states that lobster seeds can only be caught for cultivation in the territory of Indonesia and prohibits anyone from transporting lobster seeds outside the territory of Indonesia. The consideration for issuing a policy to prohibit the export of lobster seeds is aimed at optimising the management of lobster seeds and fulfilling the needs for lobster cultivation in Indonesia. With the motive of preventing violations of the regulation of the Minister of maritime affairs and Fisheries related to the prohibition on exporting lobster seeds, the Ministry of maritime affairs and Fisheries, with the authority granted by the government, supervises the activities of fishing for lobster seeds in accordance with what has been regulated in Article 18 paragraph (2) of the Minister of Maritime Affairs and Fisheries Regulation Number 16 of 2022 which is carried out in the following way:¹⁵

1. Examination of files regarding the certainty of lobster seed fishermen
2. Examination of certificate of origin of lobster seeds
3. Examination of the suitability of the location for catching lobster seeds
4. Examination of a certificate from the task force implementing agency in the field of education and marine and fishery development.

The author is of the opinion that the existence of a policy prohibiting the export of lobster seeds imposed by the government through the Ministry of Maritime Affairs and Fisheries provides benefits in order to prevent the occurrence of monopolistic practices in lobster seed exporting services, in this case, namely by PT. ACK. Other benefits of this policy are that it can preserve lobsters so they don't become extinct and provide opportunities for local fishermen to cultivate lobster seeds with the aim of increasing selling prices so that the welfare of the community, especially fishermen, in this case, can be further improved.

2. Responsibilities of a *Freight Forwarder Company* Proven to Have Monopolistic Practices in Lobster Seed Export Services

Legally proven business actors who have undergone unfair business competition must be legally responsible for their actions that

¹²KPPU PRESS RELEASE Number 54/PR-KPPU/XI/2020.

¹³Shidarta, 2009, *Moralitas Profesi Hukum*, Refika Aditama, Bandung, p. 84.

¹⁴Article 10 Peraturan Komisi pengawas Persaingan Usaha No. 1 Tahun 2019.

¹⁵Article 18 paragraph (2) Peraturan Menteri Kelautan dan Perikanan Nomor 16 Tahun 2022.

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have violated the applicable legal provisions. According to the Big Indonesian Dictionary (KBBI), responsibility is defined as an obligation to bear anything, and if something arises, then the person in question can be prosecuted, found guilty, or sued. Meanwhile, in legal terminology, responsibility is said to be an obligation for someone to carry out something that has become mandatory or obligatory for him.¹⁶

Penalties that can be imposed on business initiators who compete in business unhealthy is an administrative sanction. KPPU, as an institution overseeing the implementation of Law No. 5 of 1999, may stipulate administrative sanctions against business actors. Even though the Business Competition Supervisory Commission (KPPU) has the authority to enforce provisions in business competition law, KPPU is not a special judicial institution for business competition issues. KPPU does not have the power to impose sanctions in both criminal and civil forms because its position tends to be an administrative institution because of the administrative authority it has. Therefore, the sanctions imposed by KPPU are administrative sanctions.

Business actors who carry out the unfair business competition can also be subject to punishment as stipulated in Article 118 of Perppu Number 2 of 2022 concerning Job Creation which changes the provisions of Article 48 of Law Number 5 of 1999, namely:¹⁷

"Violations of the provisions of Article 41 of this Law shall be punished with a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs) or imprisonment for a maximum of 1 (one) year as a substitute for a fine."

Changes in Article 48 of Law no. 5 of 1999 cause violations of monopoly practices that can be subject to fines or imprisonment only for violations of Article 41 related to the obligation of business actors to cooperate in the event that the KPPU conducts inspections and or investigations

PT. ACK as the Reported Party in the monopoly case contained in the KPPU Decision Number: 04/KPPU-I/2021 has basically been decided by the Commission Council as guilty of violating Article 17 of Law No. 5 of 1999, which stipulates a prohibition for business initiators in controlling the production, marketing of products and services which can lead to practices monopoly and unfair business competition.

Based on the consideration of the Commission Council stated that PT. ACK, in case Number: 04/KPPI-I/2021 has been legally proven to have violated Article 17 of Law No. 5 of 1999. However, in that Decision, there was no imposition of administrative sanctions in the form of fines because it was based on the consideration of the Commission Council above, which was based on the stipulation in Article 14 PP Number 44 of 2021 jo. Article 2 of KPPU Regulation Number 2 of 2021 which states that in this case PT. ACK as the reported party is deemed unable to pay sanctions in the form of fines because the state has confiscated the state's assets in the Decision of the Central Jakarta District Court Number 28/Pid.Sus-TPK/2021/PN.Jkt.Pst.

