VERTICAL INTEGRATION PRACTICE: THE CASE OF PT SOLUSI TRANSPORTASI INDONESIA AND PT TEKNOLOGI PENGANGKUTAN INDONESIA

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ABSTRACT

Business actors often use vertical integration agreements as an instrument to take control of several business activities including the production process of certain goods and/or services and avoid uncertainty over the supply of raw materials to produce goods and/or services. By using vertical integration, a company will get benefits which are the efficiency of production costs so that the profits obtained by a company are greater. One of the examples of vertical integration agreement practice is the case of an affiliation between PT. Solusi Transportasi Indonesia (Grab Indonesia) and PT Teknologi Pengangkutan Indonesia (PT TPI). The agreement between Grab Indonesia and PT TPI give rise to allegations of violation of vertical integration of the agreement build by both parties, namely the element of production control in the form of discrimination against business actors competing with PT TPI which subsequently had a further impact on drivers who are not partners of PT TPI. This paper uses a normative juridical research method with a statutory approach, a case approach, and a conceptual approach. This paper discusses cases based on vertical integration theory and its development, then assesses the vertical integration agreement between Grab Indonesia and PT TPI.

Keywords: online transportation service, antitrust law, vertical integration

INTISARI

Perjanjian integrasi vertikal kerap digunakan oleh pelaku usaha sebagai langkah untuk menguasai beberapa kegiatan usaha termasuk dalam rangka proses produksi barang dan/atau jasa tertentu dan menghindari ketidakpastian akan pasokan bahan baku untuk memproduksi barang dan/atau jasanya. Dengan menggunakan integrasi vertikal, sebuah perusahaan mendapatkan manfaat salah satunya efisiensi biaya produksi sehingga laba yang diperoleh suatu perusahaan lebih besar. Salah satu contoh adanya perjanjian integrasi vertikal dalam suatu kegiatan usaha, yaitu kasus perjanjian integrasi vertikal antara PT. Solusi Transportasi Indonesia (Grab Indonesia) dengan PT. Teknologi Pengangkutan Indonesia (PT TPI). Perjanjian antara Grab Indonesia dengan PT TPI memunculkan adanya dugaan pelanggaran integrasi vertikal atas perjanjian yang dibuat oleh kedua belah pihak, yakni adanya unsur penguasaan produksi dalam bentuk diskriminasi terhadap pelaku usaha pesaing PT TPI yang selanjutnya berdampak lanjut pada pengemudi yang bukan mitra PT TPI. Tulisan ini menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Tulisan ini membahas kasus berdasarkan teori integrasi vertikal dan perkembangannya, kemudian asesmen terhadap perjanjian integrasi vertikal yang dilakukan antara Grab Indonesia dengan PT TPI.

Kata kunci: jasa transportasi daring, hukum persaingan usaha, integrasi vertikal.

INTRODUCTION

Contract in business competition should have given a positive impact to all the parties involved in the market mechanism. In the economic studies, market mechanism refers to a certain market working system where demand and supply are affecting the price and quantity of products that can be transacted (Cerdasco, 2020, Introduction Section). The supply and demand activities in the business creates market competition. To achieve a fair business competition, state intervention is necessary to regulate the systematics of business competition through a regulation.

Antitrust law came into force in the late nineteenth century in response to the rise of trusts in the United States (Sawyer, 2019, p. 1). Starting from a case involving S. C. T. Dodd, an attorney for John Rockefeller's Standard Oil Co., created a trust to facilitate a tight combination of oil refiners that could dictate price and supply while also avoiding state-level taxes and corporate regulations (Sawyer, 2019, p. 2). After this, various cases of this kind emerged. Sayer (2019) stated that this encouraged several states and the federal government to pass antitrust laws to regulate business competition, focusing on coordination among firms and business tactics used to monopolize industries (p. 2). Subsequently, the Sherman Antitrust Act was passed in 1890 which aimed to "rein in the trusts" through federal prosecutions (Sawyer, 2019, p. 2).

