

## ANALYSIS OF FOOD IMPORT POLICY BY BULOG (BUFFALO MEAT IMPORT) IN THE PERSPECTIVE OF BUSINESS COMPETITION

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**Abstract:** *The Indonesian market is filled with diverse domestic and foreign products, leading to intense competition and occasionally unfair business practices. To address this issue, the government introduced UU No. 5/1999, which prohibits monopolistic practices and unfair competition, aiming to safeguard the welfare of the people and promote economic democracy. In an effort to ensure the people's well-being, the government implemented policies such as the importation of buffalo meat. However, not all policies align with legal regulations, as the importation of buffalo meat by the Badan Urusan Logistik (BULOG) may violate pricing laws stated in UU No. 5/1999. The Commission, responsible for overseeing the implementation of this law, serves as an advisory body to the government, highlighting any inconsistencies between policies and UU No. 5/1999, particularly Article 35 letter e. The government's objective is to protect market competition by issuing policies that are in harmony with the law.*

**Keyword:** *competition, government, policy, pricing, unfair business practice*

### INTRODUCTION

The current era of globalization brings changes and convenience for developing countries such as Indonesia in improving economic development. One of the steps that can be taken is to open up to international trade, which allows the import and export of various products to meet domestic needs. This makes the market differentiated and businesses must compete not only with domestic competitors, but also with competitors from other countries.

To deal with increasingly fierce market competition, the government enacted a law on business competition to create a healthy business environment and prevent the concentration of economic power<sup>1</sup>. Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition was established to regulate the Indonesian economy so that it is healthy and no monopoly occurs<sup>2</sup>. Article 2 of this Law states that business actors in Indonesia must conduct their business activities with the principles of economic democracy, which includes a balance between the interests of business actors and the public interest.

In an effort to achieve the goal of fair competition, a perfectly competitive market is the desired criterion. A perfectly competitive market is an ideal market structure because it encourages high production efficiency. Healthy business competition allows the market to reward the performance of good business actors and sanction those who are not good. In addition, the policy of enforcing fair and healthy competition also aims to safeguard the welfare and interests of consumers and prevent the concentration of economic power in certain groups.

For example, the Indonesian government imports buffalo meat from India through the Public Company for Logistics (Perum Bulog) to reduce high beef prices<sup>3</sup>. This policy also aims to fulfill the demand for meat during Ramadan and Lebaran<sup>4</sup>. In these imports, the government set the sales price of buffalo meat to bring down the price of beef and give consumers more choices. This policy was deployed in the Jabodetabek area.

<sup>1</sup> Mohammad Reza, Jurnal Persaingan Usaha, Edisi 5 <http://www.kppu.go.id/>, 2011, h. 88 diakses pada tanggal 15 Oktober 2016

<sup>2</sup> Ibid, h. 89

<sup>3</sup> Fnh, 'Pemerintah Siapkan Skema Ketersediaan Daging Dengan Menerbitkan Izin Impor Hingga Juni 2017 Mendatang™, [www.hukumonline.com](http://www.hukumonline.com). 13 September 2016, dikunjungi pada tanggal 25 September 2016.

<sup>4</sup> Ibid.



In this research, we will analyze whether the government's efforts to maintain market stability are in accordance with Law No. 5/1999 and whether Bulog's buffalo meat import policy has the potential to cause unfair business competition. The purpose of this article is to understand the government's efforts to maintain market stability, analyze the buffalo meat import policy, and contribute to the development of business competition law in Indonesia.

### METHOD

This research uses normative legal research, which examines legislation, regulations, and theoretical concepts related to the issues to be discussed. In this research, legal rules, legal principles, and legal doctrines are analyzed in order to deal with the legal issues at hand.<sup>5</sup> There are two problem formulations in writing this article. First, using a statutory approach, by reviewing all laws and regulations relating to the legal issues being addressed.<sup>6</sup> Second, using a conceptual approach and case study to analyze certain cases from various legal aspects. In addition, a conceptual approach is also used, by referring to the views and doctrines that have developed in legal science.

In preparing this article, primary and secondary legal sources were used. Primary legal materials consist of Law No.5/1999 and regulations of the Minister of Agriculture. Meanwhile, secondary legal materials include publications on law such as textbooks, legal journals, talkshow videos, and related news. The process of collecting legal materials was carried out through literature studies, collecting relevant laws and regulations, hardcopy and softcopy literature, as well as articles or talkshow results from print media and the internet that are relevant to the topic of writing. The data is then analyzed and described systematically in relevant chapters. The approach used in this research is the deductive method, which examines the relationship and consistency of laws and regulations in general. The legal materials are reviewed, compiled, and described to identify the issues raised, then analyzed to reach a conclusion in accordance with the formulation of the problem.

