

JURIDICAL ANALYSIS OF CHANGES IN THE IMPOSITION OF FINES FOR BUSINESS COMPETITION VIOLATIONS

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Abstract

The principle of proportionality in the determination of fines is an important aspect in assessing fair and effective sanction policies. In the international system, proportionality is often associated with market impact and the capacity of business actors. In Indonesia, with the enactment of KPPU Regulation Number 2 of 2021, there is an opportunity to evaluate the extent to which this proportionality is applied in calculating the amount of fines against violators. This research uses a doctrinal method with a conceptual and statutory approach. The purpose of this study is to determine the motives for changes in the regulation of the imposition of fines in business competition violations in Indonesia and to see its comparison with other countries. The results show that the regulation of the imposition of fines currently in force has an impact on the technical accuracy of estimates of business strategies for business actors. The strategy in question is that in accordance with the Commission's objective to provide an understanding of the compliance program in fair business competition to business actors who commit violations or have the potential to commit violations. This study concludes that the regulation of fines against business actors embodies aspects of legal certainty and expediency. The conclusion of the study also shows that further arrangements need to be made regarding the details of the method of calculating fines against business actors. This regulation is needed to provide transparency for the realization of legal justice.

Keywords: Regulation, Fines, Business Competition.

INTRODUCTION

The Indonesian state is a state based on law so that the Indonesian economic system is also based on law. In accordance with Article 33 and Article 34 of the 1945 Constitution of the Republic of Indonesia (UUD 1945), the Indonesian economic system is based on law so that the state is responsible for the welfare and prosperity of its people. These conditions require assertiveness in arrangements related to the protection of rights and fulfillment of obligations. In the current era of globalization, rapid business growth allows local and international businesses to flourish. Bringing openness, the movement of information flow becomes fast and wide. In running the wheels of business, openness can help business actors. With easily accessible information, businesses can find out the potential of their competitors. Competition is inseparable from human life, because basically every individual wants to appear superior to other individuals. Business competition is a term that is often used in the business world. Competition is not foreign to business people and cannot be denied. Business people are driven by business wheels to compete with each other in similar business fields, with the aim of increasing sales, seeking the highest possible profit, and winning market share.

In the business world, the ideal competitive environment is fair competition. It is desirable that healthy competition, or fair competition, will occur, but it is often thwarted by cunning business actors. Through fair competition, companies can gain many benefits. One of them is to encourage entrepreneurs to improve product quality, efficiency, and innovation (Mulyadi & Rusydi, 2017). To regulate business competition in Indonesia, Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Anti-Monopoly Law) was created. The *International Monetary Fund* (IMF) requested Indonesian laws to regulate business competition and prohibit monopolistic practices. This regulation was made not without purpose and cause, the reasons for the later issuance of this regulation are among others: (Pertiwi & Azzahhrah, 2023)


1. That to support the realization of certainty and business opportunities through the improvement of the investment ecosystem and business activities, it is necessary to have more conducive business practices that emphasize fair business competition;
2. That in order to provide legal certainty for the imposition of administrative actions in the form of fines, guidelines for the imposition of fines for violations of monopolistic practices and unfair business competition committed by business actors are required;

The implementation of the economy in Indonesia must provide opportunities for all people, so that they can participate in development in various economic sectors, this is as mandated by Article 33 paragraph (4) of the 1945 Constitution which states that the national economy is based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. The process of carrying out business activities needs a reference that has coercive power, so that the implementation of the economy in Indonesia in practice does not tend to be monopolistic, protect healthy competition, have a conducive business climate, and create effectiveness and efficiency in business activities. The Anti-Monopoly Law, in its current development, made several regulatory changes through Law Number 11 of 2020 concerning Job Creation (Job Creation Law). To conclude the changes in business competition regulation, the government issued Government Regulation Number 44 of 2021 concerning the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition (PP Anti Monopoly).

