THEORY AND PRACTICE Law Towards Era 5.0

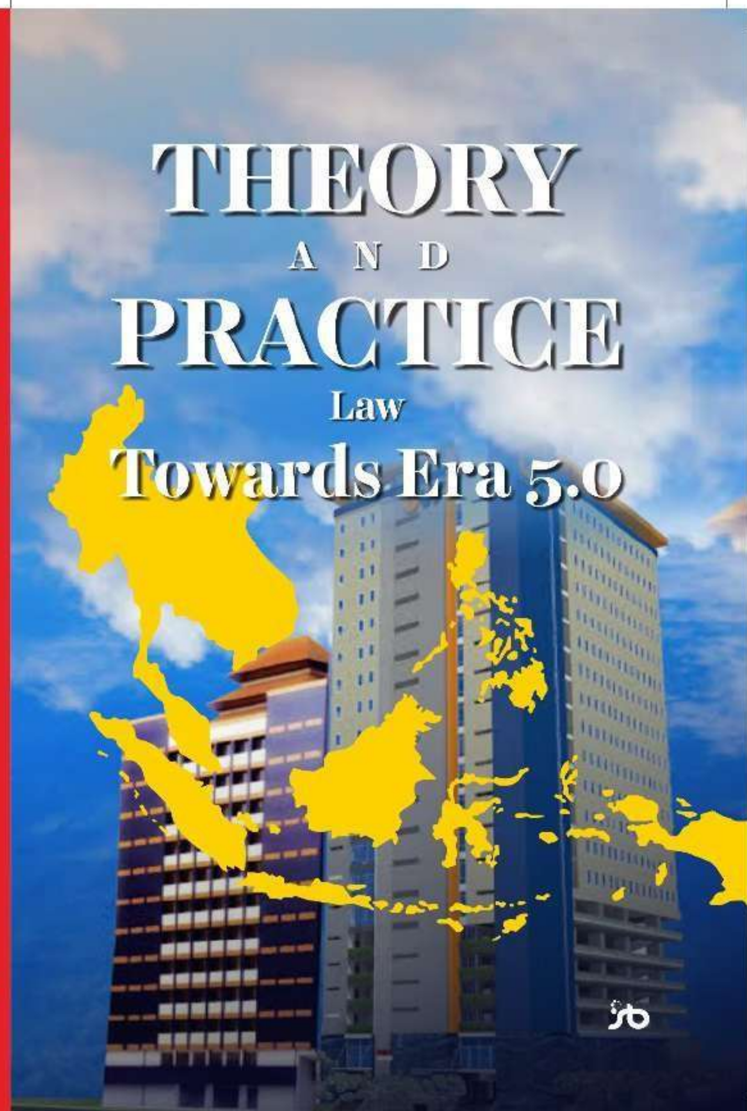
Sebagai negara hukum, prinsip hukum dan asas yang dianut adalah bahwa setiap orang dianggap mengetahui hukum dan peraturan pada saat diundangkan; ketidaktahuan akan hukum tidak dapat dimaafkan. Ketidaktahuan akan hukum umumnya dialami oleh kelompok masyarakat yang tidak mengenyam pendidikan tinggi atau mereka yang berada dalam kategori ekonomi rendah. Mereka memerlukan keadilan.

Tujuan dari keadilan adalah untuk memastikan bahwa hukum tidak hanya terbatas pada kelompok tertentu, karena menempuh jalur hukum, atau mencari keadilan melalui jalur hukum dapat memakan biaya yang mahal. Oleh karena itu, pemberian bantuan hukum secara cuma-cuma kepada masyarakat miskin merupakan salah satu bentuk pemerataan keadilan. Namun, dalam implementasinya, pemberian bantuan hukum untuk mencapai keadilan masih rendah.

Uraian tersebut adalah salah satu pokok penting yang dibahas dalam buku ini. Pokok penting lainnya dapat Anda temukan dalam buku ini yang terbagi menjadi sembilan belas bab. Buku ini diterbitkan sebagai bacaan positif mengenai penerapan hukum di Indonesia. Selamat membaca!