### RESULTS AND DISCUSSIONS

#### I. Government Efforts to Maintain Market Stability Based on Law No. 5/1999

Sellers or business actors in the market offer their goods and/or services with the aim of obtaining maximum profit. The sellers and buyers will bargain over the price until they reach a price agreement, which is followed by the transfer of goods from the seller to the buyer. The price agreement can also be referred to as an equilibrium price, which is the price at which neither consumers nor producers want to increase or decrease the amount consumed and sold.<sup>7</sup> Therefore, the amount demanded is equal to the amount offered. If the price is below the equilibrium price, there will be excess demand, which will make it difficult for the market to meet the demand. Conversely, if the price of a good and/or service exceeds the equilibrium price, there will be excess supply, where the amount offered increases while the amount demanded decreases<sup>8</sup>. This will cause the market to become unbalanced.

Law No. 5/1999 Article 1 point 11 states that what is meant by market structure is the state of the market that provides clues about aspects that have an important influence on business behavior and market performance, including the number of sellers and buyers, barriers to market entry and exit, product diversity, distribution systems, and market control. A better market structure occurs when business actors cannot control the price and quantity of goods in the market.

Market structure is classified into several forms, including perfectly competitive markets and imperfectly competitive markets, which are further subdivided into various types. According to basic

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<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 7, Kencana Prenada Media Group, akarta, 2009, h. 35

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Prendamedia Group, Jakarta, 2015, h.133

<sup>7</sup> Andi Fahmi Lubis et.al. *Hukum Persaingan Usaha Antara Teks dan Konteks*, Deutsch Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, Indonesia, 2009, h. 26

<sup>8</sup> Ibid



economic theory, market structure can be categorized into four forms based on the degree of market power<sup>9</sup>: Perfect Competition, Monopolistic Competition, Oligopoly, and Monopoly.

The determination of the market structure division is related to the determination of the relevant market. Article 1 Point 10 of Law No. 5/1999 defines the relevant market as a market related to the coverage or certain marketing area by business actors for the same or similar goods and or services or substitutes of such goods and or services. The relevant market, according to the definition in Article 1 paragraph 10 of Law No. 05/1999, can be categorized into two groups: the product market and the geographic market<sup>10</sup>. In the product market, the identification begins from the demand side and then continues by examining the supply side<sup>11</sup>. On the other hand, a geographic market is an area where businesses can increase their prices without attracting new businesses or losing significant consumers who move to other businesses outside the area. Geographic markets can be analyzed by examining the level of competition between business actors and by considering the relationship between sales, transportation costs, and price levels across different regions.<sup>12</sup>

Protection of business competition is carried out by the government in the context of implementing Article 33 paragraph (1) of the 1945 Constitution, which is further outlined in Article 2 of Law No. 5/1999. It explains that the Indonesian state aims to create business competition regulations, promoting economic democracy while considering the balance between business actors and the public interest.

In addition, the government supports, encourages, and develops economic development activities to improve the welfare of all people. This is achieved by providing facilities and infrastructure. Law No. 5/1999 also acts as a system for free and fair business competition, aiming to create people's welfare and an efficient economic system. With it, the government formulates policies based on public interest and economic efficiency, as stated in Article 3 letter a of Law No. 5/1999. This represents a form of government intervention to direct the market towards improvement and efficiency.<sup>13</sup>

The failure of the mechanism that occurs in the market is caused by the allocation of resources that are not efficient and effective, resulting in unstable prices of goods and services. The causes of failure in the market mechanism can be seen from two aspects<sup>14</sup>: the prices of goods and services no longer reflect marginal social benefits, and due to these weaknesses, complementary mechanisms are needed to provide goods and services in sufficient quantities, thus encouraging the market to work more efficiently and effectively.

Competition policy is a form of government intervention in the market other than economic regulation. The difference between economic regulation and competition policy lies in the intended subject. Economic regulation intervenes directly in firms' decisions, such as the price to be set and the quantity to be provided. The objective of economic regulation or economic policy is the provision of optimal goods and services to consumers. The process of business competition can achieve this goal by adjusting production capacity and demand structure and by adjusting the provision of goods and services to the interests of consumers. The principle of state intervention in economic activities is one of the three important principles needed in the context of fostering the legal ideals of the principles of national law in terms of trade and economic law. The other two principles are the principle of balance and the principle of supervision.<sup>15</sup>

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<sup>9</sup> Andi Fahmi Lubis et.al., *Hukum Persaingan Usaha Antara Teks dan Konteks*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, Indonesia, 2009, h. 29

<sup>10</sup> L. Budi Kagramanto, *Mengenal Hukum Persaingan Usaha Berdasarkan UU No. 5 Tahun 1999*, Laros, Surabaya 2008, h. 121

<sup>11</sup> *Lampiran Peraturan Komisi Pengawas Persaingan Usaha No. 3 Tahun 2009 : Pedoman Pasal 1 Angka 10 Pasar Bersangkutan Juli, 2009*, h. 10

<sup>12</sup> *Ibid*, h. 252

<sup>13</sup> *Ibid*, h. 38

<sup>14</sup> L. Budi Kagramanto, *Mengenal Hukum Persaingan Usaha (Berdasarkan UU no. 5 Tahun 1999)*, Laros, Surabaya, 2008, h. 38

