

Research Article

The role of Indonesia Competition Commission (ICC) in enforcing concerted action

Helena B. Tambajong*, Annita T.S.F. Mangundap, Rietha Lieke Lontoh

Faculty of Law, Universitas Katolik De La Salle Manado, Indonesia

*Corresponding Author: htambajong@unikadelasalle.ac.id | Phone: +6282189607983

ABSTRACT

Business competition is one of the important sectors in building the national economy. By realizing fair business competition, national economic development will be created. Law of the Republic of Indonesia Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition was formed to sustain conducive business competition. To oversee the enforcement and implementation of this regulation, the Indonesia Competition Commission (ICC) was formed. Along with the changes, the more demands or pressures that arise. This of course also has an impact on the implementation of business competition. Trying to survive, develop and earn profits is a sure thing that every business actor will do. Demands and the desire to continue to develop make business actors do everything they can to keep making a profit, so that in the end the business actors do not heed the applicable rules. This method of survival and profit is not only carried out individually by each business actor, but also carried out based on a mutual agreement and with the same goal. A joint agreement made between these business actors is called a concerted action. Cases of business competition violations are currently starting to be indicated by the presence of concerted action elements in them. Seeing this situation, the authors feel the need to conduct research to find out the role of the Indonesia Competition Commission (ICC) in resolving business competition cases that occur and what forms of business competition law enforcement in Indonesia are in cases that contain concerted action elements. The research method used is normative legal research based on literature studies which refers to the use of secondary data which includes primary, secondary, and tertiary legal materials.

Keywords: Indonesia Competition Commission; ICC; Concerted Action

1. INTRODUCTION

The economic development of a country is certainly expected to be able to provide welfare to the community, which in its implementation must be based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Law of the Republic of Indonesia Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Business Competition Does not regulate all types of agreements and actions that are prohibited or prohibited by business actors to keep business competition organized, healthy and stable to realize social welfare. This law regulates a commission, which is Indonesia Competition Commission or ICC which is an independent institution that has its own duties and authorities. ICC not only oversees the implementation of laws, but also plays a role in solving business competition problems that arise. ICC was formed based on Presidential Regulation of the Republic of Indonesia Number 75 of 1999 concerning the Indonesia Competition Commission. ICC is an institution that has a multifunctional role. This role gives authority to ICC covering executive, legislative and judicial areas. ICC also has the authority as a consultative institution in carrying out its duties.

Implementation of business activities with existing changes, raises demands or pressures in business activities that encourage business actors to take various ways so that they can survive in a market, continue to develop, and obtain profits as the main objective of conducting business activities. The methods or actions taken by these business actors may result in unfair business competition. Various actions taken by business actors are not only carried out individually, but also jointly with other competing business actors in the same market, considering the presence of ICC in carrying out their actions. The form of joint activity by business actors in business competition is called concerted action.

The provisions of the Law of the Republic of Indonesia Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition as stipulated, are not fully heeded by business actors in carrying out business activities. The implementation of the form of business competition activities in practice still deviates a lot. And there needs to be attention from ICC regarding these violations. Violations of the provisions of business competition regulations found as an example are the existence of agreements or collective agreements by business actors to control a market by

influencing or determining the provisions on prices to be paid by consumers.

Airline ticket prices are determined by 3 (three) groups of national airlines, namely the Garuda Indonesia Group, the Lion Air Group, and the Sriwijaya Group. The cases revealed involved 7 (seven) airlines, namely PT Garuda Indonesia (Persero) Tbk, PT Citilink Indonesia, PT Batik Air, PT Lion Mentari, PT Wings Abadi, PT Sriwijaya Air and PT NAM Air. The case of determining the price of airplane tickets based on trials conducted by the ICC considers that there are indications of concerted action between competing business actors. The element of concerted action in business competition is deviant because it will result in unfair business competition. The form of concerted action carried out by business actors, namely by agreement or mutual understanding to abolish or make uniform discounts and eliminate service products offered at low prices. Related business actors removed the low-price subclass, resulting in limited supply and high price increases for the services provided by airlines (ICC Press Release 2021). Concerted action or joint action is a form of action that is motivated by the linkages carried out jointly by business actors to dominate the market in the form of agreements or decisions (Antoni 2019, 99). The behavior of business actors to cooperate with each other in order to gain advantages and strength in a market can be detrimental to other business actors and consumers at the same time.

