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Indonesian Business Competition Law post the enactment Government Regulation in Lieu of Law on Job Creation Regulation into Law

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Abstract: *This study aims to find out the development of business competition law in Indonesia as stipulated in Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and its impact on the dynamics of business competition in Indonesia after the enactment of Law Number 6 of 2023 on Stipulation of Government Regulation in Lieu of Law (Government Regulation in Lieu of Law) Number 2 of 2022 concerning Job Creation into Law. This study uses a normative method with a statute approach and a library research approach. The formulation of the problem in this study is the development of business competition law in Indonesia after the enactment of the Government Regulation in Lieu of Law on Job Creation into Law and the impact of the enactment of Law Number 6 of 2023 on the dynamics of business competition in Indonesia. The results showed that the Business Competition Law in Indonesia experienced the first change in terms of substance after the enactment of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. These changes then led to a shift in the dynamics of the Competition Procedure Law, which was considered regressed.*

Keywords : *Business Competition Law, Business Actors, and Unfair Competition*

Abstrak: Artikel ini bertujuan untuk mengetahui perkembangan hukum persaingan usaha di Indonesia yang tertuang dalam Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat dan Dampaknya terhadap dinamika persaingan usaha di Indonesia setelah diberlakukannya Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja Menjadi Undang-Undang. Penelitian ini menggunakan metode normatif dengan pendekatan undang-undang (*statute approach*) dan pendekatan

kepuustakaan (*library research*). Rumusan masalah pada penelitian ini adalah bagaimana perkembangan hukum persaingan usaha di Indonesia setelah disahkannya Government Regulation in Lieu of Law Cipta Kerja menjadi Undang-Undang dan bagaimana dampak dari pemberlakuan Undang-Undang Nomor 6 Tahun 2023 terhadap dinamika persaingan usaha di Indonesia. Hasil penelitian menunjukkan bahwa Hukum Persaingan Usaha di Indonesia mengalami perubahan pertama dari segi substansinya setelah diberlakukannya Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja Menjadi Undang-Undang. Perubahan tersebut kemudian menimbulkan pergeseran dinamika pada Hukum Acara Persaingan Usaha yang dinilai mengalami kemunduran.

Keywords : Hukum Persaingan Usaha, Pelaku bisnis, dan Persaingan Usaha Tidak Sehat.

INTRODUCTION

Globalization has increasingly made business competition competitively and increased the intensity of business competition to encourage people always to strive to exist in business competition¹. Tight competition requires rules to regulate business competition so that there are no fraudulent actions by business actors that can cause harm to other parties and have an impact on the national economy². Thus, regulations are needed to produce order, protection, and justice that can be applied in the business sector³. In business, there is a legal system known as business law. Business law includes norms that regulate behaviour in business activities, involving aspects of the implementation of trade transactions, industry, and financial aspects related to producing goods and/or services. It includes sanctions imposed as a form of control⁴.

Furthermore, the legal basis for business competition in Indonesia lies in Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Several works of literature, such as "*Hukum Anti Monopoli*" by Suyud Margono, mention that business competition law refers to Law Number 5 Year 1999, also called anti-monopoly law. Meanwhile, the book "*Hukum Persaingan Usaha*," written by Alun Simbolon, states that business competition law refers to Law Number 5 Year 1999, which he calls the Law on the Prohibition of Monopolistic Practices (*UULP*)⁵. Similar to the information in the book "*Hukum Persaingan Usaha*" by Cita Citrawinda, it is stated that regulations regarding business competition in Indonesia were only introduced after Law Number 5 of 1999 was passed on March 5, 1999⁶.

The Business Competition Law is designed to harmonize the interests of business

¹ Desi Apriani, 'Tinjauan Terhadap Hukum Persaingan Usaha Di Indonesia Dari Perspektif Hukum Perlindungan Konsumen' (2019) 4 Jurnal Panorama Hukum 19, 19.

² Zaid Zaid and Muhammad Fikri Aufa, 'Peran Undang-Undang Persaingan Usaha Dalam Meningkatkan Pertumbuhan Ekonomi' (2022) 15 Jurnal Pamator : Jurnal Ilmiah Universitas Trunojoyo 89, 90.

³ Ahmad Rizki Sridadi, *Aspek Hukum Dalam Bisnis* (1st edn, Airlangga University Press 2009) 2.