<sup>15</sup> Sri Rejeki Hartono, *Perumusan Asas Keseimbangan Kepentingan Dalam UU No. 5/1999 Tentang Larangan Monopoli dan Persaingan Usaha Tidak Sehat Serta Penerapan Hukumnya Dalam Putusan Hakim Atas Perkara*



Some policies or regulations made by the government aim to address business actors who engage in monopolistic practices and unfair business competition. These policies or regulations include<sup>16</sup>: a) Policy/regulation on prices, which is implemented by encouraging companies to increase their production of goods and services. This increase in production aims to lower the production cost per unit, resulting in cheaper selling prices for the goods and services. Consequently, the purchasing power of the community towards the product increases; b) Policy/regulation in the field of taxation, which is used to redistribute income. This redistribution allows for company profits to be diverted towards improving public welfare; and c) Law No. 5/1999 on antitrust is enacted to prevent companies from engaging in monopolistic and unfair business competition practices. This law aims to contain the consequences of such operations.

Effective economic policy management requires careful attention to the dynamics of globalization, national commitments, international economic agreements, and national strategic interests. It is essential to maintain the nation's economic independence and sovereignty<sup>17</sup>. The government must be vigilant and understand the needs of the community and business actors to ensure that economic activities can thrive competitively as expected.

However, competition policy, which aims to foster a competitive market, should prioritize actions or mechanisms that limit anti-competitive behavior or practices originating from government regulations themselves<sup>18</sup>. Government intervention, when applied systematically and correctly through policy-making and issuance, can lead to fair and reasonable competition, thereby restoring rational resource allocation.

The Business Competition Supervisory Commission (KPPU) is an independent institution in Indonesia that operates independently from the influence of government power and other parties. It was established to fulfill the mandate of Law No. 5/1999, which outlines the duties and authorities of the Business Competition Supervisory Commission (KPPU). In addition to the existence of the Business Competition Supervisory Commission (KPPU) and its corresponding duties and authorities, the government also has regulations related to trade that occurs in Indonesia. In general, trade regulations on a broader scale are regulated by the Minister of Trade.

Trade is an activity carried out in the market to fulfill needs. Trade can be conducted by importing and exporting goods to and from abroad. Importing activities are carried out when the price of the goods abroad is cheaper than the price to produce or manufacture them in the country. Import activities, which have both positive and negative impacts on the economy of a country and its people, are often accompanied by restrictions on the number of import quotas to protect domestic producers and also have a wider impact on the country's economy.

During trading activities, especially after foreign goods enter, domestic market products experience differentiation. The government is obliged to protect businesses and consumers in order to create a perfect market and fair competition. The Indonesian government assigns trade affairs to the Minister of Trade, who is responsible for setting foreign trade policies, as well as regulating and supervising their implementation. Additionally, according to Presidential Decree No. 6 of 2013, which amends Presidential Decree No. 28 of 2005 on the Establishment of the National Team for International Trade Negotiations, the Minister of Trade is responsible for being the chairperson of the PPI National Team, which is tasked with organizing every international trade negotiation. This information can be found in Article 3 of Presidential Decree No. 6/2013.

The Minister of Trade has the task of determining the goods that can be imported into Indonesia, guiding and fostering the import trade apparatus of both the private sector and the state. They are also responsible for issuing regulations related to imports and exports, particularly those concerning

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Persaingan Usaha, Thesis, Program Magister Ilmu Hukum Universitas Diponegoro, Semarang, 2009, Tgl 23 Februari 2009, h. 69

<sup>16</sup> L. Budi Kagramanto, *Mengenal Hukum Persaingan Usaha (Berdasarkan UU no. 5 Tahun 1999)*, Laros, Surabaya, 2008, h. 42

<sup>17</sup> Rancangan awal rencana pembangunan jangka panjang nasional tahun 2005-2025.

<sup>18</sup> Andi Fahmi Lubis et.al, *Hukum Persaingan Usaha Antara Teks dan Konteks*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, Indonesia, 2009, h.39



animals and animal products, as specified in MOT Regulation No. 22/2013, which deals with the Provisions on Import and Export of Animals and Animal Products.<sup>19</sup> According to this regulation, not all companies are permitted to import animal products. Only companies that have obtained a ministerial decree are allowed to engage in the importation of animals and animal products. Article 16 of MOT 22/2013 states that imports of animals and animal products can be carried out by state-owned enterprises in order to ensure Indonesia's food security.

Currently, Indonesia has implemented a policy on meat imports to fulfill the animal protein needs of the Indonesian people, which are still relatively low. The government imports buffalo meat from India, and this is carried out by Bulog (Badan Urusan Logistik), commonly referred to as Perum Bulog. Bulog has public duties from the government, namely<sup>20</sup>: 1) maintaining the Basic Purchase Price for grain; 2) stabilizing prices, especially basic prices; and 3) distributing rice for the poor (Raskin) and managing food stocks.

