

Violations of Anti-Monopoly Practices in Business Competition in the Four-Wheeled Motor Vehicle Tire Industry

Evita Isretno Israhadi¹, Hasan Basri²
evita_isretno@borobudur.ac.id¹, basri.kyp2@gmail.com²

Universitas Borobudur^{1, 2}

Abstract. This research describes violations of anti-monopoly practices in business competition in the four-wheeled motor vehicle tire industry. The author uses a normative juridical approach, using primary and secondary data. Data analysis uses qualitative analysis. The results show that perpetrators of money laundering crimes are subject to sanctions based on Articles 6, 7, 8, 9, and 10 of Law Number 8 of 2010 concerning Money Laundering Crimes. The most important substance in the regulation of Law No. 5 of 1999 concerning Anti-Monopoly is a Prohibited Agreement which has been stipulated or regulated in Articles 4 to 16. The facts of the trial found that Reported Parties I-VI were proven to have violated the rules stipulated in Law no. 5 of 1999, precisely in Article 5 paragraph (1) and Article 11. Article 5 (passage 1) expresses that each business entertainer is precluded from settling on concurrences with contending business entertainers to decide the cost of merchandise as well as administrations that should be paid by purchasers or clients in a similar market. The two translations of violations of these two articles were obtained from APBI presidium meetings in the period 2009 to 2012 which indicated that there was an agreement to restrain production and regulate price regulation.

Keywords: Violation; Antimonopoly practices; Business breach.

1 Introduction

Increasing the economic growth of a country can be done in various ways, one of which is by carrying out business activities aimed at obtaining profits and income to meet the living needs of individual people, both primary, secondary, and tertiary needs. As is the aim of these business activities, many people also want to carry out various types of business activities because life's needs must always be met. The growth of various types of business activities is what gives rise to business competition between business actors, as solid business contest (fair rivalry) and unfortunate business rivalry (out of line rivalry).[1]

Profit-making is always the main motive for business actors in running their businesses. Greater profits will be obtained if the business grows large. Becoming big and advanced is the dream of every entrepreneur, and therefore the law never prohibits a business from becoming big and advanced. Likewise, when a business is large and advanced, of course, the company will always try to maintain its greatness and progress. For this matter, the law can never prohibit anyone who tries to maintain the ability, greatness, and progress of their company to always be a leader or leader in their respective business fields or industries.[2]

The large number of business actors who are trying to become leaders in their business fields creates competition. The fact that there is a limited number of consumers and market size ensures that competition between business actors will always occur in business activities. According to Areeda and Hofenkamp: Competition can be broadly defined as a process in which market forces operate freely to ensure the efficient use of scarce resources to maximize total economic welfare.[3]

Competition often has a negative connotation because it is considered to prioritize one's interests. Even though a human being, whether in his capacity as an individual or as a member of an organization, economically will still try to obtain the maximum profit. Alfred Marshal, a leading economist, even proposed that the term competition be replaced with the term "economic freedom" in describing or supporting the positive goals of the competition process. Therefore, the definition of competition or business rivalry is in a positive and independent sense as a response to efforts to achieve equilibrium.[4] Unreasonable business contest is rivalry between business entertainers in doing creation exercises, and additionally advertising of merchandise, as well as administrations that is completed unscrupulously or illegal or blocks business contest.[5]

The most important substance in the regulation of Law No. 5 of 1999 concerning Anti-Monopoly is a Prohibited Agreement which has been stipulated or regulated in Articles 4 to Article 16. So agreements in competition law can be divided into two, namely horizontal agreements and vertical agreements. When other business actors or new entrants in the business sector certain parties are involved in agreements or agreements that result in or influence trade in a certain area, then this action is called a horizontal agreement.