In fact, the existence of the Antitrust Law (*Hukum Persaingan* Usaha) creates pros and cons between business actors and the public. The existence of this type of law in the United States which was enforced through the Sherman Act was deemed to violate the principles of the liberal economy adopted by the country (Tanjung, 2014, Introduction Section). Business actors feel that the regulation restricts the freedom and sense of competitiveness. One of the figures that strongly opposed the existence of competition law is Murray N. Rothbard, an economist from the Austrian School. In “Power & Market: Government and the Economy”, he assumed that competition law is an obscure legal product and crowded with inexplicable meanings by giving the government and the courts the power to define what is meant by "monopolistic crime". Tanjung (2014) adds that many business actors do not even know why they were prosecuted for violating Business Competition Law (Introduction Section).

Regardless of the unclear condition regarding the error determination for business actors according to the Business Competition Law in the understanding of Rothbard, the existence of government’s intervention is aimed more to create a more competitive market, but with the atmosphere of healthy competition. CSIS (2016) added that the government’s intervention can be achieved by providing equal opportunities in market development, in terms of regulation as well as infrastructure and public services, for business actors, and reducing the privileged rights that some business actors can get (p. 14). Besides, another objective is to protect consumers from arbitrary actions by business actors, such as in controlling market prices.

In Indonesia, monopoly practices and business competition before 1999 did not have a comprehensive codified legal product yet. Regulations regarding business competition prior to 1999 were contained in several articles of the Criminal Code (*Kitab Undang-Undang Hukum*

Pidana), Civil Code (*Kitab Undang-Undang Hukum Perdata*), Law No. 5 of 1984 on Industry, Law No. 1 of 1995 on Limited Liability Companies, Law No. 8 of 1995 on Capital Market, Law No. 9 of 1995 on Small Business, Law No. 32 of 1997 on Commodity Futures Trading, Law No. 10 of 1998 jo. Law No. 7 of 1992 on Banking (Basri, 2002). Therefore, the birth of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition will certainly create better regulation with more detailed and systematic rules owing to the previous statutory regulations.

The thought on Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition ("Business Competition Law or Anti-Monopoly Law") was due to the monetary crisis that occurred during 1997 in Indonesia (Damuri, et al, 2017, p. 2). At that time, the government realized that the fundamentals of the Indonesian economy's implementation had not received strong support. Due to that, the government decided to create a law that unified the government's policy in the economic sector.

Observing the condition of business competition before the enactment of this law, the public in the past three decades before Law Number 5 of 1999 were not able to participate fully in developing Indonesia's economic sector (Dewan Perwakilan Rakyat Republik Indonesia, 2017, p. 11). On the other hand, the development of private enterprises during this period was much distorted. As a result, the development of private businesses indicated an unfair business competition climate.

Not only that, Indonesia's business climate in the past three decades was only controlled by private companies with a strong network among fellow entrepreneurs to accelerate business activities (Dewan Perwakilan Rakyat Republik Indonesia, 2017, p. 38). As a result, a healthy, efficient, and competitive atmosphere of business competition was not generated.

Moreover, the monopoly itself existed as a result of government policies regarding business activities that were not covering all of the elements of the people, or in other words, this policy is only enjoyed by a few groups of people. This policy gave birth to an unhealthy business practice, including conspiracy to fix prices (price-fixing) through cartels, establishing mechanisms that hinder the formation of competition, creating barriers to entry, and forming both horizontal and vertical integration (Dewan Perwakilan Rakyat Republik Indonesia, 2017, p. 12).

The government in making policies should not only include upper-class society but also includes all levels of the society. That way, every level of society can take advantage of the policies that have been issued and get the same opportunity to develop their business activities. Hence, every level of society will be benefited by the policies issued and received the same opportunity to develop business activities. If this is not carried out, it will have the potential to cause monopolistic practices and unfair business competition.