⁴ Rudyanti Dorotea Tobing, *Aspek-Aspek Hukum Bisnis: Pengertian, Asas, Teori Dan Praktik* (Akhmad Dakhoir ed, Laksbang Justitia 2015) 60.

⁵ Alun Simbolon, *Hukum Persaingan Usaha* (Liberty 2018) 1.

⁶ Cita Citrawinda, *Hukum Persaingan Usaha* (Abdul Rofiq ed, CV Jakad Media Publishing 2021) 24.

actors between one business actor and another and between business actors and the consumer community. The main objective of this law is to maintain a balance of interests between the two entities, namely business actors and the public, to create a business environment that supports and guarantees equal opportunities in business⁷. Thus, competition law is expected to realize an economic structure that is based on the principle of kinship to create the principle of economic democracy⁸. In the principle of economic democracy, the prosperity of the community is prioritized⁹.

Since its enactment, the Competition Law was first amended in 2020 with Law Number 11 of 2020 on Job Creation (2020 Job Creation Law). However, the Constitutional Court declared the 2020 Job Creation Law conditionally unconstitutional and gave 2 (two) years to be revised. Thus, in 2022, Government Regulation in Lieu of Law (Government Regulation in Lieu of Law) Number 2 of 2022 on Job Creation was issued which then in 2023, this *Government Regulation in Lieu of Law* was passed into law by Law Number 6 of 2023 on *Government Regulation in Lieu of Law* Number 2 of 2022 on Job Creation and is valid until today (from now on Law Number 6 of 2023 is called the Job Creation Law). The Job Creation Law amends several articles in the Business Competition Law, namely Article 44, Article 45, Article 46, Article 47, and Article 48, and deletes Article 49. These articles respectively regulate the authority of the court over objections to decisions of the Business Competition Supervisory Commission (*KPPU*), submission of cassation of objection decisions of the Commercial Court to the Supreme Court, stipulation of the implementation of *KPPU* decisions, maximum fines on administrative sanctions, provisions for primary and additional punishment.

Study on the development of business competition law in Indonesia is still relatively limited after the enactment of the Job Creation Law. One of the studies that discusses this is the work written by Muhammad Habib, Apik Hadiarlamsyah, Lutfizar Wahyu Pramukti Sunardi, and Wery Chesar. Their study findings include the impact of the *Government Regulation in Lieu of Law* on Job Creation, which has caused pros and cons. It is considered to change several points, including the shift in filing objections to *KPPU*'s decision and the execution of *KPPU*'s decision, which was initially carried out by the District Court and shifted to the Commercial Court. In addition, there are changes in fines that are determined with consideration of several aspects, as well as the elimination of the primary and additional punishment, which results in the return to the criminal law in the Criminal Code.

Furthermore, the difference between the current study and the previous study by Muhammad Habib et al. is that this study focuses on the development and changes in the contents of the articles in the Business Competition Law since the enactment of the 2020 Job

⁷ Augustinus Simanjuntak, *Hukum Bisnis: Sebuah Pemahaman Integratif Antara Hukum Dan Praktik Bisnis* (1st edn, Rajawali Pers 2018) 161.

⁸ Suyud Margono, *Hukum Anti Monopoli* (3rd edn, Sinar Grafika 2018) 27.

⁹ Asep Bambang Hermanto, "Politik Hukum Dalam Demokrasi Ekonomi Indonesia," *Jurnal Hukum Dan Bisnis (Selisik)* 4, no. 1 (2018): 20, <https://journal.univpancasila.ac.id/index.php/selisik/article/view/680>.

Creation Law, then the issuance of *Government Regulation in Lieu of Law* Number 2 of 2022, and finally the enactment of Government Regulation in Lieu of Law Number 2 of 2022 into law by the Job Creation Law. It is the reason why the author wrote this scientific article. The lack of study related to the development of business competition law after the enactment of the *Government Regulation in Lieu of Law* on Job Creation into Law means that the public needs more scientific literature related to the understanding and knowledge of business competition law that applies in Indonesia today. Thus, the urgency of this study is to contribute to knowledge and understanding related to developing business competition law in Indonesia after the stipulation of the *Government Regulation in Lieu of Law* on Job Creation into Law.

Based on the description above, the problem formulations in this study are: First, How is the Development of Business Competition Law in Indonesia after the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law? Second, What is the Impact of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law on the Dynamics of Business Competition in Indonesia?