It is not enough for laws and government regulations to produce fair competition; a specialized institution is needed that is responsible for complying with the laws. Article 30 of the Anti Monopoly Law stipulates that a Business Competition Supervisory Commission (KPPU) must be established. KPPU has full authority to oversee business activities in Indonesia and implement the Anti Monopoly Law. KPPU stands alone because it is not affected by state authorities or other institutions. (Nugroho, 2014) KPPU is a *quasi judicial* institution that has executorial authority related to business competition cases and an institution authorized to handle business competition cases in Indonesia, as mandated in Article 1 paragraph 18 of the Anti Monopoly Law. KPPU's authority in enforcing business competition law plays an active role in cases that continue to develop in Indonesia, including prohibited agreements, oligopoly, prohibited activities such as monopoly, and abuse of dominant position. The position of the KPPU is attached to administrative authority, so that the sanctions imposed are administrative sanctions. (Mantili, 2016)

KPPU is authorized to form regulations regarding the implementation of its functions. KPPU Regulation Number 2 of 2021 concerning Guidelines for the Imposition of Fines for Violations of Monopolistic Practices and Unfair Business Competition (Perkom Sanctions Fines), among others, serves as the basis for the enforcement of business competition law in Indonesia. The purpose of this regulation is to increase enforcement efforts against business practices that harm consumers and the market. Fines are regulated more specifically in this regulation to ensure a deterrent effect for business actors proven to have committed violations. The level of loss incurred, the amount of profit obtained from the violation, and the economic situation of the business actor are factors that determine the fines given. This shows that KPPU has tried to use a proportional and accountable method when calculating the amount of sanctions without ignoring aspects of justice and business continuity. The imposition of administrative actions in the form of fines as stipulated in Article 18 of PP Anti Monopoly is further regulated in Perkom Sanctions Fines. KPPU said that many business actors are uncooperative and have not paid fines for decisions that have been legally binding (*inkracht*). Based on KPPU data as of July 31, 2021, there are 339 reported parties (companies) that have not implemented KPPU's decision and the unpaid fines reached a value of IDR 380.79 billion. It is the case of tender conspiracy whose decisions have generally not been implemented. (Susanto, 2024)

One of the administrative sanctions is in the form of fines imposed by KPPU. If the company does not have sufficient guarantees, the company applying for discretionary payment terms to KPPU must do what they have to do. According to the Anti Monopoly Government Regulation, which is a derivative



of the Job Creation Law, it is mandated (mandatory). (Hartono et al., 2022) The fines imposed by KPPU are regulated in Article 47 of the Anti Monopoly Law. The lowest fine is Rp1,000,000,000.00 (one billion rupiah), and the highest fine is Rp25,000,000,000.00 (twenty-five billion rupiah). These fines are intended to punish business actors who violate competition regulations so that they do not make the same mistake again. Article 108 of the Job Creation Law then changes the amount of fines that can be imposed by KPPU. In the latest provision, the basic fine is Rp1,000,000,000.00 (one billion rupiah), and the maximum fine that can be applied is no longer Rp25,000,000,000.00 (twenty-five billion rupiah). The procedure for calculating the amount of fines that can be applied by KPPU has been changed.

In addition, this regulation is suspected to increase the transparency of the calculation process and the imposition of sanctions. In order to create legal certainty, KPPU must explain the legal basis, evidence, and analysis used in determining fines. Therefore, *Perkom Sanksi Denda* regulates the sanction mechanism technically and gives KPPU the responsibility to ensure fair competition and proportional sanctions. In addition, this regulation gives KPPU the authority to establish a flexible fine payment mechanism for business actors experiencing financial difficulties, under certain conditions. To ensure that law enforcement does not disrupt the overall economy, this was done in response to existing economic problems in Indonesia. Nevertheless, the regulatory changes that resulted from the enactment of the Job Creation Law that resulted in the necessity for KPPU to make implementing regulations need to be studied further and examine comparisons with other countries. Is it true that the normative reading that the author described earlier is correct? Departing from these issues, this research raises two strategic issues for further research. First, a critical examination of the motives for changes in the regulation of fines for business competition violations in Indonesia will be conducted. Second, it is necessary to conduct an in-depth study of the impact and comparison of the regulation of the same context by other countries.

METHODS


This research uses a method in the form of a doctrinal legal approach. This approach is used to obtain an analysis of laws and regulations related to the imposition of fines for business competition violations. Using a qualitative research design and relying on secondary data sources in the form of relevant laws and regulations and the results of interviews with KPPU. Doctrinal legal research utilizes a variety of sources, including legal literature, theory, legislation, and empirical data. A thorough examination of this topic within a more specific framework will provide adequate understanding. (Hutchinson & Duncan, 2012).