2. METHOD

The study method used in this research is normative legal research method. The normative legal research method is a method used by conducting legal research from an internal perspective with legal norms as the object of research (Diantha 2020, 12). Legal research is normatively pure or applied research. Normative legal research is research on legal norms and doctrines which form the basis for the application of elements in the field of law. This understanding implies that what is examined is the legal norms of problems or legal facts that occur in people's lives. Soerjono Soekanto divides normative legal research into legal principles, legal history, legal systematics, level of synchronization, and comparative law (Fuady 2018, 130-134). The normative legal research is collected based on the facts that occur. Facts that occur are analyzed based on conformity with legal principles, norms, including all laws and regulations. Researchers will also use doctrine and court decisions as data to conduct research. All data and facts obtained and adjusted in an organized manner with legal provisions were then analyzed to obtain a research result. This study uses data sources that include primary legal materials, secondary legal materials, and tertiary legal materials as supporting materials. The data in this study focuses on methods or research methods of library research using existing supporting data

This study was compiled by the authors based on data collection from various sources. The data used in legal science research consists of 2 (two) types, namely primary data, and secondary data. Primary data is data obtained directly from field research, while secondary data is data obtained indirectly from library research. This research was structured with reference to the use of secondary data as the main ingredient. Research using secondary data comes from primary legal materials, secondary legal materials, and tertiary legal materials (Diantha 2020, 192). Soerjono Soekanto and Sri Mamudji argue that legal research using normative legal research methods is legal research that is carried out by studying or researching library materials (Efendi 2020, 129). Based on the research method used, the data collection method used by the author is to collect data through library research. The data collected refers to the use of secondary data with the main materials from this study which include primary legal materials, secondary legal materials, and tertiary legal materials.

The writing of this research uses normative legal research methods. Normative legal research is research conducted qualitatively on legal norms (Fuady 2018, 20). Normative legal research focuses on the legal issues that arise. Therefore, the data analysis method used is qualitative analysis. This qualitative research method is a method of research on phenomena, facts, or problems that occur in social life. Qualitative analysis techniques are collecting and processing primary legal materials and secondary legal materials in a systematic manner by categorizing, classifying, understanding all data on the situations that arise (Diantha 2020, 200). This data analysis method uses deductive thinking techniques. Deductive analysis is carried out by drawing conclusions from general to specific (Butarbutar 2018, 147).

3. RESULTS AND DISCUSSION

The Indonesia Competition Commission as an independent institution that is not influenced by government power has its functions, duties and authorities. These functions, duties and authorities are spelled out to clarify the position and role of ICC in overcoming and dealing with legal issues in the activities of the business world. To be able to optimize and carry out its role as a supervisory agency for Law Number 5 of 1999, ICC needs to be proactive in handling cases of unfair business competition that have occurred in Indonesia.

Presidential Decree Number 75 of 1999 stipulates the function of establishing the Indonesia Competition Commission, namely to evaluate agreements entered into by business actors, evaluate the actions or forms of activity of business actors in running their business, and evaluate the dominant position of business actors. Another function of the ICC is to take an action as regulated in the law and carry out administrative activities related to the work of the ICC itself. ICC's duties are not only limited to taking action on handling cases of monopolistic practices and unfair business competition, ICC is also tasked with providing advice and considerations related to government policies to parties related to monopolistic practices and unfair business competition that occur. The implementation of the ICC's tasks is also supported by the ICC's role in compiling guidelines and publishing all provisions or policies related to the implementation of Law Number 5 of 1999. The preparation of these guidelines is intended so that ICC becomes an institution capable of dealing with problems that have not been regulated before (Nugroho 2021, 556).

ICC has the authority to receive all reports of alleged monopolistic practices and unfair business competition from the public and business actors. ICC is also authorized to take initiative steps in resolving acts of unfair business competition that occur without the need to wait for reports from the public. Disclosure of allegations of violations of monopoly practices-

and unfair business competition from reports from the public or at the initiative of the ICC, is carried out by the ICC by conducting research, investigations and examinations of business activities carried out by business actors that are suspected to result in monopolistic practices and unfair business competition. ICC also has the authority to provide conclusions from the results of investigations and examinations conducted. The conclusion of this result is in the form of a ICC statement regarding whether or not monopolistic practices and unfair business competition have occurred. The handling of cases that are being examined by ICC needs to be kept confidential by ICC members (Nugroho 2021, 556).