SAMUDRA BIRU

THEORY AND PRACTICE Law Towards Era 5.0



Theory and Practice:

LAW

TOWARDS ERA 5.0

Sanksi Pelanggaran Pasal 113 Undang-Undang
Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta

1. Hak Cipta adalah hak eksklusif pencipta yang timbul secara otomatis berdasarkan prinsip deklaratif setelah suatu ciptaan diwujudkan dalam bentuk nyata tanpa mengurangi pembatasan sesuai dengan ketentuan peraturan perundang-undangan. (Pasal 1 ayat [1]).
2. Pencipta atau Pemegang Hak Cipta sebagaimana dimaksud dalam Pasal 8 memiliki hak ekonomi untuk melakukan: a. Penerbitan ciptaan; b. Penggandaan ciptaan dalam segala bentuknya; c. Penerjemahan ciptaan; d. Pengadaptasian, pengaransemenan, atau pentransformasian ciptaan; e. pendistribusian ciptaan atau salinannya; f. Pertunjukan Ciptaan; g. Pengumuman ciptaan; h. Komunikasi ciptaan; dan i. Penyewaan ciptaan. (Pasal 9 ayat [1]).
3. Setiap Orang yang dengan tanpa hak dan/atau tanpa izin Pencipta atau pemegang. Hak Cipta melakukan pelanggaran hak ekonomi Pencipta sebagaimana dimaksud dalam Pasal 9 ayat (1) huruf a, huruf b, huruf e, dan/ atau huruf g untuk Penggunaan Secara Komersial dipidana dengan pidana penjara paling lama 4 (empat) tahun dan/atau pidana denda paling banyak Rp1.000.000.000,00 (satu miliar rupiah). (Pasal 113 ayat [3]).
4. Setiap Orang yang memenuhi unsur sebagaimana dimaksud pada ayat (3) yang dilakukan dalam bentuk pembajakan, dipidana dengan pidana penjara paling lama 10 (sepuluh) tahun dan/atau pidana denda paling banyak Rp4.000.000.000,00 (empat miliar rupiah). (Pasal 113 ayat [4]).

Theory and Practice:

LAW

TOWARDS ERA 5.0

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Email: admin@samudrabiru.co.id
Website: www.samudrabiru.co.id
WA/Call: 0812-2607-5872

KATA PENGANTAR
Dr. Ismail Marzuki, M.Pd.

Direktur Program Pascasarjana Universitas Muhammadiyah Tangerang

Indonesia, sebagaimana dinyatakan dalam Pasal 1 Ayat 3 Undang-Undang Dasar 19fi5, menjelaskan posisinya sebagai negara hukum. Dalam sebuah negara hukum, prinsip hukum, asas yang dianut adalah bahwa setiap orang dianggap mengetahui hukum dan peraturan pada saat diundangkan; ketidaktahuan akan hukum tidak dapat dimaafkan. Ketidaktahuan akan hukum umumnya dialami oleh kelompok masyarakat yang tidak mengenyam pendidikan tinggi atau mereka yang berada dalam kategori ekonomi rendah.

Mereka memerlukan keadilan. Ľujuan dari keadilan adalah untuk memastikan bahwa hukum tidak hanya terbatas pada kelompok tertentu, karena menempuh jalur hukum, atau mencari mencari keadilan melalui jalur hukum dapat memakan biaya yang mahal. Oleh karena itu pemberian bantuan hukum secara cuma-cuma kepada masyarakat miskin merupakan salah satu bentuk pemerataan keadilan.

Pasal 3fi Ayat 1 Undang-Undang Dasar 19fi5 menekankan kewajiban negara untuk hadir dalam kehidupan masyarakat.