Analysis and Discussion

Changes in Fines for Competition Violations in Indonesia

The Indonesian government strictly regulates the business climate in Indonesia. The regulation is certainly oriented towards a healthy business competition climate. Healthy business competition will not only attract investors but also foster economic access for people in various classes. Currently, regulations regarding business competition are contained in Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Anti-Monopoly Law). However, before the law was passed and implemented as a legal regulation on anti-monopoly, Indonesia did not have any legal provisions relating to it. During the New Order government, Indonesia failed to formulate legal regulations specifically governing anti-monopoly and business competition. This failure was due to several factors, most notably the government's belief that large companies needed to be developed as drivers of development, which essentially granted monopoly positions to these companies. Furthermore, the granting of monopoly facilities is necessary because these companies have been willing to support related sectors. (Soetjitro, 2007)

The supervision of business competition in Indonesia is delegated to the Commission as mandated by the Anti Monopoly Law. The Business Competition Supervisory Commission (KPPU) was established




based on Presidential Decree No. 75/1999 on the Business Competition Supervisory Commission (KPPU Decree). KPPU is a non-structural institution that is independent from the influence and power of the government and other parties. The purpose of establishing KPPU is of course as an institution that implements the Anti Monopoly Law. The Commission has the task of assessing agreements, business activities, and abuse of dominant positions that have the potential to cause monopolistic practices or unfair business competition, in accordance with the provisions in the Anti Monopoly Law. In addition, the Commission is authorized to take actions based on its regulated authority, provide advice and considerations to the government regarding policies that may affect business competition, prepare guidelines and publications related to the law, and report the results of its work periodically to the President and the DPR. As a stand-alone entity under the auspices of the executive and directly accountable to the president, KPPU has set significant quality standards for its executives, particularly in the context of investigations. The aim is to ensure that every task and authority is optimally utilized to create a healthy business competition climate in Indonesia. The KPPU's scope of supervision is reiterated in Anti-Monopoly Law Articles 4 to 28, which aim to prevent or take action against infringing practices and unfair business competition in Indonesia.

Among its main tasks, KPPU also provides recommendations to the government to formulate economic policies. This policy will act as a legal basis to regulate monopolistic actions and unfair business competition practices. This process begins with problem identification supported by the results of data collection in the form of regulations and evidence from relevant agencies; thus, through this data, KPPU can conduct policy analysis by referring to the policy hierarchy, competition issues, and ongoing partnership issues. The results of the research that have been collected can then be submitted to KPPU commissioners, and will work with the Directorate of Business Competition Policy in the form of a draft recommendation letter. According to the Indonesian Anti-Monopoly Law, *monopolistic practices are the concentration of economic power by one or more business actors resulting in the control of production and or marketing of certain goods and or services so as to cause unfair business competition and may harm the public interest*. Meanwhile, what is meant by *unfair business competition is competition between business actors in carrying out production and or marketing activities of goods and or services that are carried out in an unfair or unlawful manner or hamper business competition*. Article 3 of the Indonesian Anti Monopoly Law clearly underlines the objectives of the establishment of this law, namely to protect the public interest and improve national economic efficiency for the welfare of the community; create a conducive business climate that guarantees certainty of opportunities for business actors; prevent monopolistic practices and unfair business competition; and achieve effectiveness and efficiency in business activities.

The prohibition against monopolistic practices and unfair business competition is implemented through various laws and regulations. One of the regulations that plays a role in the implementation of the prohibition against monopolistic practices and unfair business competition is Law No. 22 of 2001 on Oil and Gas, which is connected with Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation that has been passed into law (Oil and Gas Law). The Government of Indonesia shows a deep commitment to eradicating monopolistic practices and creating fair business competition. This is due to the potential chain effects that can arise from monopolistic practices and unfair business competition. As a form of realization of efforts to support the creation of a healthy competition climate, the commission is given special authority. The authority has been normatively mentioned above, and the core discussion in this research refers to the imposition of fines. Fines are one of the administrative sanctions. Article 47 of the Anti Monopoly Law stipulates that the imposition of fines is as low as IDR 1,000,000,000.00 (one billion rupiah) and as high as IDR 25,000,000,000.00 (twenty-five billion rupiah). Furthermore, Article 48 of the Anti-Monopoly Law also regulates the basic punishment in the form of fines for various violations of the Anti-Monopoly Law.

