LEGAL BRIEF

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Juridical Review of the Acts of Vertical Integration and Discrimination Performed by Pt Grab Teknologi Indonesia and Pt Teknolog Pengangkutan Indonesia Regarding Transportation Services Special Rental

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Abstract

This study aims to find out the problems regarding the act of vertical integration and discrimination carried out by PT Grab Indonesia and PT Teknologi Pengangkutan Indonesia related to special rental transportation services . This research is a normative juridical legal research with 2 types of approaches, namely the Legislative Approach and the legal concept analysis approach. The type of data used is primary data, namely related laws and regulations, especially Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and secondary data obtained from library materials. The type of analysis used is inductive analysis, which analyzes the laws and regulations related to the problem and then correlates it with several principles and theories that form the basis for writing this thesis. In this writing, the author concludes that the judge's considerations in analyzing the case of the Practice of Vertical Integration and Discrimination carried out by PT Grab Indonesia and PT TPI related to this special rental transportation service used 3 (three) theories, namely, the theory of business competition, the theory of justice, and the theory of protection. law

Keywords: Juridical Review, Vertical Integration Act, Discrimination..

A. Introduction

In essence, the purpose of business activities is to generate profits and money in order to meet basic, secondary, and tertiary demands (Hermansyah, 2009). A person engages in business activities in order to meet his or her basic needs, which eventually gives rise to business competition among business actors (Hotana, 2018). Business competition is a natural occurrence between business players engaged in business operations (Ngasifudin & Al-Munawwaro, 2021).

According to the objectives of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, one of which is to create a conducive business climate and create effectiveness and efficiency in business activities (Zihaningrum, 2016), healthy business competition will generate positive outcomes. This favorable impact is not only advantageous for corporate players, but it also benefits consumers (Farafwati, 2017).

In practice, there is no perfect commercial competitiveness in society. (Prasetyowati et al., 2017) Many corporate actors take use of current conditions to obtain market power. Monopolies are one of the kinds of unfair corporate competition. Article 1 number 2 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition defines monopoly practice as the concentration of economic power by one or more business actors, resulting in the control of the production and/or marketing of certain goods and/or services, which results in unfair business competition and can be detrimental to the public interest (Malaka, 2014).

The government passed Law Number 5 of 1999 outlawing monopolistic behaviors and unfair business competition in response to the detrimental effects of unfair business competition. This law ensures the certainty of equal business opportunities for all, prohibits monopolistic practices and/or unfair business competition, and promotes the effectiveness and efficiency of business activities in order to enhance the productivity of the national economy and the well-being of the Indonesian people. 2022) .

The existence of Law No. 5 of 1999 about the Prohibition of Monopolistic Practices and Unfair Business Competition demands oversight in order for the objectives of the Law to be properly implemented and to benefit the Indonesian economy. The Business Competition Supervisory Commission (KPPU) is responsible for this function (Widjaja & Gunadi, 2020). KPPU is an autonomous entity that cannot be affected by the government or other parties with a conflict of interest, despite the fact that they exercise authority and report to the President (Nugroho, 2014). The KPPU is a quasi-judicial agency with executive jurisdiction over commercial competition-related cases.

Law Number 5 of 1999 about the Prohibition of Monopolistic Practices and Unfair Corporate Competition prohibits the misuse of a monopoly position by a business actor in order to engage in anti-competitive conduct that results in unfair business competition in the relevant market (Sudiarto, 2021). Anti-competitive corporate practices include vertical integration agreements. In the manufacture of a product, there exists a vertical web of stages, each of which adds value. The vertical manufacturing stages commence with the procurement of raw materials and conclude with the distribution and sale of the finished product.

The Prohibition of Monopolistic Activities and Unfair Business Competition Act of 1999 clearly prohibits monopolistic practices and unfair business competition, one of which is a vertical integration agreement (Zuhry, 2018). Vertical integration is one of several prohibited agreements; the vertical integration agreement is governed by Article 14 of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, namely "Business actors are prohibited from entering into agreements with other business actors in order to control the production of a number of products that are included in a series of production of certain goods and or services, where each series of production is the result of processing or further processes, either in a direct or indirect series, which may result in unfair business competition and/or harm to the community (Puspariti et al, 2015).

There are further acts outlawed by Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, such as discriminatory practices against business players (Sugiarto, 2016). As stated in Law Number 5 of 1999, article 19 letter (d) regulates the prohibition of discriminatory practices "Business actors are prohibited from engaging in one or more activities that may result in monopolistic practices and/or competition, either alone or in collaboration with other business actors. Unhealthy business practices in the form of discrimination towards specific business actors Discrimination against business actors is illegal since it might result in monopolistic tactics and/or unfair business competition (Ningsih, 2019).