One of the most important types of agreements prohibited in Law No. 5 of 1999 concerning Anti-Monopoly is a cartel. The term cartel is found in several languages such as "cartel" in English and cartel in Dutch. "Cartel" is also called "syndicate", namely an agreement or joint agreement (written) between several producer companies and others of the same type operating in the same field to regulate, control, and control various things, such as prices, marketing areas and so on, to suppress competition and/or business rivalry in the relevant market, and achieving large profits.[6]

In 2015, the Council at the Business Competition Supervisory Commission imposed maximum fines on 6 (six) domestic tire manufacturers. These six companies are considered to have violated Article 5 section (1) related to Article 11 of Regulation no. 5 of 1999 concerning Hostile to Imposing business model in the Auto Business with respect to the Four-Wheeled Engine Vehicle Tire Cartel. The six organizations are Restricted Obligation Organization (PT.) Bridgestone Tire Indonesia, PT. Sumi Elastic Indonesia, PT. Gajah Tunggal (GJTL), PT. Goodyear Indonesia (GDYR), PT. Elang Perdana Tire Industry, and PT. Shop Elastic Industry.

The Business Contest Administrative Commission (KPPU) through the Commission Committee drove by Kamser Lumbanradja concluded that PT. Bridgestone Tire Indonesia (Revealed Party I), PT. Sumi Elastic Indonesia (Announced II), PT. Gajah Tunggal Tbk (Revealed III), PT. Goodyear Indonesia Tbk (Announced Party IV), PT. Elang Perdana Tire Industry (Revealed V) and PT. The Shop Elastic Industry (Detailed Individual VI) was legitimately and convincingly demonstrated to have disregarded Article 5 passage (1) of Regulation no. 5 of 1999 concerning Hostile to Restraining infrastructure.

The preliminary realities tracked down that Respondents I, II, III, IV, V, and VI were demonstrated to have disregarded Regulation no. 5 of 1999 concerning Hostile to Syndication, explicitly in Article 5 passage (1) and Article 11. In Article 5 (section 1), it is expressed that: "Business entertainers are disallowed from settling on concurrences with contending business

entertainers to decide the cost of products as well as administrations gave should be paid by purchasers or clients in a similar pertinent market". Besides, in Article 11 of Regulation no. 5 of 1999 concerning Hostile to Restraining infrastructure expresses that: " Business entertainers are precluded from going into concurrences with their contending business entertainers, which mean to impact costs by controlling the creation or potentially promoting of merchandise and additionally benefits, which might bring about monopolistic practices as well as uncalled for business rivalry." ”.

At the first hearing, several tire companies as Objection Petitioners submitted requests for Additional Examination of several witnesses/experts to the Panel of Judges at the Central Jakarta District Court which was examining this case in this regard, the Panel of Judges at the Central Jakarta District Court promised to provide answers to the request for Additional Examination in 2 (two) weeks after the first hearing. But then unexpectedly all parties, both the tire company as the applicant for objection I to the applicant for objection VI and the KPPU; as the respondent, on July 8, 2015, 20 (twenty) working days out of a total of 30 (thirty) working days as managed in High Court Guideline No. 3 of 2005 concerning Strategies for Submitting Lawful Issues with KPPU Choices, the Board of Judges in the quo case read out the Focal Jakarta Region Court Choice No.70/PDT.G/KPPU/2015/PN.JKT.PST related to KPPU Choice No. 08/KPPU-I/2014, which in addition to other things chose to:

- a. Reject the request for additional examination submitted by several objection applicants;
- b. Reject the Objection Request submitted by the tire company;
- c. Strengthening KPPU decision no. 08/KPPU-I/2014; And
- d. Punishing tire companies with a fine of 5 billion rupiah each (there is a reduction in the fine compared to the fine imposed in the KPPU decision because the sanctions imposed by the KPPU are too large which allows liquidity bottlenecks for the companies concerned even though the sanctions should be corrective, preventive, and educational).

Regarding the decision in the tire cartel case above, all tire companies that were found guilty filed an appeal to the Supreme Court considering the lack of legal considerations mentioned in the decision.

The problem in this paper is what is the practice of 4 (four) wheeled motor vehicle tire cartels in the automotive industry according to Regulation Number 5 of 1999 concerning Disallowance of Syndication Practices and Uncalled for Business Contest, and what is the reason for the lawful contemplations of the Focal Jakarta Locale Court in the KPPU Choice Number 08/KPPU-I/2014 dated 10 December 2014?