One of the main ways the KPPU oversees the Anti Monopoly Law is by applying competition law principles. The extent to which KPPU can solve problems is measured as the level of performance.




The first performance level measurement can be seen from the data in 2020 which states that KPPU has produced 349 case decisions. Challenges to these decisions were won by KPPU with 56% in the District Court and 58% in the Supreme Court, and 80% in the Judicial Review. Of these decisions, 89 percent have permanent legal force in KPPU, District Court, Supreme Court, and Judicial Review, and 11 percent are still in the process of legal remedies. (Rizki, 2021) Administrative sanctions can be in the form of fines, cancellation of agreements, orders to companies to stop vertical integration, and cessation of activities that demonstrate unhealthy monopolistic practices and harm the public. In addition, KPPU has the authority to prevent business actors from abusing dominant positions and to determine the cancellation of mergers or consolidations of business entities and takeovers of shares.

The above conditions are KPPU's efforts that continue and are supported by the government. One of them is the issuance of Law Number 11 of 2020 concerning Job Creation (Job Creation Law). The government assumes that the effectiveness of business activities in Indonesia, including supervision and enforcement of business competition law, can be achieved by harmonizing laws and regulations. The Job Creation Law, which was drafted using the *omnibus law* method, has a fairly broad impact on several sectoral regulations, including business competition. Government Regulation (PP) Number 44 of 2021 on the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition is one of the 49 implementing regulations of the Job Creation Law made by the government. One of the important points in this regulation is the large fines imposed on business actors. Three things that are regulated in the Government Regulation are: (1) the authority of KPPU; (2) sanction standards, types of sanctions, and the amount of fines; and (3) examination of objections and cassation of KPPU decisions. Almost everything regulated in it is related to the norms of sanctions and authority. Actually, this content material is somewhat different from the delegation regulated in the Job Creation Law. This Government Regulation further regulates the standards, types, and sizes of fines as referred to in paragraphs (1) and (2). This is indicated by Article 47 paragraph (3) of the amendment to the Anti Monopoly Law after the Job Creation Law.

In this new regulation, the government provides provisions for the imposition of fines as a form of implementation of the KPPU's authority. Previously, the provisions regarding fines stipulated in the Anti-Monopoly Law provided a maximum limit, but now the regulation is more complex. According to Article 12 of the Government Regulation on the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition, a minimum fine of IDR 1 billion is considered a basic fine. In addition, administrative sanctions imposed by KPPU may not exceed 50% of the net profits earned by the business actor in the relevant market during the period of violation of the Law. Administrative sanctions may also not exceed 10% of the total sales in the market. The amount of the fine is determined based on the adverse impact caused by the violation and the duration of the violation. Mitigating and aggravating factors, as well as the ability of the business actor to pay, are also considered. Taking into account the provisions of this Government Regulation, the Commission may set the highest fine amount. This may be done by considering the value of profits or the value of sales derived from the violation of the Act, in the relevant market, and during the period of the violation. In essence, the options available are alternative, and the Commission decides how to use them in each case. If the Commission wishes to calculate the value of net profits derived from a violation of the Act, they must consider the activities of the business actor, the market circumstances, and the time when the violation occurred. The profit earned by the business after deducting state taxes and levies, as well as fixed costs directly related to the business activity concerned, is known as the net profit value.

On the other hand, if the Commission uses the value of sales related to the violation of the law as the basis for calculation, the Commission shall take into account the activities of the business actor, the conditions of the relevant market, and the duration of the violation. The value before imposition of state taxes or levies directly related to the sale of goods or services in the relevant market is used to determine the value of sales. The number of years in which the infringement occurred determines



the duration of the infringement, an element that is crucial for determining the amount of the fine to be imposed. If the time is less than six months, it is considered half a year. If the time is more than six months, it is considered a full year. Conversely, if the time is more than one year, it is considered a full year. The commission can then calculate the number of violations per month and the number of violations for one year.