Bulog, in addition to carrying out Business Planning and Development (PPU) activities, is also involved in Industry that is divided into three categories, namely rice-based industries that organize the integration of rice manufacturing, supporting industries that produce supporting products outside of rice manufacturing, and other food industries that produce rice-derived products as well as primary and secondary food industries.<sup>21</sup>

Based on the designation specified in Presidential Regulation No. 4/2016, the ministerial regulation used as the basis for Bulog to carry out the import of buffalo meat from India is Ministerial Order (MOA) No. 17/Permentan/PK 450/5/2016 regarding the import of boneless meat from specific countries or zones within a country of origin. The importation of meat under certain circumstances is linked to the high market prices, as stated in Article 3, paragraph 2 of MOA No. 17/2016. Bulog is one of the state-owned enterprises; therefore, according to Article 3, paragraph 2 of MOA No. 17/2016, Bulog has permission to carry out buffalo meat import activities from India, as the Minister of Agriculture has also obtained permission from the Minister of Trade.

## **II. Indications of Unfair Business Competition as a Result of Bulog's Buffalo Meat Import Policy**

Unfair business competition occurs when business actors violate the provisions of Law No. 5/1999. The main factor in creating a competitive business climate is the presence of business actors who carry out economic activities within the jurisdiction of Indonesia. Many methods are used to gain an advantage in the market, but this often results in competition that is detrimental to other business actors. The behavior of these business actors reflects the application of Law No. 5/1999, which regulates actions that have the potential to create a monopoly and unfair business competition. In the context of prohibiting monopolistic practices, the definition of business actors includes all types and forms of business entities, regardless of the nature of the legal entity, as long as they engage in economic activities within the jurisdiction of Indonesia.<sup>22</sup>

Law No. 5/1999 broadly regulates two things: monopolistic practices and unfair business competition. In Article 1, paragraph 1 of Law No. 5/1999, a monopoly is defined as the control over the production, marketing of goods, or the use of certain services by one actor or a group of actors. The situation that often occurs in terms of monopolistic practices is when there are still business entities in the market, but one or two entities control the market.

Monopoly is divided into two types: natural monopoly and monopoly by law. Natural monopoly occurs due to the abilities of a person or a group of business actors and the geographical advantages of a place or area that provide certain advantages, making it difficult for other business actors to compete

<sup>19</sup> Pasal 3 Keppres No. 260 Tahun 1967 Tentang Penegasan Tugas dan Tanggung Jawab Menteri Perdagangan dalam Bidang Perdagangan Luar Negeri

<sup>20</sup> Sekilas Perum Bulog : Perencanaan dan Pengembangan Usaha , diakses pada tanggal 23 November 2016 <http://www.Bulog.co.id/sekilas.php>

<sup>21</sup> Mentan Izinkan Bulog Impor Daging Kerbau Indie 70.000 Ton, dikunjungi pada tanggal 2 November 2016 [http://nasional.kini.co.id/2016/09/13/1\\_7259/mentan-izinkan-Bulog-impor-daging-kerbau-india-70-000-ton](http://nasional.kini.co.id/2016/09/13/1_7259/mentan-izinkan-Bulog-impor-daging-kerbau-india-70-000-ton)

<sup>22</sup> Ahmad Yani dan Gunawan Widjaja. Seri Hukum Bisnis Anti Monopoli. PT Raja Grafindo Persada, Jakarta, 2006, h. 11



<sup>23</sup>. On the other hand, monopoly by law is a monopoly that is established by the state or government due to its perceived profitability, as stated in Article 33 of the 1945 Constitution and protected by laws and regulations <sup>24</sup>. Monopoly by law is commonly used to regulate public interests, such as infrastructure managed by state-owned enterprises (BUMN).<sup>25</sup>

The provisions of Law No. 5/1999 in Article 1 point 6 state that unfair business competition occurs when business actors carry out the production and marketing of goods and services in a way that is dishonest, unlawful, or inhibits competition. Unfair business competition includes dishonest methods of production and marketing, violations of the law aimed at eliminating competition, restrictive trade practices or barriers to entry, and is conducted by business actors among each other <sup>26</sup>. Law No. 5/1999 stipulates three indicators of unfair business competition, namely unfair competition, unlawful competition, and competition that inhibits competition between business actors <sup>27</sup>. Business competition has positive impacts such as optimal utilization of resources, reducing production costs, and improving quality.<sup>28</sup> However, competition can also bring negative impacts such as business violations, price wars that harm competitors, barriers to new business actors, and monopolistic practices and unfair business competition.

Unfair business competition falls into two categories: prohibited agreements and prohibited activities. These regulations are stipulated in Law No. 5/1999, specifically in Chapter III, which regulates Prohibited Agreements. Law No. 5/1999 covers a wide range of matters, particularly concerning the regulation of agreements. Article 1, paragraph 7, defines an agreement as an act of one or more business actors to bind themselves with one or more other business actors, either in writing or unwritten. The elements of an agreement comprising Law No. 5/1999 include the existence of an action performed by business actors as parties to the agreement, which can be a written or unwritten agreement, and do not state the purpose of the agreement.