METHOD

This study used a normative method. The approaches used are the statute approach and library study. The purpose of the normative study method is to describe the applicable norms with existing legal concepts¹⁰. Collection and analysis techniques are carried out by analyzing various rules and literature related to business law to obtain clarity regarding legal understanding and principles that can answer the studied problems. The flow of study completion, or what is usually called the research map in this study, begins by determining the legal issue (issue) to be studied and then formulating the research problems to be studied. Then, from the legal issue, the relevant laws and regulations and various other literature sources will be determined to answer the problem formulation that has been determined at the beginning. The results obtained will be concluded after reviewing the laws and regulations and sources of literature.

DISCUSSION

A. The History of Competition Law in Indonesia

The book "*Hukum Dagang*", written by Sentosa Sembiring, provides a basic understanding of the importance of laws governing business competition. For example, the book tells the story of a meatball trader named R.B. Suhartono. Through his hard work and persistence, R.B. Suhartono raised capital to build a meatball company so that his business grew into several business units. These business units developed by R.B. Suhartono can be considered conglomerates. In business and business, there are two forms of business

¹⁰ David Tan, 'Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum' (2021) 8 Nusantara: Jurnal Ilmu Pengetahuan Sosial 2463, 2467.

development, namely those that grow naturally and those that develop unnaturally because they get certain facilities and privileges from parties related to public office. Businesses that develop unnaturally have the potential to become conglomerates and need to be monitored and controlled. If these business units built by R.B. Suhartono grow and receive special treatment, especially from officials, then such conglomeration is considered to violate the rules¹¹.

Before the reform era, in business, market control was controlled by entrepreneurs who could collaborate with the authorities. Entrepreneurs attempted to influence the rulers in Indonesia. As a result, the few entrepreneurs who managed to collaborate received preferential treatment, formed conglomerates, and controlled as much market share as possible. This dynamic gave rise to the ongoing practices of Corruption, Collusion and Nepotism due to the abuse of power between business people and rulers¹². As a result, many businesses in the small and medium economic sectors need help accessing markets already controlled by a select few.

In business competition, fraudulent behavior is not limited to conglomeration. Other fraudulent acts can arise from business actors' behaviour, such as selling losses, binding agreements, intellectual property rights, merging companies,¹³ and other behaviours that cause unhealthy competition activities, which consequently cause losses to other parties. This fraudulent behaviour will undoubtedly affect the country's economy and the community's welfare.¹⁴ This is why the law has become very important: preventing business actors from committing fraud. This situation justifies why a country, including Indonesia, needs regulations to govern business activities¹⁵. Therefore, the emergence of business competition law marked the beginning of the reform era as a step to optimize the protection and implementation of business competition to prevent market share domination by certain groups¹⁶.

Law is closely related to every aspect of human life¹⁷. In the business aspect, the function of law is to limit and supervise the actions of business actors to ensure healthy and fair activities, especially when we enter the freemarket era¹⁸. In a free market environment, business actors will make maximum efforts to fulfil all the needs of their consumers through the efficient provision of various products. However, it is likely that some of them engage in

¹¹ Sentosa Sembiring, *Hukum Dagang* (4th edn, PT Citra Aditya Bakti 2015) 227.

¹² Rachmadi Usman, *Hukum Persaingan Usaha Di Indonesia* (Tarmizi ed, 1st edn, Sinar Grafika 2013) 2.

¹³ Cosmo Graham and Fiona Smith, *Competition, Regulation, and The New Economy* (Hart Publishing 2004) 4–9.

¹⁴ Abdul R Saliman, *Hukum Bisnis Untuk Perusahaan: Teori Dan Contoh Kasus* (4th edn, Kencana Prenadamedia Group 2008) 199.

¹⁵ Meita Fadhilah, 'Penegakan Hukum Persaingan Usaha Tidak Sehat Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dalam Kerangka Ekstrateritorial' (2019) 3 *Jurnal Wawasan Yuridika* 55, 56.

¹⁶ Margono (n 8) 27–28.

¹⁷ B Arief Sidharta, *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum* (3rd edn, PT Refika Aditama 2009) 36.

¹⁸ Rai Mantili, Hazar Kusmayanti and Anita Afriana, 'Problematika Penegakan Hukum Persaingan Usaha Di Indonesia Dalam Rangka Menciptakan Kepastian Hukum' (2016) 3 *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 116, 117.

fraudulent acts by forming a market structure that favors themselves and disregards the interests of others¹⁹.