The examination conducted by the ICC will not be fully carried out perfectly without obstacles in presenting witnesses who are involved in or related to cases of alleged violations of the provisions of Law Number 5 of 1999. Therefore, ICC can ask for assistance from investigators to summon and present parties -the party concerned who refuses or is not willing to attend as requested by the ICC. Another obstacle that prevents the role of the Indonesia Competition Commission from being carried out perfectly is in terms of implementing ICC's decisions. ICC in its authority can decide a case related to whether there is a violation. Even though the ICC is an institution that is free from outside interference in implementing and establishing its decisions. The obstacles experienced by the Commission for the Supervision of Business Competition in carrying out its duties certainly will not be able to maximize the role of ICC as an institution that has the main objective of enforcing law in business competition in Indonesia. It is still difficult for ICC to resolve cases of alleged business competition violations. Law enforcement in the world of business competition is needed to maintain the sustainability of the world economy and business competition, as well as for the welfare of society. ICC needs to reinforce its role and position in order to be able to resolve cases in business competition that occurs in Indonesia.

Activities in the business world will continue to run according to the changing demands experienced. Business actors will continue to try to fulfill and achieve their business targets to be able to grow further. The process or method used by business actors to achieve this business target sometimes causes problems or unlawful acts occur. This situation will not only harm consumers as users of the goods and/or services being traded, but also for other business actors who trade or market similar goods and services. Cases of violations in business competition recognize a term called concerted action. Concerted action is understood as an agreement based on the joint actions of business actors expecting a profit. The form of agreement between one business actor and another business actor can be made in writing or not in writing. The concerted action element in a business competition violation can be indicated in the form of the agreement or activities carried out by the business actor. Concerted action is stated to occur when business actors have a goal, have an understanding, and an agreement is made jointly (Meyliana 2013, 26). This form of mutual agreement is known as a meeting of minds. Concerted action is a form of action that is not carried out individually but based on mutual trust and dependence between business actors with the same goal (Anisah 2021, 13). This concerted action process is established because of the communication between the parties. This communication can be in the form of indirect or tacit communication accompanied by evidence of parallel actions (Anisah 2021, 14-15). Concerted action can be in the form of understanding and adjustment actions from one business actor to another.

The form of law enforcement carried out by the Indonesia Competition Commission in cases containing or containing concerted action in its implementation can start from reports from the public regarding alleged violations of business competition provisions and also on the basis of the ICC's initiative to resolve business competition cases which will result in monopolistic practices and unfair competition. Case handling by ICC is based on reports, starting on the basis of reports from the public or business actors. Cases reported by the public or business actors need to be examined or clarified by the ICC regarding the clarity of the reports submitted (Lubis 2017, 395). Report clarification also serves to obtain initial evidence stating whether the allegations are true and will later be followed up with an investigation. The handling of case reports is then carried out at the stages of investigation, filing, implementation of the Commission Council hearings, and Commission decisions. The handling of cases based on the initiatives of the Indonesia Competition Commission, began with the ICC conducting research on the results of studies, news in the media, and data or information. The research was conducted by analyzing existing data or information. Research by ICC is carried out to obtain initial evidence before proceeding to the next stage, the investigation stage. The results of this research report then become a benchmark for ICC to carry out an investigation or not. The handling of initiative cases will then proceed to the stages of investigation, filing, implementation of the Commission Council hearings, and ending with the reading of the Commission's decision.

The process of the Commission Council meeting is carried out with an examination stage which begins with a preliminary examination to assess whether a further examination is necessary. Preliminary examination consists of reading or submitting reports on alleged violations. Business actors who are proven to have violated or admit to having violated in the preliminary examination, will be given the opportunity to make changes in behavior before proceeding to further investigations. ICC supervises business actors during the allotted period to change behavior. The implementation of this supervision is carried out to ensure that the business actor concerned does not engage in unhealthy competitive behavior again. Proof of violations by business actors with indications of concerted action is carried out by the Indonesia Competition Commission by collecting evidence in the form of, testimony of witnesses, expert statements, letters or documents, instructions, and statements of business actors. Evidence from concerted action implementation can also use communication evidence and economic evidence that must be analyzed by ICC. The use of these two pieces of evidence is regulated in the Regulation of the Commission for the Supervision of Business Competition Number 1 of 2019 concerning Procedures for Handling Monopolistic Practices and Unfair Business Competition.

Evidence of communication is evidence showing traces of communication in the form of exchange of information between one business actor and another. Economic evidence is used as evidence that can provide information or explain economic theories that strengthen allegations of monopolistic practices and unfair business competition. Utilization of economic evidence is studied through 2 (two) aspects of the approach, namely the market structure approach and the approach of market actors or the behavior of business actors. The market structure approach is carried out by analyzing -

and assessing the percentage of control of a company in a market run by business actors and determining whether a violation has occurred.