KPPU can also impose administrative sanctions in the form of termination of activities if the activity is proven to have an impact on the emergence of monopoly practices, causing unfair business competition and causing future losses to society as stipulated in Article 6 paragraph (2) of the Republic of Indonesia Government Regulation No. 44 of 2021. However, the Decision also did not impose such sanctions because it was based on the consideration of the Commission Council since November 26, 2020, when the Circular of the Director General of Capture Fisheries of the KKP Number B22891/DJPT/PI.130/IX/2020 concerning Temporary Suspension of the Issuance of SPWP in transportation services for export of lobster seeds until the end of the trial in this case, there has never been any export of lobster seeds by air transportation abroad.

Apart from the above responsibilities, the researcher argues that in this case, the company PT. ACK should also be responsible to other business actors, namely lobster seed exporters who use the services of PT. ACK for his act of setting an unreasonable price which is IDR 1,800 per head, which does not match the actual price of IDR 350 per head. This unfair price fixing has resulted in lobster seed exporters as service users who have no other choice but to use export services from PT. ACK. With the power it has, PT. ACK can set the highest price to make a profit. Business actors in running a business must maintain their integrity by upholding honesty and only take profits in reasonable amounts.¹⁸

KPPU, in its considerations which have been previously explained, considers that there has been confiscation of the property of PT. Aero Citra Kargo and its Director for the country with a total value of IDR 12,475,839,511. However, according to the researcher, compensation for lobster exporters as consumers must also be considered because there has been a discrepancy in the pricing of services provided by PT. ACK to consumers, namely lobster seed exporters, at the actual price.

The rules, as stipulated in the Civil Code, aim to protect business actors from losses arising from the actions of other business actors. Namely article 1365 concerning unlawful acts (PMH). Article 1365 states: "Each unlawful act, which brings loss to another oblige people because of his fault issue the loss, compensate for the loss"

¹⁶ Andi Hamzah, 2005, Kamus Hukum, Ghalia Indonesia, Bogor, p. 26.

¹⁷ Peraturan Pemerintah Pengganti Undang-Undang No. 2 Tahun 2022 tentang Cipta Kerja .

¹⁸ Hirmawati Fanny Tainpubolon, 2020, *Etika Bisnis Pelaku Usaha Yang Merugikan Konsumen Dalam Hukum Persaingan Usaha*, Journal of the Master of Laws Program, Faculty of Law, University Indonesia Vol. 1 N o. 1.

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The trial process in court in civil disputes can be enforced if one of the parties feels aggrieved by the other party's actions. An example of action that can harm one of them is an unlawful act for violating a rule of law.¹⁹ Business actors who have suffered losses due to unfair business competition perpetrated by perpetrators of violations can sue using the provisions of Article 1365 of the Civil Code if it can be proven that there is a connection between the acts of violation against the law and the losses suffered by the plaintiff, so that the perpetrators of these violations must be held responsible.

Abdulkadir Muhammad said that the legal subject is responsible for the violation he committed intentionally in which the activity resulted in losses to other parties.²⁰ PT. ACK, which in this case was proven to have committed monopolistic practices that caused unfair business competition and harmed the public interest, must be held responsible for the sanctions that arise as a result of their actions. The author believes this is an economic crime that has occurred in lobster seed export activities. Therefore, the imposition of strict sanctions is very necessary for business actors who engage in unfair business competition so that they can be held accountable for their actions. The imposition of strict sanctions is also necessary so that in the future it can serve as a warning to other business actors not to repeat the same thing.

CONCLUSION

Based on the elaboration of the above discussion, it can be concluded that the government's role in preventing the monopolistic practice of lobster seed export services by *freight forwarder companies* has been carried out by the KPPU, which is the agency with the authority to supervise and enforce laws prohibiting monopolistic practices and unfair business competition that regulated in Law no. 5 of 1999. The government, in this case, the KPPU, has not maximised its role in preventing monopoly practices. After the case of monopolistic practices in the export of lobster seeds, the government, through the Ministry of Maritime Affairs and Fisheries, again banned the export of lobster seeds and only allowed the catching of lobster seeds for cultivation in Indonesian territory.

The responsibility of a *freight forwarder company* that is proven to have committed monopolistic practices in lobster seed export services must comply with and carry out the sanctions imposed by stopping the company's operational activities and confiscating the company's assets according to a specified amount. In addition, the company must also be responsible for lobstering seed exporters who use PT. ACK for his actions in fixing unreasonable prices for export services by providing compensation to exporters who have been harmed.

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