Besides, one of the events that underlines the birth of the Business Competition Law is the government and private policy to establish a business with a debt mechanism (Septiyaningrum, 2013, p. 107). This debt is obtained from both domestic and foreign financial institutions without limit and control from the government. These businesses that had been built on the basis of this loan were then destroyed due to the monetary crisis experienced by Indonesia in 1997 which caused the depreciation of the rupiah exchange rate against foreign currencies, especially the US Dollar.

Due to that event, the government was encouraged to create a business climate that is having a competitive, efficient, and healthy environment. Therefore, the Business Competition Law was created as the basis for the realization of the fifth principle of Pancasila, namely "social justice for all Indonesian people".

In order for the Business Competition Law to run effectively as it should be in preserving the atmosphere of fair business competition in Indonesia, therefore an independent institution was formed namely Business Competition Supervisory Commission. The formation of BCSC can be seen in the article 30 Business Competition Law which reads:

> *"(1) To supervise the implementation of this Law, a Business Competition Supervisory Commission is formed, hereinafter referred to as the Commission.*
> *(2) The Commission is an independent institution that is independent from the influence and power of the Government and other parties.*
> *(3) The Commission is accountable to the President."*

According to the Business Competition Law, unfair business competition is divided into two types, namely prohibited agreements and prohibited activities. An agreement is one of the actions that need to be regulated in business competition because from this a bond can be made between one business actor and another business actor. Agreements between actors in the business competition may have positive impacts, such as increasing efficiency, raising the product quality and quantity, as well as expanding information networks. However, if the agreement is made solely to control the production or the market, it also may have resulted in negative ends, such as deaden the fair business competition in the market, limiting the production, or even increasing goods/services' prices (Puspawati, 2017, p. 1-2). Business Competition Law stipulates several types of agreements that are prohibited in Chapter III, namely oligopoly, price fixing, zoning, boycotts, cartels, trusts, oligopsony, vertical integration, closed agreements, and agreements with foreign parties. In this journal, the focus will be on prohibited agreement in the form of vertical integration. In general, there are two forms of agreement, which are vertical integration and horizontal integration. Vertical integration happens between business actors with business linkages, while horizontal integration is carried out between competing business actors (Nugroho, 2014).

The prohibition of vertical integration is regulated under Article 14 of the Business Competition Law:

> *"Business actors shall be prohibited from entering into agreements with other business actors with the aim of controlling the production of several goods constituting products which are included in the production chain of certain related goods and or services*

> *whereby each production series is the end product of processing or further processing, either in a direct or indirect series, which may potentially cause unfair business competition and or may be harmful to society."*

Based on the above article, it can be understood that vertical integration is a condition in which a company takes control over several production or distribution steps that produce a product, both goods and services, in a vertical market. This taking over of control can increase the productivity of business actors. Even so, supervision and control must still be enforced. This is because if the takeover of control crosses predetermined limits, it can create a concentration of power that can affect the market structure so that it can lead to a monopolistic market (Muliyawan, 2015, Types of Unfair Business Competition Section). This should not be allowed to happen because the Indonesian economy adopts a democratic system in the economic sector which requires a balance between the interests of business actors and the public interest.

Based on this economic democracy system, the Business Competition Supervisory Commission ("**BCSC**"), as mandated by Article 30-37 of Law No. 5 of 1999, investigated the alleged vertical integration between PT Solusi Transportasi Indonesia (or Grab Indonesia) and PT Teknologi Pengangkutan Indonesia ("**PT TPI**") after reports were received from online taxi driver-partners in December 2018 in North Sumatra. Grab Indonesia's driver-partners who filed a lawsuit felt that they had received discriminatory treatment due to the agreement made by Grab Indonesia and PT TPI. This journal will examine more deeply about how Grab Indonesia and PT TPI formed a vertical integration by practicing production control in the form of discrimination against PT TPI's competitors which subsequently had a further impact on drivers who are not being a part of PT TPI's partners.

