

Legal Objection Effort To The Decision Of Commission

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ABSTRACT: This research purposed to analysis and the fulfilment of the rights of business actors in filing object legal effort by KPPU's decisions in the District Court and understanding the KPPU's position in the case of objection. The research method was used a statute approach by reviewing Statute Number 5 of 1999 concerning the Prohibition Of Monopolistic Practices and Unfair Business Competition and Supreme Court Regulation Number 3 of 2005 concerning Procedures For Handling Object Legal Effort by KPPU's decision and regulations relating to legal issues. Based on the analysis of the results of the research, the authors conclude that (1) the rights of business actors in filing object legal effort by KPPU's decisions have not been fulfilled as in the civil procedural law in general (HIR and RBg) because the business actors were not given the opportunity to submit a replication and submission of evidence in the hearing at the trial (violating the principle of audi et al partam); (2) The position of KPPU as the litigant party of an objection is not in line with its authority in carrying out additional checks on the orders of the panel of judges, so that the KPPU is considered to try its own case (Indonesian Nemo Judex in Propria).

KEYWORD: Objection, KPPU, and Legal Efforts

I. INTRODUCTION

In Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition or often called the "Antimonopoly Law", it is determined that the institution authorized to hear monopolistic practices is KPPU. The birth of the Antimonopoly Law is the goal of reform in law enforcement in all fields, from the political, social, economic and cultural fields. The authority of the KPPU in prosecuting cases of monopolistic practices is very broad, which starts at the stage of investigation, investigation, prosecution, until the issuance of the decision of the KPPU Assembly. Because the KPPU has the authority to adjudicate monopolistic practice cases and decide whether there is a violation of the provisions of the Antimonopoly Law, it means that the KPPU's decision is the same as the court's decision in general and those who feel they have the right to file legal remedies. In Article 36 letter (i) it is determined that KPPU imposes administrative sanctions on business actors who violate the provisions of this Law. Administrative sanctions referred to are regulated in Article 47 of the Antimonopoly Law. In addition to administrative sanctions, KPPU is also authorized to impose criminal sanctions on business actors based on Article 48 and Article 49 of the Antimonopoly Law. The principal crimes are in the form of fines, while additional crimes are in the form of revocation of business licenses; prohibition on business actors proven to have violated this Law to occupy positions of directors or commissioners; and termination of certain actions or activities that cause the loss of others. Given the dualism of the judiciary in examining legal remedies against the KPPU's decision, the Supreme Court issued PERMA No. 3 of 2005 concerning the Procedure for Legal Remedies for Objection to the KPPU Decision which reaffirms that the legal remedy of objection is submitted to the District Court, not to the State Administrative Court. In the objection examination event, KPPU is a party, but on the other hand KPPU has the authority to conduct additional checks based on the order of the panel of judges to complete the results of the previous KPPU examination.

II. RESEARCH QUESTION

The background above raises questions for the author, namely: 1. Are the rights of business actors in filing legal objections against the KPPU's decision fulfilled? 2. Does the position of KPPU as a party in the case of an objection match the values of justice?

III. THEORY FOUNDATION AND RESEARCH METHOD

Proof of theory in the Civil Procedure Law Subekti, former Chairman of the Indonesian Supreme Court and professor of civil law at the University of Indonesia, believes that proof is a process of how evidence is used, proposed or maintained in the applicable procedural law. When evaluating evidence, the judge can act freely or be bound by the law, in this case there are two theories, namely: a. Free Proof of Theory The judge is free to assess the evidence presented by the parties to the dispute, both the evidence that has been mentioned by the Act, as well as the evidence that is not mentioned by the Act. b. Bonded Proof of Theory The judge is bound

by the evidence presented by the parties to the court. The decision handed down must be in line with the evidence presented at the trial. c. Combined Proof Theory Judges are free and bound to assess the results of the verification. In assessing the evidence, a judge must also remember the principles that are important in the civil proof law.

IV. LEGAL PURPOSE THEORY

Ahmad Ali divides the grand theory about the purpose of law, namely: western theory, eastern theory and Islamic theory as follows:

1 1. Western theory

a. Classical theory:

1) Ethical Theory is a solely legal goal to realize THEORY FOUNDATION AND WRITING METHODS

2) Proof of theory in the Civil Procedure Law

1) Standard Priority Theory is the purpose of the Law covering Justice, Benefit, Legal Certainty. 2) Casuistic Priority Theory is a legal objective covering justice, legal benefits and certainty in a priority order, proportionally, according to the case faced and wanted to be resolved. 2. Eastern Theory In contrast to the western theory of the purpose of law, eastern theory generally does not place certainty but only emphasizes the purpose of the law, namely justice is harmony and harmony is peace. So different from the objectives of western law, the purpose of eastern law still uses their original legal culture that is not too neglected based on justice, expediency, legal certainty. 2 3. Islamic Theory.

V. RESEARCH METHOD

The type of research used focuses on normative juridical, by trying to describe the results of the study. To get information, the author uses the literature study method. The data in this study were taken from various literature such as books, journals and legislation relating to the problem formulation of the research title. Data sources used are secondary data sources taken from various literatures such as books, journals and legislation related to the formulation of the problem of the research title. Data obtained from books, journals and laws and regulations relating to the problem formulation of the research title, are analyzed qualitatively with normative deductive thinking methods, namely from general matters and then drawn specific conclusions.