The Impact of Changes in Fines Arrangements on the Conditions of Business Competition in Indonesia

Legal certainty, as a fundamental goal of law, contributes to the pursuit of justice. The true essence of legal certainty is in the implementation or enforcement of the law, regardless of the actors involved. Legal certainty allows individuals to anticipate the consequences of certain legal actions. In the absence of discrimination, clarity is essential to realizing the ideal of equality before the law. Certainty is an inherent trait of the law, especially in relation to established legal rules. Laws without clarity will lose their meaning, as they cannot serve as behavioral guidelines for all individuals. (Lathif, 2017) The Anti Monopoly Law was created after the end of the New Order government and was intended to address economic problems that could not be solved by conventional economic policies, such as fiscal and monetary policies. This is as stated in the general explanation of the Act. Although there has been much progress in Long-Term Development, demonstrated by high economic growth, there are still many problems, especially in economic development that have not been resolved. In addition, the creation of the Anti Monopolisation Law can be considered an attempt to repair the Indonesian economy, which has been devastated by the multidimensional crisis caused by the 1997/1998 monetary crisis.

Monopoly crime is a major factor in the destruction of a country's economy. Monopolies can damage the market structure, which is also the cause of major economic crises, as stated by Schmitz & Fettig (2020). What was proposed in the 1930s is still relevant, according to Schmitz and Fettig. Namely, this is due to two things. First, monopolies are a major source of inequality and poverty. Second, monopolies often hide and disguise actions that cause great harm to low-income people. Monopolies clearly spread poverty and economic injustice by stealth.

According to the *Center for Economics and Development Studies* (CEDS) of Universitas Padjadjaran (UNPAD), the level of business competition in Indonesia increased slightly in 2023. Indonesia's Business Competition Index (IPU) last year increased by 0.04 from the previous year to 4.91 in 2022. This indicates that business competition in Indonesia is rather high. This indicates slightly improved business competition conditions and competitiveness performance amid the current global economy. Over the past few years, CEDS has measured Indonesia's IPU based on various dimensions, including structure-conduction performance (SCP), regulation, supply, demand, and institutions. The survey was conducted across 34 (thirty-four) provinces and 15 (fifteen) economic sectors. Respondents consisted of various stakeholder institutions, such as the Chamber of Commerce and Industry, academics, Bank Indonesia, and Provincial Industry and Trade Offices. The index is calculated in this way. Each dimension has its own indicators. To measure the economy per region, several ideas are used, including the SCP (dynamic), the contested market hypothesis, the sufficient life hypothesis, the effective structure hypothesis, and the newly created New Industrial Organization Hypothesis (NEIO) for each province. (ICC, 2024) In particular, CEDS provides conclusions, one of which is to maintain IPU performance on dimensions that have increased index scores, namely the dimensions of behavior, performance, regulation, and supply. And then encourage the government to encourage regulations that are made to really support fair business competition. (KPPU, 2024)

Reflecting on the results of the historical description of the impact of the existence of the Anti Monopoly Law in Indonesia, as well as a fairly objective measurement of the IPU, of course, the government gave birth to a new arrangement. The new regulation in question is as changes regarding fines in business competition in Indonesia. As a follow-up to the adjustment of regulations regarding changes in administrative sanctions in the form of fines from the government, KPPU issued KPPU




Regulation Number 2 of 2021 concerning Guidelines for Imposition of Fines for Violations of Monopolistic Practices and Unfair Business Competition (Perkom Sanctions Fines). This Perkom Sanksi Denda is a further regulation of PP Anti Monopoly. Further regulation of the Anti Monopoly Government Regulation, in this Perkom is stated in Article 8. The imposition of fines to business actors, although the maximum limit is not specified, the commission is required to pay attention to two things. First, the net profit, and second, the total sales of the reported business actor. Both considerations are measured in terms of the relevant market share and calculated during the period of violation of the Anti Monopoly Law. The Commission Panel evaluates the application of fines by considering the availability of data and the financial capacity of the Business Actor.

Perkom Sanction Fines require audited financial statements, which creates uncertainty in the calculation of fines. The basis for levying fines is the relevant market. Companies that operate in the entire territory of Indonesia. If the Relevant Market is limited to one region, then the financial statements used do not indicate a violation. The financial statements are corroborated by expert testimony in accounting. This poses a problem, as the accounting expert may ignore the full report by focusing only on the existing records. Public accountants can validate the financial statements after an extensive audit period of several months. The second criterion for imposing fines is determined by the value of sales. Sales are defined according to the Perkom Sanction Penalty as the value of sales before state taxes or levies directly related to the sale of goods or services in the Relevant Market. Sales are determined by analyzing valid and credible financial statements, bank statements, sales volume, market prices, price lists, bid price lists, recapitulation, and documentation of sales and/or purchases, as well as other relevant data. (Johan, 2022)