METHODS

The research was written using the normative juridical method. The normative juridical method aims to examine legal principles and sources of written law using secondary data. Secondary data in this legal research consists of primary and secondary legal materials. Primary legal materials, namely statutory regulations, court decisions, and jurisprudence. Then, secondary legal materials can be obtained through books, scientific articles, news articles, academic texts, and draft laws and regulations.

The types of legal materials used, such as primary legal materials in the form of laws, BCSC regulations, and decisions; secondary legal materials in the form of literature books, results of scientific writing and internet searches; and tertiary legal materials in the form of a legal dictionary. Normative legal research is carried out on a review of the prevailing laws and regulations, which is Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Apart from that, the research is also based on the Decision of the BCSC of the Republic of Indonesia Case No. 13/KPPU-I/2019 ("Case No. 13").

The approach used in this research are statutory*,* case, and conceptual approach. The statutory approach is research by identifying holistically all laws and regulations related to this topic. Then, the case approach is carried out by examining one case in the decision of the BCSC. The final approach implemented in this paper is a conceptual approach carried out by examining the doctrine or ideas of certain legal concepts, then examining their arguments and the consistency of their application in legal practice.

CHRONOLOGY

A case involving Grab Indonesia and PT TPI originated from the affiliation of the two companies. Based on the Grab Indonesia Deed of Establishment No. 19 dated 11 August 2015 ("DOE No. 19 of 2015"), Stephanus Ardianto Hadiwidjaja acted as a Commissioner in the company's structure, while Kiki Rizki became a Director, and Suzy Lindartono later entered as President Director on 17 November 2015. However, there have been changes in the company's structure, where Stephanus changed positions as Director while Suzy served as Commissioner. Furthermore, on 9 June 2016, it was noted that Stephanus and Suzy were also included in the management structure of PT TPI–Stephanus as Director and Suzy as Commissioner. This position can be carried out until 23 November 2018.

Judging from the facts above, it is understood that when the agreement between Grab Indonesia and PT TPI was first formed on June 5, 2017 when Stephanus was serving as the director of the two related companies. At that time, Suzy was also the commissioner of the two companies who made the contract.

Beside the company's structure, there was also the same share ownership between Grab Indonesia and PT TPI. According to the company's DOE No. 19 of 2015, Grab Indonesia's shares were originally owned by Stephanus and Kiki. Then, Kiki transferred its shares to Suzy and Teddy Trianto. The shares owned by Stephanus, Suzy, and Teddy were subsequently transferred to Grab PT and Grab Platform Indonesia PT

Besides owning shares in Grab Indonesia, Teddy and Kiki also had shares in PT TPI. On 22 September 2016, Kiki then transferred the rights to his shares to Stephanus. Furthermore, Teddy also transferred all of his majority shares to Stephanus and GC Lease Technology PT

The involvement between Grab Indonesia and PT TPI further strengthened the suspicion of vertical integration of the agreement made by the two parties. The agreement was suspected to contain elements of production control in the form of discrimination against business actors competing with PT TPI and subsequently had a further impact on drivers who were not partners of PT TPI, both drivers owning private vehicles and drivers from PT TPI's competing partners. The competitors of PT TPI include the Indonesian Rental Entrepreneurs Association Services Cooperative (*Koperasi Jasa Perkumpulan Pengusaha Rental Indonesia*), Indonesian National Police's Parent Cooperative (*Induk Koperasi Kepolisian Negara Indonesia*), Trans Business

Partner Cooperative (*Koperasi Mitra Usaha Trans*), PT Cipta Lestari Trans Sejahtera, and PT CSM Corporatama.

One of these privileges is the Loyalty Program. This program is a special incentive provided by Grab Indonesia to PT TPI's driver partners. They have the opportunity to own the car that they rent from PT TPI if they have been loyal to using the Grab application and have continued to partner with PT TPI for 5 years. This program is a continuation of PT TPI's internal Gold Captain Program which provides long-term vehicle rental services, that is one year and can be extended up to four times with the obligation to pay rental fees weekly. In addition, drivers can also receive other benefits, including health insurance, scholarships, and free maintenance.