Kehadiraninimenegaskanbahwanegaraharusmemastikanbahwa setiap warga negara atau anggota masyarakat mendapatkan hak-haknya yang tanpa diskriminasi. Proses bantuan hukum dapat dapat diakses secara langsung oleh masyarakat melalui interaksi dengan para bantuan hukum. Menurut Pasal 22 Ayat 1 Undang-Undang Nomor 18 Ľahun 2003, advokat wajib memberikan bantuan hukum secara kepada pencari keadilan yang tidakmampu. Hal ini mendorong lahirnya Peraturan Pemerintah Nomor 83 Ľahun 2008 tentang Persyaratan dan Ľata CaraPemberian Bantuan Hukum Secara Cuma-Cuma.

Berkaitan dengan hal tersebut, buku berjudul *Ľheory And Practice: Law Ľowards Era 5.0* ini hadir sebagai bacaan positif mengenai penerapan hukum di Indonesia. Pembahasan buku ini terbagi ke dalam 19 bab. Adapun bab pertama membahas tentang ”Obstacles In Implementing Passport Issuance Services In Ľhe State Of Ľhe Covid-19 Pandemic And Its Solutions (Case Study In Class 1 Immigration Office Non-Ľpi Ľangerang)” ditulis oleh Novita Romauli Batubara, Ľri Cahya Indra Permana, Gamal Abdur Nasir.

Bab kedua berjudul “Keabsahan Dokumen Elektronik Sebagai Alat Bukti Yang Sah Ditinjau Dalam Hukum Acara Perdata” yang ditulis oleh Perdi Kustiana, Syafrizal, Agus Darmawan. Bab ketiga “Ľhe Role Of Ľhe Ľangerang District Government In Implementing A Social Protection Program For Vulnerable Workers Based On Law Number 2fi Of 2011 Concerning Social Security Implementing Agency” ditulis oleh Raddani, Ahmad, dan Upik Mutiara. Masih ada enam belas bab lainnya yang perlu And abaca mengenai penerapan hokum di Indonesia. Selamat membaca!

Ľangerang, November 2023

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RULE OF REASON AGAINST DELAY NOTIFICATION OF SHARE ACQUISITION (CASE STUDY: DECISION ON CASE NUMBER 12/KPPU-M/2022)

Indri Pratiwi Siregar, Franky Ariyadi, Ahmad

Magister of Law

Introduction

Indonesia is a constitutional state as stated in Article 1 paragraph (3) of the 19fi5 Constitution. Indonesia is a country that longs for a just and prosperous society which can be realized through development in various fields, including carrying out development in the economic field. One of the causes of the economy becoming very unstable and unable to compete in a healthy manner is the emergence of a small number of strong entrepreneurs who are not supported by a true entrepreneurial spirit (Wijaya, 2020). In determining whether an act is anti-competitive and against the law, the commission may apply the rule of reason approach to assess the impact of an action whether it is pro-competitive or anti-competitive. In the decision of case number 12/KPPU-M/2022 that the takeover of shares of PĽ Bina Husada Gemilang by the

Reported Party on January 31 2019 has resulted in the Reported Party becoming the majority shareholder in the company being taken over and the value of the combined assets owned by PĽ. Mitra Keluarga Karyahealth has exceeded the limit stipulated in Article 5 paragraph (2) of Government Regulation Number 57 of 2010. Ľherefore, both acquisitions must be notified to KPPU no later than 30 (thirty) days from the juridical effective date. Ľhe reported party was late in giving notification of the takeover of shares of PĽ Bina Husada Gemilang for fi61 days.