The prohibition principle outlined in Law No. 5/1999 encompasses restrictions on restrictive business practices and market structure restraints. The law primarily emphasizes the prohibition of certain business conduct<sup>29</sup>. One of the forbidden agreements pertains to alleged discrimination against consumers, wherein different prices are established for the same goods and services. This agreement can take the form of an oral agreement, potentially leading to legal liability. <sup>30</sup>

Law No. 5/1999 sets prices to safeguard the public interest and ensure the efficiency of the national economy. Articles 5 to 8 regulate various types of prohibited pricing agreements <sup>31</sup>, including price fixing among business actors, setting different prices for the same goods and services, establishing prices below market prices, and determining resale prices. Business actors are prohibited from entering into agreements that involve not selling or supplying goods or services below a mutually agreed-upon price. Resale price maintenance is categorized into maximum price fixing and minimum price fixing.<sup>32</sup>

The various types of price-fixing agreements described in Articles 5 through 8 of Law No. 5/1999 adopt a per se illegal juridical approach. This approach implies that regardless of the reasons used to conduct price-fixing agreements by business actors, such actions will not be justified, and they can be penalized in accordance with the provisions of Law No. 5/1999.

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<sup>23</sup> Ibid. h.9

<sup>24</sup> Op. Cit, Mustafa Kamal Rokan, h. 9

<sup>25</sup> Op. Cit, Andi Fahmi Lubis et.al, h. 129

<sup>26</sup> Elyta Ras Ginting, Hukum Anti Monopoli Indonesia ( Analisis dan Perbandingan Undang-undang Nomor 5 Tahun 1999), Citra Aditya Bakti, Bandung, 2001.

<sup>27</sup> Mustafa Kamal Rokan, Op. Cit.. h. 10

<sup>28</sup> Jhony Ibrahim, Hukum Persaingan Usaha (Filosofi, Teori dan Implikasi Penerapannya di Indonesia), Bayu Media, Malang, 2006, h. 102-103

<sup>29</sup> Ibid, h. 134

<sup>30</sup> Suyud Margono, Hukum Anti Monopoli, Sinar Grafika, Jakarta, 2009, h. 79

<sup>31</sup> Suyud Margono, Hukum Anti Monopoli, Sinar Grafika, Jakarta 2009, h. 84

<sup>32</sup> Suyud Margono, Hukum Anti Monopoli, Sinar Grafika, Jakarta 2009, h. 84



Price-fixing agreements are divided into two categories<sup>33</sup>: Horizontal Price Fixing, which occurs between businesses at the same level, and Vertical Price Fixing, which occurs between businesses at different levels. Although there are price-fixing agreements that are still allowed under Article 5, paragraph (2) of Law No. 5/1999, provided that they do not result in unfair business competition with competitors. For example, price-fixing agreements in the form of joint ventures or those based on applicable laws such as fuel prices or dry grain prices set by the government or relevant departments. In this case, the provisions of Article 5, paragraph (1) do not apply, and both forms of price fixing are exempted from the prohibition of price-fixing agreements and are therefore permitted. Price fixing among business actors is prohibited because it results in the loss of the market mechanism that should determine prices based on supply and demand in the market.

Business actors establish relationships with other parties to achieve profits in running their business, especially through mergers or cooperation with other business actors at different levels in the production process.<sup>34</sup> This is known as vertical integration, which is a form of vertical restraint in business competition. Vertical restraints are practices that aim to limit competition in the vertical dimension or differences in production levels or linkages in a production or business chain.<sup>35</sup> Vertical integration can also be defined as cooperation between companies with different levels in one production process, so that it looks as if they are one company performing two different activities in one production process.<sup>36</sup>

Often in practice, vertical barriers are based on or follow an agreement among business actors at different levels of production but still in a related series.<sup>37</sup> As for vertical integration, it is regulated in Article 14 of Law No. 5/1999 that business actors are prohibited from entering into agreements with other business actors aimed at controlling the production of a number of products included in the production series of certain goods and or services where each production series is the result of processing or further processing, either in a direct or indirect series, which may result in unfair business competition and or harm the public.

Based on the definition in Article 14 of Law No. 5/1999, vertical integration is prohibited if it fulfills the following elements: The agreement is made with other business actors; Aims to control the production of a number of products; The products include a series of production results from processing or further processing, either directly or indirectly; and may result in unfair business competition or harm the public.<sup>38</sup>

The practice of vertical integration does not always lead to unfair business competition or harm the community. The positive impacts or benefits obtained from vertical integration are: 1) Economic benefits due to technological characteristics; 2) Economic benefits due to contract certainty; and 3) Economic benefits due to reduced transaction costs.<sup>39</sup> If vertical integration is carried out reasonably to reduce production costs, it does not result in unfair competition. However, sometimes vertical integration can also have a negative impact on competition between business actors, such as: 1) Upstream vertical integration can reduce competition among sellers at the upstream level; 2)

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<sup>33</sup> L. Budi Kagramanto, *Mengenal Hukum Persaingan Usaha Berdasarkan UU No. 5 Tahun 1999*, Laros, Surabaya 2008 h. 152

<sup>34</sup> Andi Fahmi Lubis et.al. *Hukum Persaingan Usaha Antara Teks dan Konteks*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, Jakarta, 2009, h. 113