2 Method and Approach

2.1 Method

The method used in writing this applied paper is a descriptive-analytical method, namely by using data that clearly describes problems directly in the field, then analysis is carried out and then conclusions are drawn to solve a problem. The data collection method is through observation and literature study to obtain solutions to problems in preparing this paper. In this research, researchers used library research as a data collection tool.[7]

2.2 Approach

Normative juridical approach, namely an approach to the relationship between juridical factors (positive law) and normative factors (legal principles) utilizing legislation relating to the practice of 4 (four) wheeled motor vehicle tire cartels in the automotive industry according to Regulation Number 5 of 1999 concerning Denial of Monopolistic Practices and Out of line Business Contest, as well as the reason for the lawful contemplations of the Focal Jakarta Locale Court in KPPU Choice Number 08/KPPU-I/2014 dated 10 December 2014.[8] This research describes the situation of the object under study, namely focusing on the practice of 4 (four) wheeled motor vehicle tire cartels in the automotive industry according to Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition, as well as what is the basis for the legal considerations of the Jakarta District Court Center in KPPU Decision Number 08/KPPU-I/2014 dated 10 December 2014.

3 Discussion

3.1 Practices of 4 (Four) Wheeled Motor Vehicle Tire Cartels in the Automotive Industry According to Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition

The point of the Unitary Condition of the Republic of Indonesia is to safeguard the whole Indonesian country and to advance general government assistance, teach the existence of the country, and take part in executing a world request in view of freedom, timeless harmony, and civil rights. To accomplish the objective of acknowledging general government assistance. The 1945 Constitution of the Republic of Indonesia (UUD 1945) manages the earth, water, and the regular assets contained in that are constrained by the State and utilized for the best flourishing individuals.

One of the most important types of agreements prohibited in Law No. 5/1999 is a cartel. The term cartel is found in several languages, such as "cartel" in English and cartel in Dutch. "Cartel" is also called "syndicate" which is an agreement or joint agreement (written) between several producer companies and others of the same type that operate in the same field to regulate, dominate, and control various things, such as prices, marketing areas and so on, to suppress competition and/or business rivalry in the relevant market, and achieving large profits.

Several things are regulated in Law No. 5 of 1999 also known as the Antimonopoly Law, including:

1. Prohibited agreements, for example, oligopoly practices, price fixing, territorial division, boycotts, cartels, trusts, oligopoly, and so on. (Article 4 to article 16 of Law No. 5 of 1999).
2. Prohibited activities, for example, monopoly practices, monopsony practices, conspiracy, and so on (Article 17 to article 24 of Law No. 5 of 1999).

Maltreatment of prevailing position. The prevailing position alluded to is what is happening where the business entertainer has no huge rivals in the significant market in regards to the piece of the pie controlled, or the business entertainer has the most

elevated position among its rivals in the important market in regards to monetary capacity, capacity to get to provisions or deals as well as the capacity to change supply or interest for specific labor and products. With respect to maltreatment of prevailing position, for instance, standing firm on various situations, share possession, and so on., as directed in articles 25 to 27 of Regulation No. 5 of 1999.

In view of the Report on Supposed Infringement of Regulation Number 5 of 1999 concerning Preclusion of Monopolistic Practices and Unreasonable Business Contest in the Auto Business connected with the Four-Wheeled Engine Vehicle Tire Cartel gave by the KPPU on May 12 2014, there is starting proof of supposed infringement of Article 5 passage (1) and Article 11 of the Business Rivalry Regulation completed by 6 Indonesian tire industry business entertainers who are individuals from APBI, including PT Bridgestone Tire Indonesia; PT Sumi Elastic Indonesia; PT Gajah Tunggal, Tbk.; PT Goodyear Indonesia, Tbk.; PT Elangperdana Tire Industry; also, PT Industri Karet Shop, to be specific as follows:

1. The 6 business actors mentioned above are in the relevant market that produces tires in the period 2009 to 2012, namely (i) Product market for tires for four-wheeled vehicles used as passenger car tires for Ring 13, Ring 14, and Ring tires. 15 and Ring 16; and (ii) Geographic Market which covers the entire territory of Indonesia and is produced and marketed by tire companies that are members of APBI; And
2. There has been an exchange of information and APBI minutes which can be categorized as sufficient evidence of communication to prove the existence of an agreement and/or agreement to influence prices by regulating production in the four-wheeled tire market.