KPPU imposed sanctions on PT GRAB INDONESIA and PT TEKNOLOGI ANGKUTAN INDONESIA (TPI) in this case. -Law No. 5 of 1999 regarding special rental transportation services related to the provision of the Grab App software application, which is held in Greater Jakarta, Makassar, Medan, and Surabaya areas. PT GRAB INDONESIA was fined Rp. 7.5 billion for violations of Article 14 and Rp. 22.5 billion for violations of Article 19(d), while PT Teknologi Pengangkutan Indonesia (TPI) was fined Rp. 4 billion and Rp. 15 billion for violations of the two articles, respectively.

The case with Number 13/KPPU-I/2019 which was decided on July 2, 2020 started from the KPPU's initiative and was followed up to the investigation stage regarding alleged violations of vertical integration (Article 14) and discriminatory practices (Article 19 letter d). KPPU suspects that there have been several violations of business competition through priority orders given by GRAB to driver-partners under the auspices of TPI. Then, the two companies were dissatisfied with the Commission's decision and filed an objection to the South Jakarta District Court. On September 25, 2020, the South Jakarta District Court overturned the decision of the Case Commission Number 13/KPPU-I/2019. The South Jakarta District Court through its Decision Number 468/Pdt.P/2020/ PN.Jkt.Sel assessed that the two companies were not proven to have violated the provisions of Article 14 and Article 19 letter (d) of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Competition Unhealthy Business.

Based on the above background, the authors are encouraged to examine and examine whether the business activities carried out by PT Grab Indonesia and PT Teknologi Pengangkutan Indonesia have been proven to have violated Articles 14 and 19 letter d of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and analyze the considerations of the panel of judges related to Court Decision Number 468/Pdt.P/2020/PN.JKT.SEL.

B. Method

The type of research used here is normative legal research. The basic characteristics of this research are that the main source is legal materials, considering that in this study what is analyzed is legal material that contains normative rules (Soekanto, 2007). This legal research was carried out using the statutory approach and the analytical and conceptual approach (Efendi & Ibrahim, 2018). This statutory approach is carried out by examining all laws and regulations related to the legal

issue being studied, while the conceptual approach is carried out by building a concept to be used as a reference in this research (Diantha, 2016). The analysis and processing of legal materials uses a qualitative inductive method, namely the method by analyzing the laws and regulations relating to the problems (problem formulation) contained in this study and then correlated with several principles and theories that form the basis or knife of analysis in article writing. The analysis of the research results is expected to be able to reveal the enactment of Indonesian law regulated in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition to the actions and behavior of business actors who carry out vertical integration and discrimination.

C. Results and Discussion

1. Analysis of business activities carried out by PT Grab Indonesia and PT Teknologi Pengangkutan Indonesia

PT Grab Indonesia is a technology company from Malaysia based in Singapore that provides applications for public transportation transportation services including 2-wheeled and 4-wheeled motorized vehicles. Grab Indonesia. PT TPI or Indonesian Transport Technology itself is a car rental service company in collaboration with Grab Indonesia. Both of them work together in organizing a rental vehicle program with the opportunity to have a car for the driver.

Grab realizes that many of its driver partners want to benefit from the Grab platform to earn income but do not have the means in the form of vehicles, especially cars. Therefore, PT Grab Indonesia and PT TPI have collaborated to facilitate the access of some driver-partners through car rental services that incidentally are cost-effective so that they can continue to earn a living like other driver-partners.

The problem here is that the two universities are reported to have carried out Vertical Integration Practices and Discriminatory Practices which of course violate the provisions in Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The problem here is that the two universities are reported to have carried out Vertical Integration Practices and Discriminatory Practices which of course violate the provisions in Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. In Court Decision Number 468/Pdt.P/2020/ PN.Jkt.Sel , the author sees that there is indeed a cooperation agreement between PT Grab Indonesia and PT TPI. However, the agreement does not cause Vertical Integration because there is no relationship between the production chain of goods or services from upstream to downstream. PT TPI is a special rental transportation company (ASK) that uses four-wheeled vehicles in providing services so that the upstream production chain should be an automotive or spare parts manufacturer. While PT Grab Indonesia is an application company, it is considered not to have a level of linkage between the production chain and PT TPI. Because the requirements of Vertical Integration are cooperation at different levels where the production of goods is related. Facts on the ground, Petitioner 1 is an application company, and Petitioner 2 is a special rental transportation company (renting vehicles).