<sup>35</sup> Mustafa Kamal Rokan, *Hukum Persaingan Usaha (Teori dan Prakteknya di Indonesia)*, Rajawali Pers, Jakarta, h. 116

<sup>36</sup> Op. Cit

<sup>37</sup> KPPU, *Persaingan Sehat Sejahterakan Rakyat*, h. 7 dapat juga dibawa dalam Mustafa Kamal Rokan, *Hukum Persaingan Usaha (Teori dan Prakteknya di Indonesia)*, Rajawali Pers, Jakarta, h. 116

<sup>38</sup> L. Budi Kagramanto, *Mengenal Hukum Persaingan Usaha Berdasarkan UU No. 5 Tahun 1999*, Laros, Surabaya 2008, h. 172

<sup>39</sup> Susanti Adi Nugroho, *Pengaturan Hukum Persaingan Usaha di Indonesia*, h 42 dapat juga dibaca dalam buku Mustafa Kamal Rokan, *Hukum Persaingan Usaha (Teori dan Prakteknya di Indonesia)*, Rajawali Pers, Jakarta, h. 117

Facilitate collusion among business actors at the upstream level; 3) Downstream vertical integration can facilitate price discrimination; and 4) Increased entry barriers.<sup>40</sup>

Risk comparison in vertical integration has both positive and negative impacts. Therefore, Article 14 of Law No.5/1999 regulates the use of the rule of reason principle, which means that vertical integration is not prohibited as long as it does not cause unfair business competition or harm the public interest, and the agreement has an acceptable reason.<sup>41</sup>

The government is actively seeking strategies to lower beef prices in accordance with President Joko Widodo's goal of maintaining meat prices within the range of Rp.80,000/kg. To address this, a series of measures has been implemented, one of which involves the importation of buffalo meat from India through Perum Bulog, with the necessary approvals from the Minister of Defense and the Minister of Trade. The primary objective of this initiative is to reduce beef prices in the market, particularly in the Jabodetabek region, where there is a significant shortage of beef supply.

To specifically tackle the beef scarcity in Jabodetabek, Bulog plans to import 80,000 tons of buffalo meat by the end of 2016, offering it at a selling price of Rp.65,000/kg. This step is intended to provide a solution to the unaffordable prices faced by lower-income groups. Despite efforts, the current price of beef in Jabodetabek stands at around Rp.114,446/kg, primarily due to domestic trade issues and insufficient reduction in prices from frozen beef imports.<sup>42</sup> Consequently, the current price still falls far short of the government's expectations to achieve the desired price range.

#### Meat Market in Jabodetabek

It is necessary to measure the amount of meat needed based on national consumption requirements, considering the high demand due to public awareness of the importance of animal protein. However, it is important to take into account the high prices and draw attention from the government. According to data from the Ministry of Trade, the national beef prices from September 2016 to December 2016 are as follows:<sup>43</sup>

(Table 1) Ministry of Trade DG PDN

No	PERIOD	UNIT (Rp/Kg)
1.	September 2016	113,710
2.	October 2016	113,770
3.	November 2016	113,710
4.	December 2016	113,870

Based on the data above, the government realizes that beef prices exceeding Rp110,000/kg need to be addressed. Therefore, the government issued a policy to reduce the price of beef nationwide. The Ministry of Agriculture notes that beef supply is currently insufficient to meet national demand, as shown in the following data on beef production and demand:<sup>44</sup>

(Table 2) Beef production, demand, and deficit

Local beef production ready to slaughter	2.5 million heads/year
National beef demand	675 thousand tons (3.9 million head)/year
Deficit of beef	1.4 million heads/year

<sup>40</sup> Andi Fahmi Lubis et al Hukum Persaingan Usaha Antara Teks dan Konteks, Deutsche Gesellschaft fur Technische Zusammenarbeit (GTZ) GmbH, Jakarta, 2009, bh. 114-115

<sup>41</sup> Ibid. h.116

<sup>42</sup> Efek Berantai Impor Daging Kerbau, Diakses pada tanggal 24 November 2016 <https://www.tempo.co/read/kolom/2016/09/22/2391/efek-berantai-impor-daging-kerbau>.

<sup>43</sup> rofil ekonomi ; Tabel Harga Kebutuhan Pokok Nasional ; Diakses pada tanggal 4 Desember 2016 <http://www.kemendag.go.id/id/economic-profile/prices/national-price-table?year=2016&month=12>

<sup>44</sup> <http://video.metrotvnews.com/economic-challenges/DkaJPXWK-bulolebih-sama-dengan-sapi> Diakses pada tanggal 4 Desember 2016

The data indicates that Indonesia still relies on beef imports to meet national meat demand, suggesting that the country has yet to achieve beef self-sufficiency and still faces dependence on imported supplies, especially in big cities like Jakarta.<sup>45</sup>

In the 2013-2015 period, beef production grew nationally, but DKI Jakarta contributed only modestly with relatively small production figures. As an alternative to beef imports, the introduction of buffalo meat from India has provided a wider choice in the Jabodetabek market. The price of imported buffalo meat is cheaper than beef. However, Indonesia also has the potential for buffalo meat production, as recorded in the following data from the Central Statistics Agency (BPS) for the period 2013-2015:<sup>46</sup>

