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REVEALING THE ABUSE OF DOMINANT POSITION BY
MOTORCYCLES SALES INDUSTRY IN INDONESIA

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ABSTRACT

Motorcycle company in Indonesia, namely Honda and Yamaha, violated the Law No. 5 of 1999 concerning the prohibition of monopoly and unfair business competition. *Komisi Pengawas Persaingan Usaha* (The Business Competition Supervisory Commission) as the responsible agency has issued the decision to resolve this case. However, on the other hand there is still alleged violation towards the dominant position abuse. Responding to the allegation, this study aims to analyze the accuracy of the decision which is given by the Business Competition Supervisory Commission in cases involving automatic scooter type motorcycle. The result of this study was the two companies not only violated Article 5 paragraph (1) of Law no. 5 of 1999 as decided by the Business Competition Supervisory Commission, but also allegedly violated the article 25 of Law No. 5 of 1999 related to the abuse of the dominant position in the price-fixing agreement which has been made by the automatic motorcycle companies of Honda and Yamaha.

INTRODUCTION

In this modern era, business actor has quite a big role to be able to develop Indonesia's economy. Business actor also plays an important role in the wheel of human life to meet their daily needs. The needs of human life is very diverse, this diversity is related to their efforts to be able to carry out their activities smoothly. One of the needs that support human activity is the means of transportation.

In Indonesia, means of private transportation is a must-have item. The lack of means of public transportation encourages people to buy means of private transportation, thus their daily activity can run quickly and accurately. Means of transportation that is relatively affordable and has the high mobility is motorcycle.

A motorcycle is a two-wheeled motorized vehicle which can be modified with additional parts to facilitate the work of the owner.

Currently, the interest of Indonesian people is directed to the automatic scooter type motorcycle. The popularity of automatic type motorcycle can be proven by the increasing sales of the motorcycle type every year. In Indonesia there are many companies which are engaged in the production and sale of motorcycles, but there are only a few companies that produce and sell the automatic scooter type motorcycle. At least the companies which engaged in the production of motorcycles, especially this type of automatic scooter, causing the competition that is not quite heavy among the business actors because there will be only a few business actors who compete. Moreover, there are companies that have market power over the automatic scooter type motorcycle market in Indonesia. At least business actors who carry out competition can trigger anti-competitive behavior by two or more business actors.

Indonesian law does not provide a legal basis for regulating or guaranteeing prices for any product (Prihandono and Relig, 2019). However, various regulations which regulated the economic activities and the work of developing and enforcing these rules are in the hands of the government. At the global level, economic law carries the greater quality, considering its scope and the economic actors who involved (Niyobuhungiro, 2019). Economic law is the branch of law that regulates public economy and among the government, its economic administrative institution, economic organization and their citizen.

Dealing with the matter, Indonesia has regulated the problem of business competition. Regulation regarding business competition is regulated in the Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to as UU No. 5/1999). In Law No. 5/1999 has established the principle of economic democracy in the Indonesian economy, in which all business actors in Indonesia in carrying out their business activities must pay attention to the balance between the interests of business actor and the public interest (Kagramanto, 2012). In the business competition law, there are two types of business competition, namely fair business competition and unfair business competition.

The agency that responsible for business competition case is *Komisi Pengawas Persaingan Usaha/ KPPU* (the Business Competition Supervisory Commission). This agency has the duty to enforce the law, thus the consumer and people know that there is institution that fight for their interest (Sri Turatmiyah and Akhmad Idris, 2010). The Business Competition Supervisory Commission suspects that it has been a violation of Article 5 paragraph (1) of Law no. 5/1999 in the automatic scooter type motorcycle industry in Indonesia. The allegation is addressed to the two giant companies namely *Astra Honda Motor* and *Yamaha Indonesia Motor Manufacturing*. Both companies are the owners of market power in the automatic scooter type motorcycle industry in Indonesia. In article 5 paragraph (1) of Law no. 5/1999 explains that business actor is prohibited from making agreements with business competitor to determine the price of goods and or services that must be paid by consumer or customer in the same relevant market. The term agreement was known by the people before the birth of Law No. 5/1999. According to Prof. Subekti (dalam Supriatna, 2016) states that an agreement is an

event, in which someone promises to another person, or where two people promise each other to do something. The agreement contained in Article 5 can also be said to be a price fixing agreement.