To be a part of the Gold Captain Program and Loyalty Program, prospective drivers must pass through PT TPI's strict recruitment system with certain qualifications so that the selected driver-partners have the best qualifications and are able to fulfill the contract's obligation. Prospective drivers must pass the initial stages of recruitment such as checking the required medical check and driving test, interview, documents scoring and analysis, training, until they are declared successful. After that, the selected driver and PT TPI will make a vehicle rental agreement and an unwritten agreement regarding driver loyalty.

In contrast, Grab Indonesia made an agreement with other special rental transportation companies, where operational actions such as recruitment, training, supervision, to the provision of rewards and sanctions against drivers are carried out by the special rental transportation company itself. This is seen as a form of production series in the practice of vertical integration by BCSC.

Based on the Case No. 13, the Judge stated that Grab Indonesia and PT TPI had violated several provisions in Business Competition Law, one of which is Article 14 concerning Vertical Integration:

> *"Business actors shall be prohibited from entering into agreements with other business actors with the aim of controlling the production of several goods constituting products which are included in the production chain of certain related goods and or services whereby each production series is the end product of processing or further processing, either in a direct or indirect series, which may potentially cause unfair business competition and or may be harmful to society."*

RESULTS AND DISCUSSION

1. Theory of Vertical Integration

Generally, business actors always want their businesses to develop over time and be able to obtain maximum benefits. One of the ways that a company can achieve this is by merging or cooperating with other business actors who are vertically at different levels in the production process. This cooperation is called vertical integration. The vertical integration agreement can be a profitable strategy for business actors, given the certainty in the supply of raw materials, which has an impact on the smooth use of available resources for business actors to produce, facilitates the marketing of production products, and increases profits (Saputra et al., 2014. p. 6). That way, business actors carry out the practice of vertical integration as if they were a company carrying out two activities with different levels in one production process.

The output of a vertical agreement is the control over several business units included in the production series of certain goods and/or services. When a business actor creates a raw material company, they do not need to collaborate with the raw material supplier anymore. This control will have an impact on reducing margin costs in each product processing and will have a beneficial effect on both business actors and the final consumer (BCSC, 2010, p. 2).

Apart from vertical integration which is pro-competitive, such as the benefits described above, certain conditions trigger anti-competitive or anti-competitive actions. When a business actor manages to master several or all stages of vertical integration, this is what is considered to threaten the sustainability of the market, especially for business competitors. Therefore, authors conclude that in its implementation, vertical integration is still chosen by several business actors who want to increase income and as a risk reduction step in business. For example, the use of vertical integration to the upstream part in a business activity can minimize the occurrence of raw materials shortages.

The Great Indonesian Dictionary (2020) (*Kamus Besar Bahasa* Indonesia) defines raw materials as anything that can be used or needed for certain purposes in the form of basic materials to make something. Based on this definition, if it is related to business activities, it can be concluded that raw materials are the basic materials that form the basis for producing goods and/or services.

Then if it is related to vertical integration to the upstream part, all or some of the operational or production activities of a raw material required by a business actor can be integrated with the supplier of the raw material. Thus, in vertical integration it can be said as single management, namely between business actors and providers or suppliers of business actors can work together to produce products that have high competitiveness (BCSC, 2010, p. 9).

The use of vertical integration to the downstream part focuses on business activities that integrate several activities that lead to the provision of final products (BCSC, 2010, p. 1). This downstream vertical integration is usually carried out to expand market share by integrating the final product to the distributor to distribute the goods and/or services back to the wider community.

Vertical integration can be said to be an affiliate relationship that occurs between a business actor and other business actors. In its development, business actors prefer vertical integration compared to company mergers. This is because in the process of merging companies there will be parts of the cost calculation that will be lost or decreased, for example in terms of transaction costs, advertising, sharing of information, and administration (Iskandar, 2014, p. 3).