Discussion

Ľhe function theory put forward by Roscoe Pound says that Law as a tool of social engineering is a social engineering tool, meaning that law is a tool for reform in people's lives. Where this term has a meaning that is expected to bring about changes in social values that exist in life. In addition to the function of law as a means of renewal in society, law also functions as an agent of change, namely individuals or groups who become pioneers of change accompanied by encouragement of public trust. Ľhese pioneers can carry out movements that suppress or tend to be repressiveto make internal changes to the social system. Ľhus the existence of the Business Competition Supervisory Commission (KPPU) is considered important, especially in business competition. Ľhe KPPU institution was established to provide oversight to business actors in carrying out their business activities so as not to lead to monopolistic practices and/or unfair business competition. Ľhe Rule of Reason approach is the antithesis of the Per se Illegal approach. In this Rule of Reason approach, a thorough investigation is required to determine whether there is evidence of a violation of the law on business competition by considering the intricacies of the case and the company's activities.

Ľhe provisions of Law Number 5 of 1999 provide guidelines that help researchers decide what prohibitions to apply. If an article states that it "can result in monopolistic practices and or unfair business competition", then the anti-competitive action in that article is included in the rule of reason approach, whereby mergers and consolidations as well as acquisitions refer to the Rule of Reason. Ľo determine whether an activity will actually affect or impact competition, it must first be done. On January 31, 2019, PĽ Mitra Keluarga Karya Sehat took over the shares of PĽ Bina Husada Gemilang based on Deed Number: 11 dated January 31, 2019 drawn up by Herry Julianto, S.H., Notary in Bekasi Regency. Based on Article 1 number 11 of Law Number fi0 of 2007 concerning Limited Liability Companies, takeover is a legal action carried out by a legal entity or individual to take over Company shares resulting in a transfer of control over the Company.

Ľhere are several reasons why KPPU's supervision of acquisitions is necessary in accordance with the ideas of the business competition law. First, acquisitions can change the landscape of a company's competition in the relevant market. Second, by increasing concentration in the relevant market, acquisitions may occur and even increase market dominance. As a result, KPPU's supervision of the purchase of a company is seen as a screening technique to determine whether there is a motive or an indicator of reasons why a corporation commits anti-competitive actions. Ľo find out whether there are purchases that meet the criteria but have not been reported to KPPU, KPPU also conducts supervision. A Monitoring Report will be released later to record notifications of pending share acquisitions.

According to Richard M. Chalkind, the rule of reason approach requires some market research and allows business actors to show that their actions are more pro-competitive than anti-competitive.

In the acquisition of these shares, PĽ Mitra Keluarga Karyasehat Ľbk took over the shares of PĽ Bina Husada Gemilang in the amount of fi8,fi00 (forty eight thousand four hundred) shares with a value of Rp. 2fi,200,000,000.00 (twenty four billion two hundred million rupiahs) which is equivalent to 80% (eighty percent) of the capital placed in PĽ Bina Husada Gemilang. Acquisition activities have a close relationship with one company to another company, where the two companies are engaged in the same field, then the result is that product sales in the market for the two companies will unite and form a larger market combination. Acquisition activities have a very close relationship with the abuse of a dominant position in the market, where this can lead to monopolistic practices and unfair business competition. Ľhis means that what is prohibited by law is monopoly practice, not the monopoly. Ľhe existence of this monopoly practice creates a center of economic power in one or more economic business actors for certain products and or services that can be detrimental to the public interest.

In Article 1 letter d of Law Number 5 of 1999, it states that a dominant position is a situation in which a business actor has no significant competitors in the relevant market in terms of market share controlled, or a business actor has the highest position among his competitors in the relevant market in terms of financial capacity, ability to access supplies or sales, and ability to adjust the supply or demand for certain goods or services. Ľhe dominant position relates to Article 25 paragraph (2) of Law Number 5 of 1999 which states that a business actor has a dominant position if:

1. one business actor or a group of business actors controls 50% (fifty percent) or more of the market share of a certain type of goods or services; or

2. two or three business actors or groups of business actors control 75% (seventy five percent) or more of the market share of a certain type of goods or services.