Through the proof that has been found, Honda is also suspected of potentially misusing its dominant position. Through this proof, Honda as a company holding a dominant position is proven to do price fixing. In several countries, price fixing can indeed be a common partnership contract in economic activity (Leslie, 2017), but legally price fixing must be monitored as an effort to uphold justice. Therefore, this study will review the accuracy of the Business Competition Supervisory Commission in making decisions. In addition, this study also aims to review article violation which committed in relation to the abuse of dominant position.

RESEARCH METHOD

This study used a normative type of legal research, namely the study which was conducted by examining and reviewing the legal principles and legal systematic which contained in applicable laws and regulations related to the research (Hadjon and Djatmiati, 2014). The legal research used was a study of norms or rules covering legal principles, legal rule (norm values), concrete legal regulation, and the legal system.

The problem approach which used in this study was the statute approach, the problem approach, and the conceptual approach. Statute approach was an approach that was carried out by examining the laws and regulations relating to the Law No. 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition which became the legal basis discussed in this study. After obtaining an argument to solve the issue, the author conducted case approach. At this stage, the author examined cases which related to the issues encountered and has become a permanent court decision (Mertokusumo, 2009). In this study, the case approach used was about the price fixing agreement made by *PT. Yamaha Indonesia Manufacturing Motor* and *PT. Astra Honda Motor* which has been decided by the Business Competition Supervisory Commission with number 04/KPPU-I/2016 which has permanent legal force, but could still be appealed. Finally, the author used the conceptual approach, which was the approach taken when the researcher did not move from the existing legal rules. At this stage, the authors carried out the analysis by maintaining the legal rule, but could move from economic rules or other rules. Other provisions which became the comparison were used as reference concept in this study.

DATA AND THE SOURCE OF THE DATA

Primary legal material was an authoritative legal material, it meant that the legal material has the authority. Primary legal material consisted of laws and regulations, official records, or treatise in making the laws and regulations and judges' decisions. The primary legal material that the author used in this article including:

- 1) The Statute Book of Civil Law (Burgerlijk Wetboek).

- 2) Regulation of the Business Competition Supervisory Commission Number 4 of 2010 concerning Implementation Guidelines for Article 11 concerning Cartels.
- 3) Regulation of the Business Competition Supervisory Commission Number 4 of 2011 concerning Guidelines for Article 5 (Price Fixing).
- 4) Regulation of the Trade Minister of the Republic of Indonesia Number 11/M-DAG/PER/3/2006 concerning the Provision and Procedure for Issuance of Agent Registration Certificate or Distributors of Goods and/ or Services.
- 5) Decision of the Business Competition Supervisory Commission Number 04/KPPU-I/2016.
- 6) Law Number 22 of 2009 concerning Road Traffic and Transportation.
- 7) Law number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

Furthermore, the secondary legal source used was legal publication, namely text book, legal dictionary, legal journal, and comments on court decisions. Besides that, non-legal source was also used to broaden the author's insight. There source was in the form of books about political science, economics, and sociology.

RESULTS AND DISCUSSION

The Business Competition Supervisory Commission suspected that there has been a violation of Law No. 5/1999 in the 110-125 cc automatic scooter type motorcycle industry in Indonesia. The violation of article 5 paragraph (1) was allegedly committed by two companies that owned market power in the Indonesian automatic scooter market. Reported in this alleged violation case was *PT. Yamaha Indonesia Motor Manufacturing* and *PT. Astra Honda Motor*.

This case began when the Secretariat of the Commission conducted research towards alleged violation of article 5 paragraph (1) of Law no. 5/1999 by two giant automotive companies from Japan, namely Honda and Yamaha. The two companies were the ruler of the motorcycle market in Indonesia, therefore every behavior or action of the two large companies would become a priority for the Business Competition Supervisory Commission. The two giant automotive companies from Japan were alleged to have made agreement that violated the provision of article 5 paragraph (1) of Law no. 5/1999. After obtaining sufficient proof, clarity and completeness of the alleged violation, the Commission Secretariat recommended further investigation regarding the case.