The Business Competition Law was established in 1999 and became effective in 2000²⁰. This law then became the primary legal basis in the aspect of business competition thus in Indonesia. Before this law came into effect, several other laws provided regulations related to the conduct of business, namely as follows:²¹ Article 1365 of the Civil Code, Article 382 bis of the Criminal Code, Article 13 paragraph (2) of Law Number 5 of 1960 on Basic Agrarian Regulations, Article 7 paragraph (2) of Law Number 5 of 1984 on Industry and Article 104 paragraph (1) of Law Number 1 of 1995 on Limited Liability Companies. Some of these laws are still valid as long as they are not revoked and do not contradict each other. However, it is important to understand that with the existence of the Competition Law, then automatically based on the principle of reference, the Competition Law will become a *lex specialis* rule for matters related to implementing business activities in Indonesia.

In addition, the presence of a Business Competition Law is expected to realize and maintain the implementation of perfect competition and prevent fraudulent behaviour that can disrupt the business climate. The characteristics of perfect competition are having the same or large number of business actors and consumers, products that are traded are homogenygeny (similar goods but do not have unique characteristics that distinguish one good from another) in the opinion of consumers, companies have the freedom to be built or dissolved, production sources are free to move anywhere, and buyers and sellers know the products that are traded. Meanwhile, the characteristic of unfair business competition is the opposite condition of perfect competition²².

B. The substance of Business Competition Law After the Stipulation of Job Creation Government Regulation in Lieu of Law into Law in Indonesia

The 2020 Job Creation Law is the first law to amend the Business Competition Law since it was enacted. The 2020 Job Creation Law aims to improve investment and economic development in Indonesia²³ and expand employment by providing equal protection and empowerment to cooperatives and small, medium enterprises, as well as domestic industry and trade. In addition, the 2020 Job Creation Law also seeks to increase investment in infrastructure provision for the national interest based on national technological science and Pancasila ideology²⁴.

However, due to formal defects, the Constitutional Court declared the 2020 Job

¹⁹ Safrina and Susiana, 'Perlindungan Usaha Kecil Menengah Dalam Undang-Undang Persaingan Usaha' (2013) 15 Kanun Jurnal Ilmu Hukum 437, 437.

²⁰ Rachmadi Usman, *Hukum Persaingan Usaha Di Indonesia* (1st edn, Sinar Grafika 2013) 1.

²¹ *ibid* 24–29.

²² Rezmia Febrina, 'Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha' (2022) 2 Jurnal Karya Ilmiah Multidisiplin (JURKIM) 121, 124.

²³ Ferdinand Jason and David Tan, 'Kepastian Hukum Bagi Penanam Modal Asing Sehubungan Dengan Inkonstitusional Undang-Undang Cipta Kerja' (2022) 4 UNES Law Review 367, 369.

²⁴ *ibid*.

Creation Law conditionally unconstitutional. This formal defect occurred because the formation was closed and did not fulfil the principle of openness. Therefore, the Constitutional Court gives 2 (two) years from the announcement of the decision for the 2020 Job Creation Law to be immediately improved. If the decision is not implemented, the 2020 Job Creation Law will be abolished and invalidated so that the old rules will be re-enacted to prevent a legal vacuum²⁵. Due to this situation, in 2022, Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation was formed²⁶. Then, in 2023, Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation was enacted into law-by-Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (from now on referred to as the Job Creation Law) and came into force on March 31, 2023, until today²⁷.

Post of the Job Creation Law was enacted, several articles in the Business Competition Law were amended and deleted. The articles in question are Articles 44 through 48 and deleting Article 49²⁸. If you pay close attention, the articles that have undergone these changes regulate Procedural Law in the Process of Case or Dispute Settlement in the Business Competition Law.

Systematically, before the amendment, the Business Competition Law consisted of 53 Articles with substance contents that generally consisted of Article 1 on general provisions, Articles 2 and 3 on principles and objectives, Articles 4 to Article 16 on prohibited agreements, Articles 17 to Article 24 on prohibited activities, Articles 25 to Article 29 on dominant position, Articles 30 to Article 37 on *KPPU* institutions, Articles 38 to Article 46 on procedures for handling cases, Articles 47 to Article 49 on sanctions, Articles 50 and 51 on other provisions, and Articles 52 and Article 53 on transitional provisions. After the 2023 Job Creation Law amendment, the competition law only has 52 articles. It happened because Article 49 regarding additional punishment was abolished, so provisions regarding sanctions only consisted of 2 articles, namely Article 47 and Article 48. The following author describes the changes.