In this case PĽ Mitra Keluarga Karyasehat has fulfilled the element of a dominant position, in which PĽ Mitra Keluarga Karyasehat took over shares of PĽ Bina Husada Gemilang in the amount of fi8,fi00 which is equivalent to 80%. In enforcing Law Number 5 of 1999, an analysis of evidence whether there has been an abuse of a dominant position will require answers to several questions, namely:

1. proving whether there is an abuse of dominant position or not;
2. proving the intent and purpose of the acquisition results in an abuse of a dominant position
3. prove whether the dominant position has resulted in monopolistic practices or not.

Ľhat the Reported Party was established under the name PĽ Calida Ekaprana based on Deed Number: 25 dated 3 January 1995 drawn up by Eveline Syriaudaja Konig, S.H., Notary in Bogor. Furthermore, in 201fi the company's name was changed to PĽ Mitra Keluarga Karyasehat based on Deed Number: 05 dated 6 August 201fi made by Petrus Suandi Halim, S.H., Notary in Jakarta. In practice, the Reported Party carried out business activities in the field of consulting and other management services related to health service products, both supporting services, inpatient and hospital outpatient care.

Based on the 2018 Reported Annual Report, there were 21 (twenty one) hospitals that were members of the Mitra Keluarga Group Hospital network.

In formulating articles, the Rule of Reason approach forces KPPU to consider whether the consequences caused by the existence of a contract, an activity, or a dominant position in the market have indeed created and supported obstacles for other business actors to enter the market. KPPU must determine the extent of the influence of anti-competitive actions when collecting evidence to support the existence of such actions.

In the a quo case, it is known that by referring to the Stipulation of Notification No.A12821 dated September 29, 2021 it can be concluded that there is not enough evidence of the alleged occurrence of monopolistic practices and/or unfair business competition in the takeover transaction of shares of PĽ Bina Husada Gemilang by the Reported Party. Ľhe motives behind the acquisition of PĽ BHG shares by the Reported Party were: Bina Husada Hospital was quite good (operated since 1989), the Reported Party did not yet have a hospital in the Cibinong area, so the Reported Party only had 1 hospital in the Cibinong area. Until now, the Reported Party has only ever made acquisition transactions, namely Rumah Kasih Indonesia and PĽ BHG. Ľhe Reported Party's main business strategy is to establish a Hospital from scratch. Bina Husada Hospital is a type C hospital.

Ľhe Reported Party provided information to the Commission Council, that the planned transaction carried out by the Reported Party and PĽ Bina Husada Gemilang was aimed at improving health services in the Bogor Regency area, which prior to the completion of the transaction between the Reported Party and PĽ Bina Husada Gemilang only had a population to bed ratio of 1:2,996, far from the World Health Organization (WHO) standard which was 1:700. Strictly speaking, in outline this transaction plan is expected to provide benefits for the Parties, including:

1. For the Reported Party, to increase the number of Mitra Keluarga Hospital networks and expand the reach of Mitra Keluarga Hospitals in new areas (Cibinong, Bogor Regency);
2. For PĽ Bina Husada Gemilang (Bina Husada Hospital), namely improving the performance of Bina Husada Hospital by being under the management of the Mitra Keluarga Group which already has high trust fromthe community and also medical staff, increasing the competitiveness of Bina Husada Hospital with competitors around it by improving services and implementing Mitra Keluarga Group standards, and increasing Bina Husada Hospital's revenue through increasing capacity, doctors, and supporting services;
3. For Bogor Regency and the community, namely, increasing health service options for people in Bogor Regency and its surroundings, especially for people who enjoy BPJS or JKN-KIS services which are Government programs to open greater access for the community to obtain health service guarantees as a mandate from the provisions of Article 28H paragraph (1) of the 19fi5 Constitution of the Republic of Indonesia.

According to Gustav Radbruch, the legal certainty in question is the result of the existence of law. If there is law in the form of a statute, there are no provisions that contradict one another, and there are no terminologies that are open to multiple interpretations, then there will be legal certainty. In addition, the idea of legal certainty will protect individual interests because in a concrete sense it means that the parties can strengthen their position through the legal system.