The alleged violation of article 5 paragraph (1) was begun with the finding of proof in the form of communication which conducted by the President Director of Yamaha. The communication was carried out via email that contained the coordination of adjusting the selling price of Yamaha motorcycles to Honda, in accordance with an agreement made by the President Director of each party. The contents of the internal email from the Yamaha which found by the Business Competition Supervisory Commission investigation team was as follows.

“Please find attached the IDN price comparison material presented by YMC at Asean Mtg just after GEC.

As you can notice, prices of some models are lower Honda, such as Vixion, Fino, etc. We need to send message to Honda that Yamaha follows H price increase to countermeasure exchange rate fluctuation/ labor cost increase as a common issue for the industry.

So please review the current pricing and when there is a room, please adjust the price. I understand that to maintain the volume, if necessary, we use the amount of price increase for promotion of the models at least for the time being.

Thanks, Kojima

(see attached file: Price position IDN 2014.Pptx)

The email above was sent on April 28, 2014 by Yamaha President Director at the time, Yoichiro Kojima to the Executive Vice President, Dyonisius Beti and forwarded to the Yamaha corporate marketing management group. Judging from the e-mail, it could be concluded that Kojima requested that the selling prices of Yamaha motorcycles follow the selling prices of Honda motorcycles, although some types of Yamaha motorcycles were below the selling price of Honda motorcycles.

Further proof which found by the Business Competition Supervisory Commission was the second email on January 10, 2015, which was sent by Yamaha Marketing Director, Yutaka Terada to Dyonisius Beti as Vice President and Yamaha Sales Director, Sutarya. The content of the email was as follows.

“I have just heard from Mr Iida that Dyon san and Sutarya san discussed while I was not in the office on 8th Jan to increase Retail Price to follow Honda as Honda increased retail price from Januari 2015.

But I do not completely agree with retail price increase to follow Honda Reasons:

1.Presiden Kojima san has requested us to follow Honda price increase many times since Januari 2014 because of his promise with Mr. Inuma President of AHM at Golf Course. As we know this is illegal. We never follow such price negotiation process. YMC also educated all employees not to negotiate prices with competitors.

2.Yamaha should decide our retail price by our own marketing strategy.

3.I can agree with only Soul GT and Jupiter MX as we need to make smooth step up to new models for these 2 models.

4.First we need to fight back to fight back and to increase market share especially in the beginning of 2015.

5.And I do not agree to discuss retail price matter at CMM. Once we did like this we will be requested to do same at CMM.

Thank U and Regards.....

Terada”

From the email above, it could be indicated that there was a price fixing agreement from Yutaka Terada's statement, namely "President Kojima san has

requested us to follow Honda's price increase many times since January 2014 because of his promise with Mr. Inuma President of AHM at Golf Course. As we know this is illegal. We never follow such price negotiation process. YMC also educated all employees not to negotiate prices with competitors. " The sentence indirectly explained that Kojima (Yamaha's President Director) had met with Inuma (Honda's President Director) at the Golf Course before January 2015 to agree on determining the selling price of their automatic scooter type motorcycle products in Indonesia. Yutaka Terada himself, as Yamaha Marketing Director, realized that the agreement made by his superior was illegal. Yutaka Terada also explained that Yamaha Motor Company (YMC) never educated the employees to negotiate the selling price of motorcycles with its competitors.

Based on the proof of the second internal email from Yamaha that has been found, the Business Competition Supervisory Commission undertaken follow-up on the cases of alleged violation of article 5 paragraph (1) of Law no. 5/1999 concerning the price fixing agreement. Based on the investigation result of the Business Competition Supervisory Commission, the selling price of automatic scooter type motorcycles in the period of 2013-2014 in Indonesia costed around 8.7 million rupiah per unit, but instead it was sold at 14-18 million rupiah per unit. Saidah Sakwan, one of the members of the Business Competition Supervisory Commission said that, if Yamaha and Honda were proven to have signed the price-fixing agreement, then the government as a regulator could reduce the price of automatic scooter in Indonesia in accordance with the prices of automatic scooter prevailing in ASEAN. The price range of automatic motorcycle scooter in ASEAN countries was around 8.7 million rupiah including all of them.