Vertical integration is still chosen by business actors because of production efficiency which can affect the price of goods and/or services being marketed. Meyer & Von Cramon-Taubadel

(Yustiningsih, 2012, p. 4) states that neoclassical economists believe that prices are the main indicator that can reflect the level of efficiency of a market. Thus, if a price of goods and/or services can meet market share expectations and can expand market share from its estimation, it can be said that the efficiency carried out by a company has gone well. The efficiency of this vertical integration can be done by, among others, reducing the use of a technical process/equipment (technical efficiency), saving transaction costs, and reducing double marginalization or eliminating unnecessary costs can be avoided (BCSC, 2010, p. 10). With this efficiency by business actors, production costs can be diverted to company operational costs and business actors can produce goods and services of better quality at lower costs.

Business actors also choose vertical integration on a rational basis that this agreement will reduce uncertainty over the supply of raw materials (BCSC, 2010, p. 12). This is because raw materials are the core of the creation of a business activity that produces goods and/or services. If there is uncertainty in a business activity regarding the raw material, the company's operational activities will experience a hiccup. To avoid this, business actors use vertical integration agreements as a measure to minimize the occurrence of uncertainty over the supply of raw materials in goods and/or service companies.

Finally, the vertical integration agreement is carried out as a step for business actors to enlarge the company, expand production marketing, and increase the profit on the sale of goods and/or services. In general, to increase an income can be done by carrying out production at full capacity. However, it is not certain that it will bring many benefits to the company, especially with various risks of loss if the increase in production was not followed by an increase in company income. So this vertical integration agreement is the choice of business actors with the consideration of having the least risk of failure. This can be done by business actors by merging or integrating with other companies.

A vertical integration agreement between business actors can be made to mutually expand the scope of business for each business actor conducting integration or merger (BCSC, 2010, p. 9).

This vertical agreement is then used by the companies as a way to cover up those weaknesses with the aim to gain greater benefits for the production process they do. Not only that, this vertical agreement can also be used to strengthen companies in marketing their product and attract more consumers to use the company's product.

This is something that is regulated in the Business Competition Law, which is by creating restrictions on the usage of vertical agreement among business actors. In order to conclude that when a business actor, who controls several business units in the relevant market, is deemed to have carried out vertical integration prohibited by competition law, then it must comply with the elements contained in the Article 14 of the Business Competition Law as follows.

2. Case Analysis

2.1 Elements

2.1.1 Element of business actors

Business Competition Law has clearly explained the definition of business actors in the Article 1 para 5, which states that business actors shall be any individual or business entity, either incorporated as a legal entity or not, which is established and is domiciled or performs activities in the jurisdiction of the Republic of Indonesia, either individually or collectively based on agreement, conducting various business activities in the field of economy.

Regarding Case No. 13, Grab Indonesia is a business actor that provides online transportation applications. Therefore, the elements of business actors in that decision are fulfilled.

2.1.2 Element of agreement

Based on Article 1 para 7 Business Competition Law, agreement is defined as the act of one or more business actors to bind themselves with one or more other business actors under any name, whether in written or unwritten form. The main principle in agreement making is freedom of contract principle where everyone is free to determine what they are agreed to when entering into an agreement as long as the agreement is made legally (based on the provisions in Civil Code), contains goodwill from the parties, and does not violate public order and ethics.

However, in fact, the freedom of contract principle is restricted and cannot be applied purely in certain circumstances due to certain restrictions, rules, and norms that need to be followed (Anand, 2010). Zulfiani (2016, p. 231), in his book, titled "*Menuju Hukum Perikatan Indonesia",* stated that the implementation of the freedom of contract principle is determined and recognized by law in the statutory level, which is Civil Code.