(Table 3) Buffalo meat production in 2013-2015

No.	Description	2013 (ton)	2014 (ton)	2015 (ton)
1.	Overall production in Indonesia	37.836	35.236	31.669
2.	Total production in DKI Jakarta	48	34	34

Based on the obtained data, Indonesia has limited buffalo meat production to meet consumption and market demand. Although people consume more beef, buffalo meat serves as an alternative. Bulog sells imported buffalo meat from India at a Highest Retail Price (HET) of IDR 65,000/kg, taking into account taxes, import duties, quarantine, and handling costs. The aim of this pricing is to reduce beef prices to Rp80,000/kg, but cattle farmers are affected as their live cattle prices have fallen. This policy also impacts smallholder farmers who only sell cattle for the annual sacrifice, ensuring the price of cattle remains stable.

In Law No. 5/1999, unfair business competition is defined as competition conducted by business actors in a way that is dishonest, unlawful, or inhibits business competition. In the context of Bulog's buffalo meat import policy to stabilize beef prices to IDR 80,000/kg in the Greater Jakarta area, this violates the provisions of Article 5 paragraph (1) of Law No. 5/1999 that prohibits business actors from entering into agreements with their competitors to fix prices in the same market. However, this provision does not apply to agreements in joint ventures or agreements based on applicable laws.<sup>47</sup> Price fixing by businesses can result in a lack of price competition and unusual market control power.<sup>48</sup> Price fixing agreements can allow businesses to force desired prices on consumers. While government price-fixing may benefit consumers with lower prices for animal protein, it may hinder competition in the market and reduce the profits of beef traders. The price-fixing action taken by Bulog, as the business actor of buffalo meat import, violates Law No. 5/1999. The purpose of the price fixing regulation itself is to anticipate all forms of activities carried out by business actors in conducting their business activities. The prohibited agreement in this third section means that if the agreement aims to fix the same price of a good and/or service, and the agreement is made by two or more business actors with the intention of eliminating competition by fixing the price of goods and/or services to be resold or purchased...<sup>49</sup>

Bulog's action in fixing the prices of buffalo meat products in the Jabodetabek market violates Law No. 5/1999, which states that the prices of goods and services in a healthy market should be

<sup>45</sup> Pusat Data dan Sistem Informasi Pertanian, Outlook Kebutuhan Daging Sapi 2015, <http://epublikasisetjen.pertanian.go.id/> Diakses pada tanggal 7 Desember 2016, h 14

<sup>46</sup> <https://www.bps.go.id/linkTableDinamis/view/id/1039>, Diakses pada tanggal 5 Desember 2016

<sup>47</sup> Suyud Margono, Hukum Anti Monopoli, Siar Grafika, Jakarta, 2009, h. 85

<sup>48</sup> Andi Fahmi Lubis et al, Hukum Persaingan Usaha Antara Teks dan Konteks, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, Indonesia, 2009, h.9

<sup>49</sup> Diutarakan oleh Rambe Kamarulzaman, Risalah Resmi DPR RI dalam Rapat Paripurna ke -13, Rabu, 14 Oktober 1998, h.110 Dalam sidang berikutnya tidak dijelaskan alasan mengapa untuk perjanjian penetapan harga dilarang secara per se illegal. Periksa pula : A.M. Tri Anggraini, Ibid, H.187. Dapat di baca dalam buku L.Budi Kgramanto, Mengenal Hukum Persainngan Usaha, h 143.



determined by supply and demand<sup>50</sup>, without competition from rival business actors. Consequently, this concentration of market power restricts business opportunities, and price fixing remains prohibited, without considering the potential negative impacts that may arise.

In addition to violating the provisions of Article 5 paragraph (1) of Law No. 5/1999, this buffalo meat import policy can also be said to violate the provisions in Article 8 of Law No. 5/1999. Article 8 of Law No.5/1999 states that, 'Business actors are prohibited from entering into agreements with other business actors that contain a requirement that the recipient of goods and or services will not sell or resupply the goods and or services received, at a price lower than the price that has been agreed so that it can result in unfair business competition.'

Under the rule of reason, buyers or recipients (such as market traders) may not sell or resupply goods or services at a lower price without damaging fair business competition. The government must prove that setting the selling price of imported buffalo meat products at Rp.65,000/kg does not create unfair business competition. In addition, the resale price fixing agreement also violates the principle of market economy, known as resale price maintenance.<sup>51</sup> Resale price maintenance has two types, namely maximum price fixing, which allows competition between business actors for the benefit of consumers, and floor price fixing, which results in distributing companies not being able to sell products at prices lower than those set by other distributing companies.<sup>52</sup>

The price agreement in Article 8 is different from the provisions of Article 5 because it is based on the rule of reason, which means that it is prohibited only if it results in unfair business competition as defined in Article 1 point 6 of Law No.5/1999.<sup>53</sup> Article 8 is considered an obstacle to competition in the Law, but not all price agreements necessarily cause obstacles to competition. Therefore, the government's actions in importing buffalo may be questionable as they may meet the criteria of abuse of market power and hindering business competition.<sup>54</sup>

Looking at the provisions governing price fixing, it means that if Law No. 5/1999 and the government conduct a policy by fixing the price of a product, namely imported buffalo meat products, the government, through its policy, has violated Article 5 and Article 8 of Law No. 5/1999, which regulate the existence of the Business Competition Supervisory Commission (KPPU). In the first part of Article 30, the status of the Business Competition Supervisory Commission (KPPU) is as follows: a. To oversee the implementation of this law, a Business Competition Commission is established, hereinafter referred to as the Commission; b. The Commission is an independent institution independent of influence, power, and other parties; and c. The Commission is responsible to the President.