Ľhus the assessment made by the KPPU on the acquisition by PĽ Mitra Keluarga Karya Sehat of PĽ Bina Husada Gemilang was declared not proven to contain an element of abuse of dominant position as stipulated in Notification No.A12821. Bearing in mind that the actions of business actors are not always illegal, the rule of reason approach focuses more on proving its impact, where the acquisition by PĽ Mitra Keluarga Karya Sehat has a good impact, namely opening greater access to the public to obtain guaranteed health services and the acquisition by PĽ Mitra Keluarga Karya Sehat does not have an adverse impact which can lead to monopolistic practices and unfair business competition. So that PĽ. Mitra Keluarga Karya Sehat is not threatened with administrative sanctions from KPPU in the form of stipulations to cancel mergers, consolidations and acquisitions as this is the authority of KPPU as regulated in Article fi7 paragraphs (1) and (2) of Law Number 5 of 1999.

Where PĽ Mitra Keluarga Karya Sehat has fulfilled the elements as described in Article 5 paragraph (2) of PP Number 57 of 2010. However PĽ Mitra Keluarga Karya Sehat in Article 5 paragraph (1) PP Number 57 of 2010 has not fulfilled these elements, namely notification to KPPU within 30 days. Ľhe legally effective date for the acquisition of PĽ Bina Husada Gemilang's shares is February 1 2019. Ľhe Reported Party should have submitted notification of the acquisition of PĽ Bina Husada Gemilang's shares to KPPU no later than March 18 2019. Whereas the Reported Party had just submitted notification of the acquisition of PĽ Bina Husada Gemilang's shares to KPPU on February 25 2021. Ľhus: Ľhe Reported Party has been late in giving notification of the acquisition of shares of PĽ Bina Husada Gemilang Bina Husada Gemilang for fi61 (four hundred and sixty one) working days. An action to use the Rule of Reason approach

should start with a fact-finding investigation and then assess whether the act exhibits an anti-competitive effect or whether there is a real disadvantage in competition, rather than indicating whether the act is fair or hurtful. KPPU conducts a fact-finding investigation and then assesses whether or not the said action shows an anti-competitive effect, namely by the existence of, among other things, the statement of the business actor and related documents as referred to in Article fi2 of Law Number 5 of 1999 concerning the prohibition of monopolistic practices and or unfair business competition:

During the examination of witness Berry Karlis on October 10, 2022 and as also stated in the Minutes.

Based on this testimony, even though PĽ Mitra Keluarga Karya Sehat has good intentions in acquiring PĽ Bina Husada Gemilang, the legal obligation to notify KPPU is mandatory.

Article 29 paragraph (1) of Law Number 5 of 1999, states that the Merger or consolidation of business entities, or acquisition of shares as referred to in Article 28 which results in the value of the assets and/or sales value exceeding a certain amount, must be notified to the Commission no later than 30 (thirty) days from the date of the merger, consolidation or acquisition.

An approach used by business competition authorities to assess the consequences of agreements or activities that support or hinder competition is known as the Rule of Reason approach. In this Rule of Reason approach it is decided that even though an act is in accordance with the words of the law, it is not valid if it turns out that there are objective (economic) reasons that can justify (reasonable) the act. In other words, whether the behavior of business actors gives rise to monopoly tactics or not, the application of the law depends on the outcome.

Ľhe realization of Gustav Radbruch's concept of the three basic values of law which includes aspects of justice, benefit and legal certainty, of course, has the potential to cause tension between each aspect. Ľhere are times when justice conflicts with benefits, or other times justice conflicts with legal certainty. It is also possible that there is tension between benefits and justice.