VI. RESULT AND DISCUSSIONS

Fulfillment of Business Actors' Rights in Submitting Legal Efforts Objection to KPPU's Decisions If the business actor has received notification of the passage of the KPPU decision, the business actor can determine his attitude, namely not accepting the contents of the decision by submitting an objection or accepting the contents of the decision, in the sense that the business actor does not file an objection to the PN. The legal basis for filing an objection is determined in Article 44 Paragraph (2) of the Antimonopoly Law: "Business actors can file objections to the District Court no later than 14 (fourteen) days after receiving the notification of the decision". In Article 1 Paragraph (1) PERMA No. 3 of 2005 regulated the definition of objection, namely: "Objection is a legal effort for business actors who do not accept KPPU's decision". Furthermore, in Article 2 Paragraph (1) it is stipulated that objections to KPPU's decisions can only be submitted to the District Court.

The Antimonopoly Law does not explicitly determine who has the right to file an objection to the KPPU's decision. Even the formulation in Article 44 Paragraph (2), Article 45 Paragraph (1), and Article 47 Paragraph (1) of the Antimonopoly Law is regulated that those entitled to file legal remedies are business actors who feel aggrieved due to KPPU's decision to impose administrative sanctions on business actors that. The Antimonopoly Law does not provide legal remedies to those reporting and harmed to file objections to the KPPU's decision stating that there is no violation of the Antimonopoly Law. In this case the party reporting and harmed is not protected. This is different from criminal cases. Based on Article 80 of the Criminal Procedure Code (KUHAP), interested third parties have the right to propose a pretrial to the District Court to examine whether the termination of the investigation is valid or not.

In Article 1 Paragraph (19) the Antimonopoly Law stipulates that "the District Court is the court referred to in the prevailing laws and regulations, in the place of legal standing of the business actor's business". This means that legal remedies are submitted to the District Court where the legal place of business is from the business actor. In Article 45 Paragraph (1) of the Antimonopoly Law, it is determined that the examination of objections must be initiated by the District Court within a period of 14 (fourteen) days after the objection is received. The commencement of the objection examination has a legal effect on the grace period for reading the final decision by the District Court, where the District Court is obliged to give its decision on the objection within 30 (thirty) days from the commencement of the objection examination. Based on Article 45 Paragraph (1)

of the Antimonopoly Law, the reading of the decision is calculated from the "commencement of the examination". "Commencement of examination" referred to is the first examination conducted by the District Court.

The procedure for submitting legal remedies against KPPU's decisions is regulated more specifically in Chapter III Article 4 Paragraphs (1) to Paragraph (8) PERMA No. 3 of 2005 concerning Procedures for Submitting Legal Remedies for Objection to KPPU's Decisions. The procedures referred to are as follows:

- (1) Objection is submitted within a period of 14 (fourteen) days from the date the Business Actor receives notification of the KPPU's decision and or is announced through the KPPU's website;
- (2) Objection is filed through the court of the District Court concerned in accordance with the procedure for registering civil cases by providing a copy of the objection to KPPU;
- (3) In the event that the objection is filed by more than 1 (one) Business Actor for the same KPPU decision, and has the same legal position, the case must be registered with the same number;
- (4) In the event that an objection is filed by more than 1 (one) Business Actor for the same KPPU decision but differs from its legal domicile, the KPPU may submit a written application to the Supreme Court to appoint one District Court accompanied by a court proposal which will examine the objection;
- (5) The application as referred to in Paragraph (4), by the Commission shall be forwarded to all Heads of District Courts who accept the petition for objection;
- (6) The District Court that receives the copy of the application must stop the examination and wait for the appointment of the Supreme Court;
- (7) After the application is received as referred to in paragraph (4), the Supreme Court within 14 (fourteen) days appoints the District Court to examine the objection;
- (8) Within 7 (seven) days after receiving a notification from the Supreme Court, the District Court that is not appointed must send the case file accompanied by (remaining) court fees to the designated District Court.

After the objection has been registered and received by the Registrar of the District Court, the Chairperson of the District Court immediately appoints a Panel of Judges who will examine and hear objections. The Panel of Judges ordered the bailiff to summon the parties (business actors and KPPU) to be present on the determined trial day as referred to in Article 121 HIR. In Article 8 PERMA No. 3 of 2005 regulated that in the examination of objections, the Panel of Judges used the civil procedure law that applies to the District Court. In civil procedural law, there are five evidences that are used as a reference for Judges in deciding a case (Article 164 HIR / 284 Rbg), namely:

1. Letter;
2. Evidence of witnesses;
3. Predictions;
4. Recognition;
5. Oath.

VII. CONCLUSION

The rights of business actors in filing legal remedies against KPPU's decisions stipulated in Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, and PERMA No. 3 of 2005 concerning the Procedures for Submitting Legal Remedies Objection to the KPPU's Decision has not been fulfilled as is the civil procedural law in general (HIR and RBG) because the business actors are not given the opportunity to submit a replication and submission of evidence at the hearing in court (violating the principle of audiences); The position of KPPU as a party in the case of an objection (Article 2 Paragraph (3) Perma No. 3 of 2005) is not in line with its authority in carrying out additional checks on the orders of the panel of judges, so that KPPU should be considered to try its own case (Indonesian *Nemo Judex in Propria*) and not the creation of justice in the proceedings in the District Court for both parties.

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