The two initial pieces of evidence of alleged violations were obtained from APBI presidium meetings in the period 2009 to 2012 which indicated that there was an agreement to restrain production and regulate price regulation. In the KPPU Decision Number 08/KPPU-I/2014 which was decided on December 10, 2014, the KPPU not only used the Business Competition Law as the major consideration for alleged violations committed by the 6 Indonesian tire industry business actors who are members of the APBI, but the KPPU also uses the Harrington method to measure the occurrence of a cartel.

3.2 Basic Legal Considerations of the Central Jakarta District Court in KPPU Decision Number: 08/KPPU-I/2014 dated 10 December 2014

Organizations have contributed a ton to the improvement of a country, particularly in the financial area. Nonetheless, enterprises likewise frequently have adverse consequences from exercises like ecological contamination, charge control, abuse of laborers, extortion, and illegal tax avoidance wrongdoings. Subsequently, this effect has made the law a controller and defender of society, which should focus and direct the exercises of these partnerships.[9]

Business competition law is one of the economic legal instruments. This is exhibited by the issuance of Regulation Number 5 of 1999 concerning the Disallowance of Syndication Practices and Unreasonable Business Contest. Before the enactment of Law Number 5 of 1999, regulations regarding business competition law were regulated in several previously applicable laws and regulations, including those regulated in Law Number 5 of 1984 concerning Industry, Article 7 paragraph (2), Book of Law. Criminal

Code (KUHP) Article 382, and Law Number 1 of 1995 concerning Limited Liability Companies Article 104.[5] Not only that, it is also regulated in the Civil Code (Burgerlijk Wetboek) Article 1356, the Basic Agrarian Law (Law Number 5 of 1960) Article 13 paragraph (2), as well as the Law on Small Businesses (Law -Law Number 9 of 1995) Article 8.[10]

Concerning the fundamental lawful contemplations of the Focal Jakarta Locale Court in the KPPU Choice Number 08/KPPU-I/2014 dated 10 December 2014, the standards and targets of our country's economy are in Article 33 section of the 1945 Public Solidarity Constitution of the Republic of Indonesia which expresses that "the economy organized as a joint endeavor in light of the guideline of family relationship." Meanwhile, the explanation states, among other things, that the article states the basis of economic democracy, production is carried out by all, for all under a leader or owner, members of society take priority, not one person's prosperity. Apart from that, the provisions in Article 33 state clearly that the national economy must be built based on the philosophy of economic democracy in the form of a people's economy, which is also the basis for political policy and business competition law. Price fixing behavior is a real form of coordination carried out by companies that exist in markets or trade associations to obtain collision results.

Thus, understanding the proof of violations of Article 5 regarding price-fixing agreements cannot be separated from understanding the guidelines for Article 11 regarding cartels. As in the tire case that the author is researching, the KPPU has decided that the Indonesian Tire Company Association has violated Article 5 and Article 11 of Law no. 5/1999.

With the KPPU Choice, Case Number 08/KPPU-I/2014 stems from the KPPU in regards to Supposed Infringement of Article 5 passage (1) and Article 11 of Regulation Number 5 of 1999 in the Auto Business connected with the Four-Wheeled Engine Vehicle Tire Cartel committed by:

1. Reported Party I, PT Bridgestone Tire Indonesia, is located at The Plaza Office Tower 11th Floor Jalan M.H. Thamrin Kav. 28-30 Central Jakarta 10350;
2. Reported Party II, PT Sumi Rubber Indonesia, is located at Wisma Indomobil 12th Floor Jalan Letjen. M.T. Haryono Kav. 8, Cawang, East Jakarta;
3. Reported Party III, PT Gajah Tunggal, Tbk., domiciled at Wisma Hayam Wuruk 10th Floor Jalan Hayam Wuruk 8, Central Jakarta;
4. Reported Party IV, PT Goodyear Indonesia, Tbk., domiciled at Jalan Pemuda Number 27 Tanah Sareal, Bogor City, West Java;
5. Reported Party V, PT Elang Perdana Tire Industry, domiciled on Jalan Elang, Sukahati Village, Citeureup - Bogor Regency, West Java;
6. Reported Party VI, PT Industri Karet Deli, located at Jalan K.L Yos Sudarso Km. 8.3 Medan, North Sumatra.