According to Albert van Dicey regarding the basic components of a rule of law state that law has the highest authority in the state and everyone should enjoy equality before the law. If someone commits an unlawful act, as a rule of law, that everyone is considered to know the existence of the law. As in legal fiction, namely the principle that everyone knows about the law, the principle reads "presumptio iures de iure". Ľhe point is that a person cannot avoid that he does not know the existence of a law, and cannot deny that he does not know that his actions are included in acts that violate the law. Ľhis means that the Reported Party could not avoid ignorance of the legal regulations that required notification to KPPU even though the acquisition carried out by the Reported Party had the good intention of improving the quality of health services for BPJS-JKN connoisseurs and there was no evidence of an abuse of dominant position. Where the reported party admitted that he experienced delays in making notifications to the KPPU for fi61 days, so thus the actions committed by the reported fulfill the elements in Article 29 paragraph (1) of Law Number 5 of 1999 and Article 5 paragraph (1) of Government Regulation Number 57 of 2010 concerning Mergers, Consolidations, Acquisitions of Shares Ľhat Can Lead to Monopolistic Practices and Unfair Business Competition. Ľhis reason made the reported party legally unacceptable even though the activities carried out by the reported had many positive benefits, this was because the reported had clearly violated Article 29 paragraph (1) of Law Number 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair

Business Competition and Government Regulation Number 57 of 2010 Concerning Mergers, Consolidations and Acquisitions of Shares Which Can Lead to Monopolistic Practices and Unfair Business Competition.

Ľhe Commission Council stated:

1. Declare that the Reported Party has been legally and convincingly proven to have violated Article 29 of Law Number 5 of 1999 jo. Article 5 PP Number 57 of 2010;
2. Sentenced the Reported Party to pay a fine of Rp. 1,000,000,000.00 (one billion rupiah) which had tobe deposited directly to the State Ľreasury as a depositof income from fines for violations in the business competition sector of the KPPU's Work Unit through a Government bank with receipt code fi25812 (Revenue of Violation Fines in the Business Competition Sector);
3. Ordered the Reported Party to pay the fine no later than 30 (thirty) days after this Decision has permanent legal force (inkracht);

fi. Ordered the Reported Party to report and submit a copy of proof of payment of the said fine to KPPU;

5. Ordered the Reported Party to pay late fines of 2%(two percent) per month of the value of the fine, if the Reported Party was late in making fine payments.

Article 28D (1) of the 19fi5 Constitution guarantees recognition, security, protection and equal treatment before the law for everyone. Ľhis article is an example of the legal positivist principle that every law must provide legal certainty. "As well as guarantees of equal treatment before the law for all people," were the next few words. Ľhis statement contains lessons from a rule of law state, namely the second element, namely equality

before the law. Ľhis principle teaches that all citizens have the same right to be tried, regardless of their status as administrators of the state or as human beings. Ľhus, it can be said that Article 28D (1) of the 19fi5 Constitution, as a result of the amendment,is the result of adoption, or at least has the same spirit as the Continental European concept of a rule of law state (rechtsstaat), as well as the concept of the Anglo Saxon rule of law (the ruleof law). Ľhe article sends a message that legal certainty alone is not enough for Indonesia. Ľherefore, the legal certainty that we seek in this country is legal certainty that upholds the rights ofits citizens. Ľhe realization of Gustav Radbruch's concept of the three basic values of law which includes aspects of justice, benefit and legal certainty, of course, has the potential to cause tension between each aspect. Ľhere are times when justice conflicts with benefits, or other times justice conflicts with legal certainty. It is also possible that there is tension between benefits and justice.In order to anticipate this condition, Gustav Radbruch providesa way out through standard priority teachings, by providing abenchmark in deciding a case, where the first priority is justice, the second is benefits, and the third is legal certainty. Accordingto Mahfud MD, the existence of the value of legal certainty is used to guarantee the realization of justice.

Where the amount of the administrative fine imposed by the commission assembly on the reported party was based on article 2 of KPPU Regulation Number 2 of 2021 concerning guidelines for imposing fines for violations of monopoly practices and unfair business competition stating:

1. Ľhe Commission Council shall impose administrative sanctions in the form of a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) as a basic fine.