The net profit-based imposition formulation uses an accounting methodology. The accounting methodology has some limitations. Net profit is defined as gross profit after deducting fixed costs, taxes, and other government levies. Accounting has a different methodology to assess actual profit. Accounting records expenses that have already been incurred and expenses that are anticipated in the future. Accounting includes deferred costs and accrued costs in the calculation of expenses in the income statement. Fixed costs including depreciation costs are classified as deferred costs according to the period of use of the production equipment. Business entities can expense these costs. (Johan, 2022) The imposition of fines derived from financial statements has several things to consider. Financial reports use different recording systems, so the application of fines based on sales or profit and loss may result in different calculations. The verification function of financial statements will have different consequences. Financial statements document past transactions, while criminal events may occur in the future. If read normatively, the new regulation on fines has the potential to create a situation where sanctions from KPPU become higher than the previous regulation of twenty-five billion rupiah. However, the opposite condition is also very possible, namely that the business actor (reported party) arranges a tactic to make financial statements that are not in accordance with the norm. This must certainly be anticipated by KPPU to be able to formulate definite and mandatory guidelines to be followed by business actors.

Nevertheless, the Indonesian government still provides space for business actors not to suffer heavy losses due to the imposition of fines. Business actors are given space in Article 18 of the Anti-Monopoly Government Regulation, which states that, "The Commission may provide leeway in the implementation of fine payments based on written requests from Business Actors with supporting data." in paragraph (1). Then, paragraph (2) states that, "The concession as referred to in paragraph (1) in the form of payment may be made in stages or within a certain period of time based on legitimate, reasonable, and transparent reasons by considering the financial capacity or continuity of activities of the Business Actor."

The ease of space for business actors above is the government's effort to create a balance. The balance in question is that on the one hand, fines can be effective and create a deterrent effect, but on the other hand, fines are also not burdensome for business actors. Because in fact, the existence of regulations regarding antitrust is to create a healthy business climate, not to kill the activities of



business actors. Administrative sanctions imposed by KPPU are expected to have an impact on changes in the behavior of business actors. An application for a change in behavior can be submitted to the commission panel at the investigation stage equipped with a statement letter of change in behavior. Then the reported party who submits a change in behavior at the preliminary examination stage can be carried out a quick examination procedure and the reported party who does not submit the behavior is continued to the further examination.

Based on the impact analysis of the change in administrative sanctions in the form of fines, KPPU provided an annual report in 2023. KPPU's annual report in 2023 shows a positive trend. Based on the annual report, the IPU increased from 4.87 to 4.91. During 2023, KPPU also handled 300 investigations originating from 279 initial investigations of report cases and 21 initial investigations of initiative cases. Furthermore, KPPU in the same year has also resolved 9 cases involving 49 reported parties. With regard to the impact and application of fines, KPPU has collected fines worth Rp. 123,403,000,000 from 9 cases that were decided. (KPPU, 2023) The condition that shows a positive trend is in line with what researchers found during an interview with the registrar of KPPU. KPPU explained that organizationally, KPPU plays a preventive role so that fines are not the main thing. KPPU also implements a quick examination for the sake of business interests that require it. Large companies generally already understand about compliance programs and are able to adjust to the necessities. Sanctions should not exceed what is appropriate and necessary for enforcement purposes. (KPPU, personal communication, August 2024).

Comparison of Competition Infringement Fines with the United States

As a mandate from the implementation of the constitution, the basis of the national economy rests on Article 33 of the 1945 Constitution. The economic system not only focuses on profits for commercial entities, but also emphasizes balance and equality in the allocation of economic resources. Therefore, all policies and sanctions applied within the legal framework, including penalties imposed on commercial entities, are anticipated to be in line with the principles of equality and shared prosperity. From the standpoint of antitrust law theory, as established in industrialized countries such as the United States and European Union member states, the imposition of fines is an effective measure to deter anticompetitive behavior that undermines market dynamics. Antitrust laws in these countries use fines as a mechanism to deter violations committed by large firms that have significant market dominance, thereby preventing them from undercutting smaller firms and hindering fair competition. (Cengiz, 2012)

