

CHAPTER I

INTRODUCTION

A. Background

More development in the business world, the greater the businesses opportunity is to do the competition. Competition is one of the activities that can cause positive impact if the businesses is done rightfully and honestly.¹ But, the competition can causes the negative impact if done fraudulently and cause disadvantage other parties/ other businesses.² Discussing the business competition that occurs between businesses, we need to know such as prohibited agreements and prohibited activities that have been regulated in Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.³ Prohibited activities such as monopoly, conspiracy, monopsony, etc. This prohibited activity is basically an agreement between businesses, both on the same level and different levels. And prohibited agreements such as trust, kartel, oligopoly, oligopsony, exclusive dealing, price fixing agreement, price discrimination agreement, etc.

As a result, the unfair business competition can also cause disadvantage consumers and even countries as well. Therefore, the existence of Law No. 5 of 1999 on Prohibition of Monopolistic

¹ Abdulkadir Muhammad, 2002, *Hukum Perusahaan Indonesia*, Bandung; Citra Aditya, page 285.

² Irna Nurhayati, "Kajian Hukum Persaingan Usaha: Kartel Antara Teori dan Praktik", *Jurnal Hukum Bisnis*, vol. 30, no. 02 (2011), ISSN: 2443-0994, page 12.

³ Ridwan Khairandy, 2009, *Perseroan Terbatas: Doktrin, Peraturan Perundang-undangan dan Yurisprudensi*, Yogyakarta: Total Media, page 279.

Practices and Unfair Business Competition to manage the businesses in business competition. Though, the existence of Law No. 5 of 1999 also does not restrict businesses to compete.⁴

The purpose of the establishment of Law No. 5 of 1999 for businesses is to conduct business competition in a right, fair, and guarantee to the consumer.⁵ This was the result of an agreement between the Government of the Republic of Indonesia and the International Monetary Fund (IMF) on January 15, 1998. At that time Indonesia was in a financial crisis. Therefore, the International Monetary Fund provides financial assistance of US \$ 43 billion. On condition that Indonesia must improve/reform the economy and change the laws on the economy with anti-monopoly laws.⁶

Lately, many cases of unfair business competition emerged, one of which is an Exclusive Dealing between PT. Tirta Investama with PT. Balina Agung Perkasa vs PT. Tirta Fresindo Jaya.⁷ Exclusive dealing is one of the businesses strategies to expand power in the business world.⁸

In this case producer of aqua PT. Tirta Investama do the exclusive dealing with PT. Balina Agung Perkasa as a distributor of aqua. The case

⁴ Suyud Margono, 2009, *Hukum Anti Monopoli*, Jakarta, Sinar Grafika, page 26.

⁵ Pande Radja Silalahi, *Undang-Undang Antimonopoli dan Perdagangan Bebas*, Jurnal Hukum Bisnis, Vol. 19 (2002), ISSN: 0852-4912, page 16.

⁶ Rachmadi Usman, 2013, *Hukum Persaingan Usaha di Indonesia*, Jakarta: Sinar Grafika, page 1.

⁷ CNN, 2017, "KPPU Sinyalir Pelanggaran Distribusi Produsen Aqua", taken from <https://www.cnnindonesia.com/ekonomi/20170510152556-92-213847/kppu-sinyalir-pelanggaran-distribusi-produsen-aqua/> accessed on Friday, November 17th 2017, 23.00

⁸ Article 15 Paragraph (3) of Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition explains "businesses are prohibited from entering into agreements with other businesses as suppliers in the price/ reduced price of goods and/ or services: goods and/ or services of another business actor as a buyer or will not purchase similar goods and/ or services from another businesses who becomes a supplier or competitor in the same market.

that occurred between PT. Tirta Investama as Aqua producer, PT. Balina Agung Perkasa as aqua distributor vs PT. Tirta Fresindo Jaya started when the complaints of retailers in Jabatabek. The complaint is directly submitted to the Business Competition Supervisory Commission (KPPU) office in September 2016.⁹ We have seen that aqua is the first bottled drinking water in Indonesia. This is one strategy to master the market, but in an unhealthy/ unfair way.

Based on that case, PT. Tirta Fresindo Jaya as produsen of Le Minerale summons PT. Tirta Investama in the newspaper on October 1, 2017.¹⁰ Furthermore, the summons conducted by PT. Tirta Fresindo Jaya was responded by the Business Competition Supervisory Commission (KPPU) case No.22/KPPU-I/2016.¹¹

Based on the investigations from KPPU Team, PT. Tirta Investama and PT. Balina Agung Perkasa do a violation of two (2) articles, namely Article 15 point 3 letter b and Article 19 letters a and b Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition. Based on the existence of this case, the author want to analyse about “Case Study of Business Competition Supervisory

⁹ UC News, 2017, “Dugaan Monopoli Perseteruan Aqua dan Le Minerale Memanas”, taken from <https://www.ucnews.id/news/Dugaan-Monopoli-Peseteruan-Aqua-dan-Le-Minerale-Memanas/3230353739623830.html> accessed on Saturday, November 25th 2017, 00.15

¹⁰ Summons/ Somasi is a reprimand for the negligence or omission of a person/ Legal Entity/ Business Entity. Summons can be done through regular mail or through newspapers, or can also be done by the court. Pusdiklat UII, Modul Praktikum Keadvokatan/ Kewirausahaan, UII, Yogyakarta, 2016.

¹¹ KPPU Republik Indonesia, 2017, “Temukan Dugaan Pelanggaran Dalam Distribusi Air Minum Dalam Kemasan Air Mineral, KPPU Lakukan Sidang Pemeriksaan Pendahuluan”, taken from <http://www.kppu.go.id/id/blog/2017/05/temukan-dugaan-pelanggaran-dalam-distribusi-air-minum-dalam-kemasan-air-mineral-kppu-lakukan-sidang-pemeriksaan-pendahuluan/> accessed on Sunday, November 18th 2017, 01.00

Commission Decision No. 22/KPPU-I/2016 about Exclusive Dealing and Market Control“.

B. Research Problem

1. How is the Mechanism for Handling Cases of Unfair Business Competition PT. Tirta Investama by KPPU?
2. What are the Legal Considerations of KPPU's Decisions No. 22/KPPU-I/2016 concerning Exclusive Dealing and Market control by PT. Tirta Investama?

C. Objective of Research

1. To Know the Mechanism for Handling Cases of Unfair Business Competition PT. Tirta Investama by KPPU
2. To Know the Legal Considerations of KPPU's Decisions No. 22/KPPU-I/2016 concerning Exclusive Dealing and Market control by PT. Tirta Investama

D. Benefit of Research

Theoretically, the authors hope that through this research can provide a better understanding of unfair business competition in Indonesia and a better solution to overcome the problem of unfair business competition supervised by the Business Competition Supervisory Commission (KPPU) based on Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.

Practically, the authors hope that through this research can prevent unfair business competition conducted by businesses in Indonesia supervised/ controlled by the

Business Competition Supervisory Commission (KPPU) based on Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.