Therefore, only laws that are in a higher level or more specific have the legal power to limit the implementation of the freedom of contract principle (Zulfiani, 2016, p. 231). This is something that is regulated by Business Competition Law with the purpose that a balance can be achieved between the interests of business actors and the interests of the public, by the implementation of the freedom of contract principle in particular.

The elements of agreement in this decision is fulfilled as it was proven by the existence of a binding agreement between Grab Indonesia and PT TPI that was signed by the same person, namely Stephanus Ardianto Hadiwidjaja as Director of Grab Indonesia and Director of PT TPI on 5 June 2017.

The contents of the written agreement state the rights and obligations of each party. In addition, there is also another written agreement, which is an agreement on vehicle rental cooperation for driver service providers made by PT TPI with driver partners. From this case, it was also found that there was an unwritten agreement which is an agreement related to the loyalty program between Grab Indonesia and PT TPI. This was proven by the notification letter from Grab Indonesia to PT TPI.

2.1.3 Element of other business actors

Other business actors are business actors that are in a series of production or operations at both the upstream and downstream levels. In this case, PT TPI is another business actor who makes an agreement with Grab Indonesia, as previously explained. Therefore, this element is also fulfilled in the decision.

2.1.4 Element controlling the production of several goods

Based on the explanation of Article 14 Business Competition Law, what is meant by controlling the production of a number of products in a series of production or usually called by vertical integration is control of a series of production processes for certain goods from upstream to downstream or a continuous process of certain services, either in a direct or indirect series, done by business actor.

There are two mechanisms of controlling production, which are upstream mechanism and downstream mechanism. If the business actors integrate several units in the supply of raw material for the main products, that is what we call as vertical integration in the upstream level. A binding agreement is made between a business actor and another business actor who acts as the supplier.

Meanwhile, vertical integration in the downstream level integrates several activities that lead to the provision of the final product in terms of distribution to the final consumer. Integration is carried out between a business actor and another business actor who acts as the buyer.

The fulfillment of this element is shown by the existence of control in online rental transportation services by Grab Indonesia and PT TPI where Grab Indonesia acts as an online transportation application provider that connects drivers with consumers. While PT TPI, as a party who runs the series of production, is one of the companies affiliated with Grab Indonesia that provides vehicles for the drivers in Grab Indonesia.

2.1.5 Element of series of production of certain goods and/or services

2.1.5.1 Element of series of production

Regarding the decision, the content of the agreement between Grab Indonesia and PT TPI regulates the merging of several or all successive operating activities in a series of production, either in a direct or indirect series.

In this series of production, the agreement that has been stated in the decision, is related to the provision of application until the offering of services to the passengers. Therefore, this element is also fulfilled.

2.1.5.2 Elements of goods and/ or services

Goods shall be any physical objects, either tangible or intangible, movable or immovable, which can be traded, used, utilized or exploited by consumers or business actors. While, services shall be any services in the form of work or performance traded in society with the purpose of being utilized by consumers or business actors.

In this case, there is no good that is used as the object of the series of production. Rather, it is in the form of special rental transportation services in the Jabodetabek, Medan, Surabaya and Makassar areas that occur in the cooperation relationship between Grab Indonesia and PT TPI.

2.1.6 Element of unfair business competition and/or harmful to society

The element of unfair business competition is contained in almost all the articles of the Business Competition Law because basically the law deals with the competition in the business world which often creates unfair business competition practices. This can be seen from the behavior of business actors who are dishonest, against the law, or obstructing business competition in relation to production and/ or marketing activities of goods and/ or services.

By doing so, the Business Competition Law provides three indicators that state an unfair business competition, namely a dishonestly operated business competition, a business competition conducted against the law, or business competition utilized by inhibiting competition among business actors.

Business competition managed dishonestly refers to the absence of goodwill from business actors. However, this action is an act against the law because it can unfairly harm business competitors and harm consumers (Galuh, 2013, p. 71). Meanwhile, violation of the prevailing rules and regulations or agreed-upon regulations are indicators of unfair business competition.