Indonesia, through KPPU, adopted a similar strategy by capping fines at a certain amount which is expected to have a deterrent effect. This policy is reinforced by a monitoring and investigation framework designed for early identification of possible violations by commercial entities. While sanctions in Indonesia may not be as stringent as in industrialized countries, this limitation embodies the intent to promote a fair and competitive market and protect consumer rights from exploitative practices by dominating firms. These fines also aim to create stability in Indonesia's domestic market. According to antitrust law theory, a competitive market encourages innovation and efficiency, which in turn benefits consumers with reduced costs and increased choice of goods. Strict penalties incentivize commercial entities to engage in fair competition, rather than resorting to practices that may harm the market system. In addition, the imposition of these penalties enhances the integrity of regulatory bodies such as KPPU, which play an important role in maintaining market balance. This is in line with Article 33 of the 1945 Constitution, which underlines the importance of equity in the economy, ensuring that economic benefits are accessible to everyone and not just a few. (Saputra, 2023)

From an economic theory perspective, antitrust law states that monopoly or oligopoly markets are often inefficient and incur large economic costs. This situation is contrary to the concept of social justice stipulated in Article 33 of the 1945 Constitution, which mandates that the national economy be structured to provide prosperity for all citizens. In short, strict and effective competition law,

including the imposition of sanctions, is a very important tool to achieve an equitable economy. These concepts are in line with the perspectives of economic theorists such as Adam Smith and Alfred Marshall, who emphasized the importance of competitive markets in achieving efficient resource allocation and improving public welfare. (Baker, 2019)

The imposition of fines must also consider the principle of proportionality so as not to hamper the investment climate and innovation. In various countries that impose fines, including the United States, there are criticisms related to sanctions that are too large. Such sanctions can burden companies, making them hesitant to take risks related to product development or business expansion. In the Indonesian context, it is important for KPPU and the government to develop a fine policy that can harmonize law enforcement with the need to encourage economic growth. The use of proportional fines will encourage a dynamic and competitive business environment, so that companies can innovate without having to be too defensive or cautious. (Anisah, 2016) The researcher presents a comparison of arrangements regarding fines for business competition violations between Indonesia and the United States in the following table:

Aspects	Indonesia	United States of America
Regulatory Framework	Regulated by Law No. 5/1999 on Prohibition of Monopoly and Unfair Business Competition; supervised by KPPU. Maximum fine of 50% of profits or 10% of sales.	Regulated by the Sherman Act, Clayton Act, and FTC Act; overseen by the FTC and DOJ. Fines can be up to twice the profit or loss.
Determination of Fines	Uses an administrative approach that considers the impact of the infringement on the market, and is based on net profits or total sales during the infringement period.	Based on economic impact and losses suffered; considers history of offenses; integrated with the justice system.
Purpose of Fines	Focus on prevention and education, as well as correction of business behavior.	Create a strong deterrent effect with large fines and criminal threats to prevent future violations.
Impact on Market	Fines are often considered not high enough to create a deterrent effect; business actors (reported) have loopholes to prepare unusual financial statements as a basis for calculating fines by KPPU.	High fines and streamlined legal process; creates a more competitive market, protects consumers, and allows for redress.

Source: Research Results

RESULTS AND CONCLUSION


This study shows that setting sanctions for corporate entities is very important to achieve legal clarity and efficiency. Clear regulations regarding sanctions provide clear direction for business actors in carrying out their actions, especially in addressing possible legal violations that may arise. This legal certainty is very important because it describes clear boundaries and consequences for violations committed, thus encouraging business actors to be more careful in the decision-making process. Conversely, legal expediency can be achieved, as this regulation does not only aim to impose penalties, but also to provide benefits to all stakeholders, including the government, companies, and the wider community.

A comprehensive regulation on the calculation of fines not only ensures transparency but also facilitates the creation of legal justice. Clarity in the calculation of fines allows companies to

understand the reasons for the fines levied against them. This clarity helps reduce the feeling of unfairness felt by businesses, as they can clearly understand the calculation of the fine. In this kind of environment, transparency is essential not only for the benefit of company stakeholders, but also for the public monitoring the corporate sector. The public, as consumers and observers, can see that the legal system is running fairly and transparently, not only serving to punish but also providing adequate deterrent impact to the perpetrators of the crime.

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