C. The Impact of the Job Creation Law on the Dynamics of Business Competition in Indonesia

As described earlier, the study has 2 (two) research problems related to the development of the Business Competition Law and the Impact After the enactment of the Job Creation Law. In this section, the author will describe the impact on the dynamics of

²⁵ 'MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki Dalam Jangka Waktu Dua Tahun' (2022) <<https://www.mkri.id/index.php?page=web.Berita&id=17816&menu=2>> accessed 30 August 2022.

²⁶ Muhammad Habib and others, 'Perkembangan Hukum Persaingan Usaha Pasca Berlakunya Perpu Cipta Kerja' (2023) 6 *Jurnal Usm Law Review* 125, 126 <<https://journals.usm.ac.id/index.php/julr/article/view/6569/3085>>.

²⁷ 'Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang' (2023) <[https://peraturan.bpk.go.id/Home/Details/246523/uu-no-6-tahun-2022#:~:text=Undang-undang \(UU\) ini,Tahun 2022 tentang Cipta Kerja.](https://peraturan.bpk.go.id/Home/Details/246523/uu-no-6-tahun-2022#:~:text=Undang-undang (UU) ini,Tahun 2022 tentang Cipta Kerja.)> accessed 30 August 2023.

²⁸ Rahmadi Tektana, 'Quo Vadis: Kepastian Hukum Aturan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Pada Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja' (2022) 2 *Jurnal Persaingan Usaha* 43, 45.

The District Court has no authority over Objections to the *KPPU* Decision

The basic knowledge that must be known is that business competition cases, including monopoly cases, fall within the scope of civil cases so that settlement can be done through litigation or non-litigation. The nature of civil cases is: First, civil cases occur because of a lawsuit from a party who feels aggrieved/feels that their rights have been violated. Second, civil cases in terms of sanctions are coercive. Third, civil cases are cases that include simple procedural law as specified in Article 4 paragraph (2) of Law Number 48 of 2009 on Judicial Power, such as "*Pengadilan Membantu pencari keadilan dan berusaha mengatasi segala hambatan dan rintangan untuk dapat tercapainya peradilan yang sederhana, cepat, dan biaya ringan*".²⁹

Article 44 of the Business Competition Law is one of the articles amended by the Job Creation Law. Before the amendment, this article stipulates that any business actor who does not accept the *KPPU*'s decision and wants to file a legal challenge against the decision can file an objection within 14 (fourteen) days to the District Court. However, after the amendment, this article determines that the filing of objections to *KPPU* decisions previously submitted to the District Court is transferred to the Commercial Court. The Commercial Court, in examining the submission, is given 14 (fourteen) days from the receipt of the objection. Furthermore, it is stated that if the party who has filed a complaint to the *KPPU*'s decision in the Commercial Court still does not accept the decision, then he/she can file a cassation to the Supreme Court within 14 (fourteen) days. Suppose it turns out that the business party does not file any legal action against the *KPPU* decision. In that case, the *KPPU* decision has permanent legal force so that *KPPU* can request the Commercial Court to determine the execution of the decision. This provision can be found in Article 44 to Article 46 of the 2023 Job Creation Law.

The Commercial Court is one of the specialized courts established within the scope of the General Courts. The Commercial Court was based on several laws and regulations, such as Law Number 4 of 1998 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law into Law³⁰. However, based on a search on the *JDIH BPK* Regulations Database website, this law has been revoked by Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. At that time, the authority of the Commercial Court was limited to bankruptcy, suspension of debt payment obligations, and other commercial cases stipulated by law, such as intellectual property rights cases and the deposit insurance corporation. However, after the existence of the Job Creation Law, the authority of the Commercial Court has become broader, namely, the authority to examine, hear and decide cases related to unfair business competition and

²⁹ Fairuz Zahirah Zihni Hamdan and others, 'Upaya Keberatan Atas Putuan *KPPU* Ke Pengadilan Niaga: Pembaharuan Berkepastian Hukum' (2023) 6 Media Iuris 61, 74.

³⁰ Wijayanta, 'Urgensi Pembentukan Pengadilan Niaga Baru' (2010) 22 Mimbar Hukum 333.

monopolistic practices that cause losses³¹.