According to the author, based on the case, the Business Competition Supervisory Commission (KPPU) does not have absolute authority to adjudicate the cooperation between PT Grab Indonesia as an application provider and PT TPI which is a four-wheeled vehicle rental company, because this is a pure civil agreement (private) which is not within the scope of KPPU's authority, and it is proven that it does not aim to control production, let alone to cause unfair business competition and harm the community. In addition, in the trial, all partners of PT Grab Indonesia outside of PT TPI stated that they did not feel aggrieved and felt that everything was done according to the agreement of each party.

2. Analysis of the Panel of Judges' Legal Considerations Regarding Decision Number 468/Pdt.P/2020/PN.Jkt.Sel

In the case of making a decision, the judge's consideration is something that is absolutely needed in the trial process and in making a decision. These judges' considerations are usually obtained from all forms of activity in the trial process, starting from the initial stages of the indictment made by the public prosecutor, the process of examining witnesses at trial and the evidence presented at trial. From that process then in terms of making a decision, using witness statements, evidence and facts revealed in court to make a consideration as the basis for the decision. The judge's decision is the climax of a case that is being examined and tried by the judge.

It can be seen in Decision Number 468/Pdt.P/2020/ PN.Jkt.Sel that the reasons for the Objection Petitioners, namely PT Grab Indonesia and PT Teknologi Pengangkutan Indonesia were granted by the Panel of Judges and proved that the accusations of practicing Vertical Integration and Discrimination Practices were address to the two PT is not correct.

Next, the author will analyze some of the legal considerations that underlie the judge's decision in this case. According to Dr. Andi Fahmi Lubis , business competition which states that the condition for VERTICAL INTEGRATION to occur is if the cooperation of business actors is at different levels in the production process or two activities at different levels, but the two productions of goods/services are related and sustainable in one production process framework.

The author agrees with the Panel of Judges that the cooperation agreement between the OBJECTION APPLICANT I and OBJECTIVE APPLICANT II is not included in the VERTICAL INTEGRATION category because, the business field of the OBJECTION APPLICANT I is application technology which is not a production chain and is not the result of processing or further processing with the efforts of the OBJECTION APPLICANT II, namely Motorized Rental Business because Motor Vehicles are the final product that is a production series with a steel factory, tire factory and auto parts factory. Therefore, it is not proven that Petitioner I and Petitioner II violated the provisions in Article 14 of Law Number 5 of 1999.

Whereas the author agrees with the Panel of Judges that it is not proven that there is an element of parent and child elements through share ownership, namely that the Petitioner for Objection I and Petitioner for Objection II do not have a legal relationship in shares, namely Petitioner for Objection I does not own shares in Petitioner for Objection II and Petitioner for Objection II does not own shares in the Petitioner for Objection I. Thus, it is not proven that there is a similarity of

shareholders or affiliations between Petitioner for Objection I and Petitioner for Objection II.

Whereas the author agrees with the Panel of Judges regarding Petitioner for Objection II who is accused of controlling the ASK (Special Rent Transport) market for 4 geographic areas, namely Jabodetabek, Surabaya, Makassar, and Medan, but in the facts of the trial the accusations cannot be based on evidence. both from the KPPU's Investigative Team and the factual witnesses and the KPPU's Commission Council itself, whether it be written evidence or research evidence or witness evidence.

Furthermore, the author will also describe the allegations of discriminatory practices addressed to the Petitioners for Objection I and II against the individual partners and legal entities of the Non-Applicants for Objection II. These accusations include:

a) Regarding the calculation of the different incentive schemes between partners from PT TPI and individual partners and non-TPI partners;
b) Regarding the different incentive system between partners from PT TPI and individual partners;
c) Related to the agreement between PT GRAB INDONESIA and PT TPI made an agreement which contains the Loyalty program;
d) Regarding the making of product promotions through video content conducted by PT GRAB INDONESIA and PT TPI
e) Regarding priority order programs held by PT GRAB INDONESIA and PT TPI.
f) Regarding the difference in treatment from PT GRAB INDONESIA for open suspension of driver vehicles from PT TPI partners who are subject to suspension sanctions.

These things are considered to have violated Article 19 letter d of Law no. 5 of 1999 concerning Discriminatory Practices. The author agrees with the Panel of Judges that there is an acceptable economic and business justification related to the different systems and incentive schemes between the Petitioners for Objection II and Non Petitioners for Objection II. The Panel of Judges considered that the Petitioner for Objection II had the position to negotiate (bargaining power) with Petitioner for Objection I in determining the form of scheme and incentive system applied to Petitioner for Objection II, this is very natural to happen in the business world. This was reinforced by evidence at the trial which stated that the reason for the granting of 24-hour incentive hours to the Petitioner for Objection II was for security reasons, namely preventing potential security threats, especially at night hours, thus requiring quality drivers and guaranteed vehicle safety. The company's reasons can be categorized as economic reasoning and security reasoning.