The report contains allegations that four-wheeled vehicle tire manufacturers in Indonesia who are members of APBI have entered into price fixing and cartel agreements with fellow tire manufacturers in Indonesia. After the Commission conducted research and clarification, it then proceeded to the preliminary examination stage. The results of the preliminary examination were carried out by hearing statements from reported parties I-VI. The examination team found that there was sufficient initial evidence to carry out a further examination. Even during the follow-up

investigation period, the examining team heard statements from the reported parties, witnesses, and experts.

The facts of the trial found that Reported Parties I-VI were proven to have violated the rules stipulated in Law no. 5 of 1999, explicitly in Article 5 section (1) and Article 11. Article 5 (section 1), expresses that for each business entertainer, it is precluded to go into concurrences with contending business entertainers to decide the cost of products or potentially benefits that should be paid by purchasers or clients in a similar market. In the mean time, Article 11 expresses that business entertainers are restricted from going into concurrences with other contending business entertainers, to impact costs by directing the creation and showcasing of products as well as administrations, which could bring about monopolistic practices and additionally uncalled for business rivalry. The two translations of violations of these two articles were obtained from APBI presidium meetings in the period 2009 to 2012 which indicated that there was an agreement to restrain production and regulate price regulation.

As for the basic legal considerations of the Central Jakarta District Court in the KPPU Decision Number 08/KPPU-I/2014 dated 10 December 2014, the principles and objectives of our nation's economy are in article 33 section of the 1945 Public Solidarity Constitution of the Republic of Indonesia which expresses that "the economy organized as a joint endeavor in view of the standard of connection." Meanwhile, the explanation states, among other things, that the article states the basis of economic democracy, production is carried out by all, for all under a leader or owner, members of society take priority, not one person's prosperity. Apart from that, the provisions in Article 33 state clearly that the national economy must be built based on the philosophy of economic democracy in the form of a people's economy, which is also the basis for political policy and business competition law. Price fixing behavior is a real form of coordination carried out by companies that exist in markets or trade associations to obtain collision results.

Thus, understanding the proof of violations of Article 5 regarding price-fixing agreements cannot be separated from understanding the guidelines for Article 11 regarding cartels. As in the tire case that the author is researching, the KPPU has decided that the Indonesian Tire Company Association has violated Article 5 and Article 11 of Law no. 5/1999.

Based on all the considerations expressed above, the KPPU has decided and sentenced Reported Parties I-VI to pay a fine of 25 billion which must be given to the state treasury as revenue from fines for violations in the business competition sector carried out by APBI. Also, KPPU provides input to the Ministry of Industry to guide APBI so that it will fully comply with what has been regulated in Law No.5/1999.

In the case of the tire cartel, according to the perpetrators of this cartel, they used tacit collusion by forming an association, namely the Association of Indonesian Tire Companies, and it could also be categorized as explicit collusion because this association agreed to withhold production and a price agreement in the minutes of this association's meeting as already explained. in the position above.

Furthermore, there is an explanation of the indications of cartels, as the law entrusts them with the task of supervising business competition in Indonesia so the KPPU has the responsibility to prevent and take action against cartel behavior in Indonesia. The KPPU, as formulated in Article 36 of Law No. 5/1999, has the authority to enforce the law in cartel cases either based on the KPPU's initiative or based on reports from the public. Early Indicators for Cartel Identification To fulfill the

requirements for sufficient initial evidence, KPPU can examine several early indicators that can be concluded as driving factors for the formation of a cartel. In theory, several factors can encourage or facilitate the occurrence of cartels, both structural and behavioral factors.

In general, this provision is useful as information for the public, especially business actors, so that they know the initial indications of what can be categorized as cartel activity. This can also be a learning process to further refine ways of identifying cartel actions, so that one day the relevant parties, especially consumers, can sue or at least know and report the actions of business actors that are indicated by the cartel as being the result.