The transfer of venue (change of authority) related to the filing of objections to KPPU decisions is carried out to improve the quality of evidence in court proceedings. This is because judges in the Commercial Court generally have sufficient experience in handling business aspects or business issues. Therefore, it is expected that the trial process in the District Court in the settlement of business cases can take place more holistically, with the hope that the quality of evidence can improve³².

The transfer of jurisdiction over challenges to KPPU decisions to the Commercial Court raises several issues that are considered a setback in the competition law process. These problems include: first, this change transferred the absolute competence of the Commercial Court, which previously decided business disputes related to bankruptcy and postponement of debt payments, trademark disputes, and other disputes in the business context. Previously, the Commercial Court focused more on commercial civil law disputes. In contrast, disputes in business competition law are not civil law disputes because they are more related to criminal offences related to monopolistic practices and unfair business competition practices committed by business actors³³. In the author's opinion, the new regulation pertaining to granting new authority to the Commercial Court to hear objections from Business Actors against the *KPPU* Decision is a significant step in business competition. This situation is an effort to reflect a more integrated and specialized dispute resolution system in the business and commercial fields, including disputes related to business competition, such as : 1) The occurrence of case overload in the Commercial Court, primarily since the Commercial Court currently only exists in 5 (five) cities in Indonesia, and 2) Judges are required to be able to specialize their skills and abilities further to be able to handle more specific cases related to business competition where this situation allows additional training to improve the quality of judges' resources.

Second, business actors experience difficulties filing objections to *KPPU* decisions, especially those far from the Commercial Court, as Commercial Courts are only found in some provinces in Indonesia³⁴. This is because the Commercial Courts in Indonesia are only located in five cities, namely Medan, Semarang, Surabaya, Makassar, and Central Jakarta. The difficulties that business actors will face due to this situation include high additional costs such as transportation, accommodation, and other expenses related to travel costs to attend trials, which can undoubtedly be a financial burden. In addition, the limited number of

³¹ Chandra Yusuf, 'Kesesuaian Karakteristik Antara Perkara Persaingan Usaha Dan Pengadilan Niaga' (2021) 12 ADIL: Jurnal Hukum 128.

³² Gustini Widijaningsih, Kurniawan and Eduardus Bayo Sili, 'Penyelesaian Sengketa Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja' (2022) 5 Unizar Law Review ... 20, 24 <<https://e-journal.unizar.ac.id/index.php/ulr/article/view/579%0Ahttps://e-journal.unizar.ac.id/index.php/ulr/article/download/579/418>>.

³³ Ismail Rumadan et al., *Kewenangan Pengadilan Niaga Dalam Mengadili Permohonan Keberatan Atas Putusan Komisi Pengawas Persaingan Usaha Tidak Sehat*, 1st ed. (Jakarta: Kencana, 2021), 2–3.

³⁴ Widijaningsih, Kurniawan and Sili (n 33) 24.

commercial courts will certainly provide difficulties for business actors in the regions who file objections or follow effective legal processes.

The period for the Decision of the Commercial Court on Objection to the *KPPU* Decision is not specified

A valid and binding rule of law contains the principles that are the basis for its formation. Legal principles are at the heart of forming a rule of law. Furthermore, the principles aim to clarify the rules in forming legal rules (including laws and regulations). This clarity can only be obtained if one of the principles in forming legal rules is applied, namely the principle of legal certainty. The principle of legal certainty is one of the principles introduced by Gustav Radbruch, whereas other principles are the principles of justice and expediency³⁵.

The presence of the principle of legal certainty makes a person know what he will do next. So, if legal certainty does not exist, the opposite happens; namely, people will not understand what they should do next. This situation then gave birth to Legal Uncertainty. Legal Uncertainty makes law enforcement clear, accurate, irregular, and inconsistent in its implementation³⁶.

Before the amendment, Article 45 paragraph (2) of the Competition Law stipulated that the District Court must issue a decision on the appeal of the *KPPU's* decision by 30 (thirty) days from the commencement of the examination of the appeal. Then Article 45 paragraph (4) stipulates that the Supreme Court that receives a cassation appeal against the inadmissibility of the decision of the State Court must also give its decision within 30 (thirty) days after the cassation appeal is received. However, Article 45 has been amended by Article 118 of the Job Creation Law,³⁷ so the article that previously consisted of 4 (four) paragraphs is now only 3 (three). This amendment deletes paragraph (2) and paragraph (4), in which the substance of each paragraph determines the period given to the state court and the Supreme Court in resolving the case.