According to Article 38, paragraph (1) of Law No. 5/1999, any person who becomes aware of a business actor violating Law No. 5/1999 may submit a report to the commission. Furthermore, any party who suffers harm as a result of such violation may report it in writing to the commission, including details of the violation and the resulting loss, in accordance with Article 38, paragraph (2). The loss incurred is typically of a financial nature or, at the very least, can be economically quantified.<sup>55</sup> It is important to note that the commission not only receives reports of Law No. 5/1999 violations but also has the authority to proactively investigate business actors suspected of violating the law (as stated in Article 40 of Law No. 5/1999).

Business actors examined by the Commission are obliged to submit the evidence required during the investigation or examination. If the examined business actor refuses to provide information to the

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<sup>50</sup> Pasal 5 ayat (1) UU No. 5/1999 berdasarkan rumusnya juga meliputi perjanjian antar pemasok dan peminat serta dapat pula diterapkan terhadap kartel. Dapat dibaca dalam L. Budi Kagramanto, *Mengenal Hukum Persaingan usaha*; Berdasarkan UU No.5/1999, Laros,, Surabaya, h.145

<sup>51</sup> Budi Kagramanto, *Mengenal Hukum Persaingan Usaha Berdasarkan UU No. 5 Tahun 1999*, Laros, Surabaya 2008 h. 159

<sup>52</sup> Andi Fahmi Lubis et.al, *Hukum Persaingan Usaha Antara Teks dan Konteks*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, Indonesia, 2009, h. 99

<sup>53</sup> *Ibid*, h 55

<sup>54</sup> Suyud Margono, *Hukum Anti Monopoli*, Sinar Grafika, Jakarta, 2009, h.89

<sup>55</sup> *Ibid*, h. 152

commission, the commission is not authorized to compel them.<sup>56</sup> In response, the commission will hand over the case to the investigator for further investigation based on the rules in Law No. 5/1999. In relation to efforts that can be made by the KPPU against violations of the provisions of Law No. 5/1999, there are 3 types of sanctions that can be imposed, namely: a. Administrative actions (regulated in Article 47 paragraph (2)); b. Main criminal sanctions (regulated in Article 48); and c. Additional criminal sanctions (Article 49).

KPPU has a dual role as a law enforcer in preventing Monopolistic Practices and Unfair Business Competition and as an advisor to government policies related to business competition. KPPU plays a role in providing input to the government in order to create healthy business competition in Indonesia's transitioning economic structure.<sup>57</sup> In the context of buffalo meat import policy, KPPU can provide recommendations to the government regarding price fixing by Bulog which violates the provisions of Law No. 5/1999 regarding price fixing and resale. KPPU's role as a policy advisor is important to avoid unfair business competition and ensure that government policies support fair competition and the welfare of the Indonesian people.

In KPPU's role as the Council of Policy, in accordance with Article 35, letter e of Law No. 5/1999, KPPU can provide advice and consideration on government policies related to monopolistic practices and unfair business competition. Providing input to the government on the buffalo meat pricing policy is carried out because government agencies, such as Bulog, are not subject to administrative or criminal sanctions. With the role of KPPU, the goal is to ensure that government policies do not result in unfair competition and are in line with fair competition for the welfare of the Indonesian people.

### CONCLUSION

The conclusion from the above is that a diverse market structure, caused by the behavior of business actors, can result in high and low prices, and cause competitive imbalances in the market. Therefore, the Indonesian government issues economic policies and regulations to protect consumers and society from harmful systems and to achieve the goal of public welfare in accordance with Law No. 5/1999. However, government policies are not always in line with applicable regulations. The policy of importing buffalo meat at a set price to lower beef prices may violate Law No. 5/1999 on Price Fixing which prohibits price fixing agreements. In the event of market violations originating from government policy, the Business Competition Supervisory Commission (KPPU) as an independent institution will provide recommendations and considerations in accordance with article 35 letter e of Law No. 5/1999. In making buffalo meat import policy, the government should consider various affected aspects and ensure the policy is in line with Law No. 5/1999 to achieve the welfare of the Indonesian people. In addition, the regulation of food supply, especially imported meat, should be carried out regularly and consistently to meet food needs, especially the need for animal protein.

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<sup>56</sup> Ibid, h. 137

<sup>57</sup> Suyud Margono, Op.Cit, h. 165

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