The use of communication evidence and economic evidence is used as evidence to strengthen the existence of a violation of business competition which has elements of a concerted action. This evidence is necessary due to the difficulty of collecting evidence in the form of statements and letters or documents. Difficulty in proving occurs when the agreement entered by business actors is carried out in oral or unwritten form or there is no cooperative action from business actors in providing honest information, so that without the help of these two forms of evidence, the element of concerted action is still difficult to prove. Therefore, The Commission for the Supervision of Business Competition needs to pay close attention to all forms of behavior of business actors and the market structure to be able to state that there is concerted action among business actors in carrying out their business activities.

This market behavior and structure must be ascertained and declared as deviant and profitable for the business actors involved as well as causing harm to society. An important element that needs to be proven by the ICC in proving a concerted action requires the ICC to prove that the violation occurred involving one business actor and another business actor who entered into an agreement or agreement to jointly carry out a specific purpose or objective and resulted in unfair business competition. This market behavior and structure must be ascertained and stated as deviant acts and provide benefits for the business actors involved as well as causing harm to the community. An important element that needs to be proven by ICC in proving concerted action requires ICC to prove that the violation occurred involving one business actor and another business actor who entered into an agreement or agreement to jointly carry out a specific purpose or objective and resulted in unfair business competition.

This market behavior and structure must be ascertained and stated as deviant acts and provide benefits for the business actors involved as well as causing harm to the community. An important element that needs to be proven by ICC in proving concerted action requires ICC to prove that the violation occurred involving one business actor and another business actor who entered into an agreement or agreement to jointly carry out a specific purpose or objective and resulted in unfair business competition. The form of law enforcement in violation of the provisions of Law of the Republic of Indonesia Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition as well as the imposition of sanctions by the Indonesia Competition Commission is in the form of administrative sanctions in accordance with the regulated authority of the ICC. ICC can impose sanctions to uphold justice for the entire community, namely as consumers and/or competing business actors. Forms of administrative sanctions that can be given to every business actor who violates the provisions of Law of the Republic of Indonesia Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, namely:

1. Determination of cancellation of agreements made by business actors;
2. Giving orders to stop vertical integration by business actors;
3. Giving orders to stop all forms of actions or activities of business actors that have been proven to result in monopolistic practices and unfair business competition;
4. Order business actors to stop the abuse of dominant position that has been carried out so far;
5. Provide a stipulation of cancellation of the merger or consolidation of a business entity and stipulation of cancellation of the acquisition of shares;
6. Provide a stipulation regarding the payment of compensation; and or
7. Imposing a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 25,000,000,000.00 (twenty-five billion rupiah) to business actors who are proven to have violated.

Decisions of the Indonesia Competition Commission for business actors proven to have violated must be implemented. Business actors who accept and without raising objections to the ICC decision are obligated to implement the contents of the ICC's decision. The ICC's decisions implemented by business actors without filing objections have permanent legal force. Business actors who do not implement the ICC's decision and do not submit objections to the decision, ICC will delegate the decision to investigators. The ICC's decision will be sufficient preliminary evidence for investigators to investigate (Lubis 2017, 398). Law enforcement is carried out to maintain a conducive climate for business competition itself for the welfare of society.

4. CONCLUSION

The role of ICC in resolving cases of unfair business competition that occurred in Indonesia is explained through the ICC's functions, duties and authorities. ICC also contributes to maximizing its role directly with the community through activities such as outreach. Even though ICC has carried out its duties, the implementation of its role has not been carried out optimally due to the ICC's lack of flexibility in resolving cases and prevention efforts from ICC. Law enforcement against the implementation of concerted action in business competition is carried out by ICC. Law enforcement by ICC is carried out with stages of case settlement regulated by ICC. The process of proving the element of concerted action is carried out using evidence as stipulated in the law as well as the use of economic evidence and communication evidence. ICC imposes administrative sanctions on business actors who violate it. ICC decisions must be implemented by business actors who are proven to have violated and for decisions not implemented by business actors will be sufficient preliminary evidence which will be delegated to investigators for investigation.

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AUTHOR'S CONTRIBUTIONS

The author discussed the results and contributed to from the start to final manuscript.

CONFLICT OF INTEREST

The author declare that he has no competing interests.

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