After the change, the potential for legal uncertainty is more significant. There is no certainty as to how long a decision will be received from the Commercial Court, which was previously the District Court and the Supreme Court. Although Supreme Court Regulation No. 3 of 2021 determines that the examination period is carried out in the fastest three months and the longest 12 months, the time gap between 3 months and 12 months is still not short. Of course, this no longer follows the principles of procedural law, namely simple, fast and light costs. This fast principle requires examining cases to be completed quickly without a convoluted process and at a relatively low cost. With such a long time, it is

³⁵ Satjipto Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti 2012) 19.

³⁶ R Tony Prayogo, 'Penerapan Asas Kepastian Hukum Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 Tentang Hak Uji Materil Dan Dalam Peraturan Mahkamah Konstitusi Nomor 06/Pmk/2005 Tentang Pedoman Beracara Dalam Pengujian Undang-Undang' (2016) 13 Jurnal Legislasi Indonesia 194.

³⁷ Lihat di halaman 653 Undang-Undang Nomor 6 Tahun 2023

undoubtedly different from the speed and light costs principle³⁸. Thus, this change slows down the process of case completion because case settlement becomes relatively more extended than before when only a 30-day time limit was given to both the District Court (now the authority of the Commercial Court) and the Supreme Court³⁹.

Elimination of the Maximum Fine Limit for Violations of the Business Competition Law

Fines as sanctions are a form of punishment given to every business person involved in fraudulent acts in running their business. This sanction aims to create a deterrent effect for violating business actors and also as a preventive measure so that other business actors do not commit similar violations⁴⁰.

Prior to the amendment, the provision of sanctions for violations by business actors was determined in Article 47 letter g of the Business Competition Law, namely a fine of at least Rp 1,000,000,000 (one billion rupiah) and a maximum of Rp 25,000,000,000 (twenty-five billion rupiah), namely: g. Imposition of a fine of as low as Rp 1,000,000,000.00 (one billion rupiah) and as high as Rp 25,000,000,000.00 (twenty-five billion rupiah). Meanwhile, after the amendment, the maximum limit of the imposition of fines is eliminated, and there is only a minimum limit provision which reads: g. Imposition of a fine of at least Rp 1,000,000,000.00 (one billion rupiah).

Regarding the calculation of the fine, in practice, 2 (two) rules provide guidelines, namely: first, Article 12 paragraph (1) letter a and letter b of Government Regulation Number 44 of 2021 on the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition. In this article, it is determined that the imposition of administrative actions in the form of fines by *KPPU* is carried out by taking into account the percentage of net profits obtained by business actors, namely no more than 50% of net profits during the violation or no more than 10% of total sales in the relevant market during the violation. Second, *KPPU* Regulation Number 2 of 2021 on Guidelines for Imposition of Fines for Violations of Monopolistic Practices and Unfair Business Competition which determines the sanctions for administrative actions of business actors in the form of fines are at least IDR 1,000,000,000 (one billion rupiah) which is the basic fine. This basic fine is then increased through a calculation based on the negative impact caused, the length of time of the violation, factors that can aggravate, and/or the ability of the business actor itself⁴¹.

Amendment of Principal Punishment and Elimination of Additional Punishment

Talking about punishment means talking about efforts made to seek truth and

³⁸ Ni Putu Riyani Kartika Sari, 'Eksistensi E-Court Untuk Mewujudkan Asas Sederhana, Cepat, Dan Biaya Ringan Dalam Sistem Peradilan Perdata Di Indonesia' (2019) 13 *Yustitia* 1, 2.

³⁹ Widijaningsih, Kurniawan and Sili (n 33) 42.

⁴⁰ Novalia Pertiwi and Annisa Azzahrah Burhan, 'Efektifitas Penerapan Program Kepatuhan Persaingan Usaha Dalam Pencegahan Persaingan Usaha Tidak Sehat' (2023) 4 *Jurnal Studia Legalia: Jurnal Ilmu Hukum* 72, 82.

⁴¹ Pasal 2 ayat (1) dan (2) Peraturan KPPU No. 2 Tahun 2021

justice⁴². Criminalization is attached to every aspect of individual life. It is related to how individuals can express what should be done to lawbreakers. Punishment is an institution that shows transactions involving individuals. These transactions are controlled by applicable rules in the form of what to do, who will be punished, and what the purpose of punishment is⁴³.