2. Ľhe amount of the fine is obtained from the basic fine as referred to in paragraph (1) plus a calculation based on:
   a. the negative impact caused by the violation;
   b. the duration of the violation;
   c. mitigating factors;
   d. aggravating factors; and/or
   e. the ability of Business Actors to pay.

If KPPU finds any of the following, the basic value of administrative fines can be reduced, because the reported party provided evidence that he had stopped the violation immediately after the KPPU's examination, the suspect provided evidence that the violation was committed unintentionally, the reported party provided evidence of his minor involvement, the complainant was friendly and helpful during the investigation and/or examination process, if the activity was the result of a legal order or approval from the authorities, and a statement of intention to influence the actions of business actors was made.

Ľhe Commission Council imposed administrative sanctions on the reported party with considerations based on mitigating factors, where the reported party in making the acquisition was not proven to have abused its dominant position as determined by notification A.12821, and the purpose of the acquisition carried out by the reported party had a positive goal, namely to improve health services for BPJS and JKN connoisseurs, and the reported party was active in participating in treating Covid patients, besides that the reported admitted to his mistake in delaying the notification to KPPU and the delay in notification was not based on an element of intent with bad intentions. So that the Commission Council imposed light administrative sanctions on the reported party.

Conclusion

KPPU's supervision of the acquisition of shares is carried out by referring to the Rule of Reason approach. Ľhis approach requires a thorough investigation to determine whether there is evidence of violation of competition law, taking into account the case as a whole and the activities of the companies involved. Law Number 5 of 1999 provides guidelines in determining the prohibition to be applied. If an activity can result in monopolistic practices and/or unfair business competition, then the action is included in the Rule of Reason approach. In the case of share acquisitions, the application of the Rule of Reason approach refers to analysis to find out whether the activity really affects or has an impact on competition. In the case of the takeover of PĽ Bina Husada Gemilang's shares by PĽ Mitra Keluarga Karyasehat, the company took over 80% of PĽ Bina Husada Gemilang's shares. Ľhus, PĽ Mitra Keluarga Karyasehat fulfills the element of dominant position, which relates to the provisions of Article 1 letter d of Law Number 5 of 1999. In enforcing business competition law, proving the abuse of dominant position requires analysis to prove the existence of such abuse, the intent and purpose of the acquisition, and whether the abuse of dominant position resulted in monopolistic practices. Based on the stipulation of the notification issued by KPPU, there is not enough evidence to suspect the existence of monopolistic practices and/or unfair business competition in the takeover of shares of PĽ Bina Husada Gemilang by PĽ Mitra Keluarga Karyasehat.

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Undang-Undang Nomor fi0 Ľahun 2007 tentang Perseroan Ľerbatas;

Peraturan Pemerintah Nomor 57 Ľahun 2010 tentang Penggabungan atau Peleburan Badan Usaha dan Pengambilalihan Saham Perusahaan;

Peraturan KPPU Nomor fi Ľahun 2012 Ľentang Pedoman Pengenaan Denda Keterlambatan Pemberitahuan Penggabungan atau Peleburan Badan Usaha dan Pengambilalihan Saham Perusahaan.

Peraturan KPPU Nomor 2 Ľahun 2023 Ľentang Ľata Cara Penanganan Perkara Praktik Monopoli dan Persaingan Usaha Ľidak Sehat

Peraturan KPPU Nomor 3 Ľahun 2019 Ľentang Penilaian Ľerhadap Penggabungan atau Peleburan Badan Usaha,

atau Pengambilalihan Saham Perusahaan Yang Dapat Mengakibatkan Ľerjadinya Praktek Monopoli Dan Persaingan Usaha Ľidak Sehat

Peraturan KPPU Nomor 2 Ľahun 2021 Ľentang Pedoman Pengenaan Sanksi Denda Pelanggaran Praktek Monopoli dan Persaingan Usaha Ľidak Sehat.

Putusan Komisi:

Putusan Perkara Nomor 12/KPPU-M/2022.

Link KPPU:

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