If the Business Competition Supervisory Commission conducted a deeper analysis of the Law No. 5/1999, actually this case could also be related to the abuse of dominant position by Honda and Yamaha based on their market share. Based on the facts revealed in the trial, it showed that the market share of each automatic scooter type motorcycle manufacturer in 2014.

The owner of the dominant position in the 110-125 cc automatic scooter type motorcycle market was Honda, then followed by Yamaha. Other companies besides Honda and Yamaha only dominated the market with a very small percentage. Based on the diagram, it could be seen that the market share owned by Honda was 72.88%, Yamaha was 25.60%, Suzuki was 1.39%, TVS was 0.12%, and Kawasaki was 0.00%.

As the owner of dominant position, they should not make an agreement of price fixing that would benefit their own company. This showed that Honda and Yamaha have abused their dominant position. Through this agreement, the two companies could easily control the selling prices of motorcycle that was applicable in the market.

Anti-competition action which was carried by the two companies could be categorized in the abuse of the dominant position contained in Article 25 paragraph (1) letter c of Law No. 5/1999. The reason was why the abuse of dominant position which committed by the two companies was categorized in article 25 paragraph (1) letter c. First, the agreement that Honda and Yamaha made would certainly affect their business actor competitor if the two companies

agreed to reduce the selling price of automatic scooter. This would be disadvantageous the business competitor and hamper the movement of competitor. Business competitors were also forced to reduce prices or survive at the same price with the consequence of consumer decline. If this problem was continued, then the business actor competitor might be out of the market because of the price game which was committed by the dominant position owner.

Second, the price fixing agreement which made by Honda and Yamaha could also aim to deter other business actors to entering the automatic scooter market in Indonesia. Based on the agreement they made, they would easily agree to raise and down the price. This created obstacles for the new business actors who wanted to enter the market. The worst possibility, was as has been explained that the business actor competitor that already on the market would left the automatic scooter market in Indonesia. If the business actor competitor has left the market, there was a huge opportunity for Honda and Yamaha to monopolize the market.

In the category of prohibited agreement and prohibited activity appear to be more emphasized on the regulation of behavior that lead to the undesirable consequences, while the category of dominant position was more focused on the prohibition of using certain structures (dominant position) to compete unfairly (Arie, 2004). Dominant position was actually not a problem if it was not misused (Singh, 2014). Based on the dominant position that Honda and Yamaha have, they could take action independently, without need to pay attention to the behavior of other business actors in the market. Due to the products of these two companies dominated the market, then the product of other companies would tend to follow the movement of Honda and Yamaha product. The agreement which was made between Honda and Yamaha would minimize the competition between them. The fulfillment of one out of the three types of dominant position abuse in article 25 paragraph (1) of Law No. 5/1999, made Honda and Yamaha could be said that they have abused their dominant position. The law did not mind if a company has a dominant position, but it would be a problem if there was abuse of that dominant position. It was also prohibited if abuse of the dominant position caused the monopolistic practices and unfair business competition.

CONCLUSION

Automatic scooter manufacturer, namely *Yamaha Indonesia Motor Manufacturing* and *Astra Honda Motor* have been proven that they have violated the Article 5 paragraph 1 of Law No. 5 of 1999. The violation was proven by the finding of proof in the form of two internal emails at Yamaha company stating that Yamaha would follow the selling prices of Honda motorcycles. After the e-mail, the price movement of motorcycle sales from Honda and Yamaha did not look much different. The decision of the Business Competition Supervisory Commission that has been given to Honda and Yamaha was correct because of the elements in Article 5 paragraph (1) of Law no. 5/1999 have been fulfilled. However, if the Business Competition Supervisory Commission conducted a deeper analysis, Honda could also violate the provision in Article 25 of Law No. 5/1999 concerning the abuse of dominant position. Based on the oligopoly market structure and with the amount of domination market owned by Honda, it could be said that the company has market power. The owner of market power in this case also as the dominant position owner in the market. As a holder of dominant

position, Honda should not abuse the dominant position that it has to make price-fixing agreement with business actor competitor.

ETHICAL CLEARANCE

This research does not involve any participants, rather it is descriptive study. This research was carried out in accordance with the research principles. This study implemented the basic principle ethics of respect, beneficence, nonmaleficence, and justice.

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