In relation to the application of the law as a form of protection for everyone, legal theory, including the theory of punishment, is one of the solutions to keep deviations from occurring. This theory of punishment can be used as a basis for criminalizing someone because judges, in imposing criminal decisions, must pay attention to the use of the theory of punishment. In the legal aspects of business competition, punishment cannot be separated from this because punishment is carried out to seek justice and truth and prevent violations of the law that cause harm to others.

In the Business Competition Law that has not been amended, the criminal provisions are regulated in several articles, namely Article 48, with a total of 3 (three) paragraphs. However, after the amendment, Article 48 only consists of 1 (one) paragraph because the other 2 (two) paragraphs are deleted. Previously, Article 48 determined different amounts of fines, namely: First, paragraph (1) stipulates that any violation of Article 4, Article 9 to Article 14, Article 16 to Article 19, Article 25, Article 27, and Article 28 will be punished with a fine of not less than Rp25,000,000,000 (twenty-five billion rupiah) and not more than Rp100,000,000,000 (one hundred billion rupiah), or if unable to pay the fine, will be sentenced to imprisonment in lieu of a fine for a maximum of 6 (six) months. Second, Violation of Article 5 through Article 8, Article 15, Article 20 through Article 24, and Article 26 will be subject to a fine of not less than Rp5,000,000,000 (five billion rupiah) and not more than Rp25,000,000,000 (twenty-five billion rupiah), or if unable to pay the fine, will be sentenced to imprisonment in lieu of a fine of not more than 5 (five) months; and Third, Violation of Article 41 is punishable by a fine of at least Rp 1,000,000,000 (one billion rupiah) and at most Rp 5,000,000,000 (five billion rupiah) or imprisonment in lieu of a fine of not more than 3 (three) months.

After the Job Creation Law, the provisions regarding the main punishment are only in Article 48, which basically regulates that if there is a violation of Article 41, then business actors who violate the article will be sanctioned in the form of a fine of not more than Rp 5,000,000,000 (five billion rupiah). If the violator is unable to pay the fine, the violator will be subject to imprisonment in lieu of a fine for not more than 1 (one) month. What is regulated in Article 41 is the attitude of business actors who hinder the *KPPU* examination process, such as not being able to submit evidence needed in the investigation or examination, refusing to be examined and provide information needed in the investigation or examination process, and other actions that hinder the investigation or examination process by *KPPU*.

⁴² Umi Roza Aditya, *Asas Dan Tujuan Pemidanaan Dalam Perkembangan Teori Pemidanaan* (Pustaka Magister 2015) 16.

⁴³ *ibid* 17.

Another article in the Job Creation Law that regulates sanctions against violations of the Business Competition Law is Article 47 on Administrative Measures. Paragraph (1) of this Article states that *KPPU* has the authority to impose sanctions in the form of administrative actions on business actors who are proven to have committed violations. Furthermore, paragraph (2) explains that the administrative actions referred to are:

- a. Cancel the agreement (Article 4 to Article 13, Article 15, Article 16);
- b. Requesting business actors to stop vertical integration activities (Article 14) immediately;
- c. Order business actors who have been proven to commit monopolistic practices and other fraudulent acts (Article 17 through Article 24, Article 26, and Article 27);
- d. Ordering business actors to immediately stop the abuse of dominant position (Article 25);
- e. Cancel a merger consolidation or takeover of shares (Article 28);
- f. Stipulate the payment of compensation;
- g. Stipulating a fine amount of at least Rp 1,000,000,000 (one billion rupiah).

CONCLUSION

The Business Competition Law in Indonesia first changed after the 2020 Job Creation Law was enacted. However, the 2020 Job Creation Law was later declared conditionally unconstitutional and must be revised within 2 years. As a result, Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation was issued, which then in 2023 was enacted into law-by-Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. Some of the articles that changed when the 2023 Job Creation Law was enacted were Article 44 to Article 48, and 1 (one) article was abolished, namely Article 49. The changes and deletion of several articles have an impact on several things, such as the District Court is no longer authorized to resolve cases of objections to *KPPU* decisions, the elimination of the time for decisions of the Commercial Court and the Supreme Court, the elimination of the maximum amount of fines for violations of the Business Competition Law, changes in the content of the main criminal articles and the elimination of additional criminal articles.

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