Furthermore, regarding the loyalty program where the program is a program that provides special incentives to driver-partners who join through Applicant II and fulfill the specified conditions, such as 5 years of loyalty using the Grab application (Petitioner Objection I), good performance, and the following conditions: other conditions. Here the author sees from the perspective of the Panel of Judges that the facts at the trial stated that there were no objections from the ASK company of Non-Complainant of Objection II who expressed objections or felt discriminated against

because of the appointment of Petitioner of Objection II as the party running the loyalty program of Petitioner of Objection I. The above is reinforced by the testimony of the witnesses who are the leaders of each of the ASK companies who are also partners of the Petitioner for Objection I, namely:

a) Witnesses explained that all drivers under their organization did not feel disadvantaged related to incentives, loyalty programs, promotional programs or related to priority orders;
b) The witnesses explained that they benefited greatly from using the Grab application technology belonging to the Petitioner for Objection I;
c) The witnesses explained that the Petitioner for Objection I often made promotions for all business partners, including business partners where the witnesses were the leaders;
d) These witnesses explained that there had never been any complaints from drivers who were members of their organizations regarding incentive programs, loyalty programs, and promotional programs;

Whereas the author agrees with the Panel of Judges, that there is no discrimination related to the promotional video of the Petitioner for Objection I against Petitioner for Objection II, because it turns out that the Petitioner for Objection I has also opened up wide opportunities for the competitors of the Petitioner for Objection II to carry out promotions. This is reinforced by evidence at trial that all partners in the form of legal entities are given the same opportunity to carry out promotions, which in this case can use the Grab symbol in activities or events.

Regarding priority orders, which is a feature that aims to be able to receive orders/orders automatically or to receive orders/orders without the need to press the accept order/order button. To achieve this status, the driver-partner must meet certain requirements, if the driver-partner achieves this status, it will get certain benefits, one of which is prioritizing or giving orders by consumers to the driver-partner who has the highest status, for example, a driver-partner with Elite plus status will take precedence over driver partners who have lower status, namely elite. Based on the information from Ningrum Natasya's expert, the program is very good because it creates competition among driver-partners;

Then the Panel of Judges considered whether there was any discrimination related to the open suspension between the Petitioners for Objection II and Non-Petitioners for Objection II. Suspend here means the temporary suspension of the driver's account due to a violation of the code of ethics. Based on the evidence at this in-depth trial, the testimony of witness Iki Sari Dewi, partner of the Non Petitioner for Objection II, can be subject to an open suspension if the error committed is non-fraud or not fraud, such as hygiene issues. However, if fraud or fraud is committed, the partner relationship with the Petitioner will be cut offI. Whereas the vehicle previously used by the Partner of the Non-Complainant II can be subject to open suspension if there has been a change of vehicle owner by submitting an application and evidence of a change in vehicle ownership;In this case, it is not proven that discrimination has occurred because both the Petitioners for Objection II and Non

Petitioners for Objection II can both apply for an open suspension on a vehicle that has been suspended by submitting an application to the Petitioner for Objection I.

Considering, whereas based on the above considerations, therefore the decision of the Respondent for Objection (KPPU) is canceled in its entirety, then the cost of the case is charged to the Respondent of Objection which until now has been estimated at Rp. 346,000, - (three hundred and forty-six thousand rupiah).

D. Conclusion

From the research above, it can be concluded that based on the judge's consideration in analyzing the case in the decision number 468/Pdt.P/2020/Pn.Jkt.Sel. In this case, the absence of a legal basis and strong evidence stated by the Respondent, namely the KPPU, whether it was evidence at the trial or the witnesses who were present, made the Judge declare that PT Grab Indonesia and PT TPI were not proven to have violated Article 14 and Article 19 letters (d) Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Meanwhile 2. Court Decision Number 468/Pdt.P-2020/ PN.Jkt.Sel cancels KPPU's Decision Number 13/KPPU-I/2019. The legal consequences arising from this Court's decision are KPPU's Decision Number 13/KPPU-I/2019 which states that business actors violate Article 14 and Article 19 letter d of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, null and void. or have no legal force. Then the sanctions imposed on PT GRAB INDONESIA and PT TPI are no longer valid.

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