4 Conclusion

Guideline of Law of the Republic of Indonesia Number 5 of 1999 concerning the Disallowance of Monopolistic Practices and Uncalled for Business Contest (referred to as Law No. 5/1999) is a Prohibited Agreement which has been stipulated or regulated in Articles 4 to Article 16. So, an agreement in law Competition can be divided into two, namely horizontal agreements and vertical agreements. When other business actors or new entrants in a particular business field are involved in agreements or arrangements that result in or influence trade in a particular area, this action is called a horizontal agreement. One of the most important types of agreements prohibited in Law No. 5/1999 is a cartel.

In view of the Report on Supposed Infringement of Regulation Number 5 of 1999 concerning Preclusion of Monopolistic Practices and Unreasonable Business Contest in the Auto Business connected with the Four-Wheeled Engine Vehicle Tire Cartel gave by the KPPU on May 12 2014, there is starting proof of supposed infringement of Article 5 passage (1) and Article 11 of the Business Rivalry Regulation completed by 6 Indonesian tire industry business entertainers who are individuals from APBI, including PT Bridgestone Tire Indonesia; PT Sumi Elastic Indonesia; PT Gajah Tunggal, Tbk.; PT Goodyear Indonesia, Tbk.; PT Elangperdana Tire Industry; also, PT Store Elastic Industry. Current realities of the preliminary observed that Revealed Gatherings I-VI were demonstrated to have abused the guidelines specified in Regulation No. 5 of 1999, unequivocally in Article 5 section (1) and Article 11. Article 5 Section (1), expresses that each business entertainer is disallowed from pursuing concurrences with contending business entertainers to decide the cost of products or potentially benefits that should be paid by buyers or clients in a similar market. In the mean time, Article 11 expresses that business entertainers are restricted from going into concurrences with other contending business entertainers, to impact costs by directing the creation and showcasing of products as well as administrations, which could bring about monopolistic practices and additionally uncalled for business rivalry. The two translations of violations of these two articles were obtained from APBI presidium meetings in the period 2009 to 2012 which indicated that there was an agreement to restrain production and regulate price regulation.

References

- [1] Hermansyah., *Pokok-Pokok Hukum Persaingan Usaha Di Indonesia*. Jakarta: Kencana Prenadamedia Group, 2009.
- [2] G. Widjaja., “Konsep Dan Pengertian Kartel dalam Kerangka Persaingan Usaha Serta Penerapannya di Indonesia,” *Huk. Bisnis*, vol. 30, no. 2, 2011.
- [3] Philip E. Areeda dan Herbert Hofenkampt., “Antitrust Law: An Analysis of Antitrust Principles and Their Application,” *ORCID*, vol. 5, no. 4, 2022.
- [4] N. N. Sirait., *Hukum Persaingan di Indonesia*. Medan: Pustaka Bangsa Press, Medan, 2004.
- [5] M. Fuady, *Hukum Jaminan Utang*. Jakarta: Erlangga, 2013.
- [6] G. Levina, R. Naibaho, and K. Siburian, “Tinjauan Yuridis Terhadap Kasus Kartel Minyak Goreng Di Indonesia (Studi Putusan Kppu Nomor 24/Kppu-1/2009),” *J. Huk. PATIK*, vol. 07, no. 5, pp. 229–240, 2017, [Online]. Available: <https://ejournal.uhn.ac.id/index.php/patik/article/view/305>.
- [7] S. Soekanto., *Pengantar Sosiologi dan Perubahan Sosial*. Depok: PT Raja Grafindo Persada, 1985.
- [8] R. H. Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta : Ghalia Indonesia, 1988.
- [9] M. Nasichin and N. P. Nofita, “Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Pencucian Uang,” *J. Pro Huk. J. Penelit. Bid. Huk. Univ. Gresik*, vol. 10, no. 1, pp. 36–45, 2021, doi: 10.55129/jph.v10i1.1434.
- [10] A. Siswanto., *Hukum Persaingan Usaha*. Jakarta: Penerbit Ghalia Indonesia, 2002.