

SUPERVISION BY THE BUSINESS COMPETITION SUPERVISORY COMMISSION (KPPU) ON ALLEGED VIOLATIONS OF ARTICLE 15 SECTION (2) Law NO 5/1999 CONCERNING CLOSED AGREEMENTS (TYING) ON RAPID TEST AND POLYMERASE CHAIN REACTION (PCR) PRODUCTS

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Abstract: KPPU as an independent institution established to oversee the implementation of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition stipulated by Presidential Decree. Therefore, as an independent institution. As the agency in charge of supervising the implementation of the Antimonopoly Law, the KPPU is a special organ that has dual duties, apart from creating order in business competition, it also plays a role in creating and maintaining a conducive business competition climate. In connection with the condition of the Covid-19 pandemic, KPPU as an institution authorized by Law no. 5/1999 to supervise business actors in carrying out their business activities so as not to carry out monopolistic practices and or unfair business competition, has conducted an initiative case study on Rapid Test and Polymerase Chain Reaction (PCR) for the diagnosis of Covid-19 in the alleged violation of Article 15 paragraph (2) of Law No. 5/1999 on closed agreements. KPPU has a supervisory function, especially against antitrust in business competition law, so that the position of KPPU is more of an administrative institution because the authority attached to it is administrative authority.

Key Words: Supervision, Exclusive Agreement, Rapid Test, Rapid Test, Polymerase Chain Reaction (PCR), Indonesia's Business Competition Supervisory Commission.

1. INTRODUCTION:

The Business Competition Supervisory Commission (KPPU) conducts supervision by calling and requesting information from various hospitals suspected of practicing *tying-in* services for rapid tests, expert statements, as well as conducting field surveys in Greater Jakarta and cities where there is a KPPU Representative Office (ie. Medan, Lampung, Surabaya, Balikpapan and Makassar). Until now, KPPU has not found sufficient evidence to be used in the investigation stage, especially the fulfillment of the elements of the impact of unfair business competition. However, this finding could not be fulfilled because most of the hospitals that were the object of the research had adapted and made changes in behavior by adjusting the form of marketing for the Rapid test product.

Not only that, KPPU has also investigated the *Polymerase Chain Reaction* (PCR) test business. Based on the KPPU's initial findings, the bundling of PCR test prices and the speed of test results can trigger unfair business competition. In his findings, he stated that business actors maximized profits through the PCR test business, especially for bundling with doctor consultations and PCR tests at a speed of time set at high prices even exceeding the top retail price (HET) set by the government.

2. THEORITICAL FRAMEWORK:

a. Theory of Law As A Tool Of Social Engineering

Law as a tool of social engineering which means law as a tool of reform/engineering in society.

b. Theory of Justice

Justice theory is a theory that examines and analyzes the impartiality, truth or arbitrariness of institutions or individuals against society or other individuals.[1]

3. LITERATURE REVIEW:

According to Arie Siswanto, what is meant by *competition law* is a legal instrument that determines how competition should be conducted.[2]

Through closed agreements, business actors can take advantage of the negative opportunities they have obtained from the closed agreements to reduce healthy agreements, and further disrupt the business climate.

4. METHOD:

The method used in this study is a normative legal approach, which is an approach that focuses on reviewing and researching legal material with reference to legal norms contained in laws and regulations, court decisions and legal norms that exist in society.[3]

5. DISCUSSION:

Violations and allegations of unfair business competition in the implementation of the *Rapid Test* and PCR are very possible, especially if the results of the Rapid test and PCR test are mandatory requirements in carrying out travel for someone who will travel outside the region or abroad. Not to mention the lack of knowledge from the public about the procedure which in the end will comply with the provisions that have been set which in the end will experience losses because they have already bought the package offered by the hospital.

6. ANALYSIS:

A. Forms of Supervision by the Business Competition Supervisory Commission (KPPU) in Alleged Violations of Article 15 Paragraph (2) of Law no. 5 of 1999 on *Rapid Test* and *Polymerase Chain Reaction (PCR) Products*

After the massive spread of the COVID-19 virus since early 2020, the Business Competition Supervisory Commission (KPPU) has indicated that there are many potentials for business competition in services. Covid-19 Rapid Test and PCR Services. This finding was conveyed based on the results of the research initiative conducted by KPPU with the allegation of the addition of a mandatory additional product (*complementary product*) in the service. At the beginning of using the Rapid Test and PCR Test services in 2020, various price ranges and packages were found, based on data through the media it was found that there were packages in the form of mandatory additional products indicated as a form of closed agreement.

KPPU in conducting supervision and efforts law enforcement *rule of reason approach method*. The *rule of reason* is that if the prohibited act has been proven, it does not automatically violate the law, but it must first be seen to what extent the consequences of these actions will lead to monopolies or will lead to unfair competition.[4]

B. KPPU's Supervision Efforts to Ensure the Law as a Tool of Social Control to Create Legal Justice

It is appropriate that the laws and regulations that will be applied in controlling the community must be able to accommodate the needs of the affected parties. Public interest is an interest that must be prioritized over other interests. To do that, it is necessary to examine the role of the institution in charge of representing the state in protecting its people so that they carry out their functions as expected.

7. CONCLUSION

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The KPPU's investigation regarding the alleged violation of Article 15 paragraph (2) of Law No. 5 of 1999 concerning closed agreements (*tying*) is determined by the commission's approach used in analyzing the problem.

- 2) Efforts that can be made to realize supervision and for alleged violations of Article 15 paragraph (2) of Law No. 5/1999 concerning closed agreements (*tying*) by the Business Competition Supervisory Commission that are fair to the public are by revising Law No. 5 of 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, especially those relating to authority in terms of evidence by KPPU.

REFERENCES:

1. Salim HS dan Erlies Septiana Nurbaini, 2015, *Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis (buku kedua)*, Rajawali Pers, Jakarta, page 26.
2. Hermansyah, 2008, *Pokok-Pokok Hukum Persaingan Usaha di Indonesia*, Jakarta: Kencana, page 1.
3. Zainuddin Ali, 2011, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, page 105.
4. Munir Fuady, 2005, *Pengantar Hukum Bisnis: Menata Bisnis Modern di Era Global*, Citra Aditya Bakti, Bandung, page 214.