Apart from having an impact on competing business actors, vertical integration also affects society. There are conditions where people have to bear costs due to unfair competition, such as when product prices become unreasonable, when quality of goods/services are low, product choices are limited or scarcity, and decreased welfare (KPPU, 2010, p. 6)

The form of unfair business competition shown in the case is the involvement of Grab Indonesia in the production chain. From this production series, Grab Indonesia's actions towards PT TPI indicate a difference in treatment between PT TPI and its competitors. The connection between vertical integration terms with treatment differences in this case is shown with the existence of unwritten agreement related to the loyalty program between Grab Indonesia and PT TPI as a party who runs the series of production. The loyalty program itself provides the drivers who partnered with PT TPI with many advantages, which give drivers the opportunity to own the car that they rent from PT TPI if they have been loyal to using the Grab application and have continued to partner with PT TPI for 5 years. Therefore, with the existence of an unwritten agreement related to the loyalty program between Grab Indonesia and PT TPI, it is possible that there will be different treatment between Grab Indonesia towards drivers who are partnered with PT TPI and those who are not. Thus, this resulted in creating an unhealthy business competition between PT TPI and its competitors. The Loyalty Program is the evidence that existed between Grab Indonesia and PT TPI, which significantly influences drivers to join PT TPI compared to its competitors.

3. Vertical Integration Impact Assessment

As previously mentioned, vertical integration can have a positive impact on market actors. In the case of unfair business competition, it is necessary to prove that the existing vertical integration agreement is an agreement that has a negative impact. Therefore, to assess whether a contract is a form of vertical integration agreement with adverse effects, it is necessary to analyze the vertical integration agreement's anti-competitive impact. The analysis has 3 (three) stages, namely:

3.1 Capability Analysis

In the capability analysis, what becomes the assessment material is the ability of business actors to take advantage of market share (market power), both in the upstream and downstream markets, by blocking access for competing business actors to increase production costs so that it affects consumers (BCSC, 2010, p. 18).

Based on PT Grab Teknologi Indonesia. vs PT Teknologi Pengangkutan Indonesia. [2019] KPPU 13, apart from other digital platform-based service providers engaged in transportation services, Grab Indonesia has a market share of 70% in the form of special rental transportation services using the Grab application (p. 462). Through this application, Grab Indonesia is considered to be superior in competition among its competitors. However, considering that the digital era is developing very rapidly, where this is also an opportunity for its competitors, Grab is trying to maintain and increase its market share through proper branding strategy and application. This is done by entering into a vertical integration agreement with PT TPI. Based on the agreement between the two, PT TPI will recruit drivers who will become Grab drivers by carrying out persuasive promotions, both by PT TPI itself and by Grab Indonesia. As a result, Grab Indonesia's market share is getting bigger, considering that drivers who use the Grab App will increase significantly.

With such a large market share, Grab Indonesia has the potential to shut down market access at the downstream level. The closure of entry at the downstream level impacts business competitors of PT TPI. They are also partnering with Grab Indonesia by having access barriers to enter into similar agreements or collaborations. These competing business actors will get a lower and less efficient position than PT TPI, which successfully agreed with Grab Indonesia. This impacts higher costs for business actors that compete with PT TPI in the form of losses. This happened when Grab promoted PT TPI as its partner and included the Loyalty Program and the Gold Captain Program. Automatically, prospective drivers who do not own a four-wheeled vehicle and want an incentive in the form of buying a car, as promoted, then the choice only falls to PT TPI, which has the program.

3.2 Incentive Analysis

The next step that needs to be analyzed is whether the company has an incentive to take anti-competitive action. It should also be noted whether these incentives can bring increased profits for the company. In this case, Grab Indonesia agreed to provide particular incentives (bonuses) for PT TPI partners if they have been loyal to Grab Indonesia and PT TPI for five years or more. The incentive can be used to purchase one unit of PT TPI's car. The incentive strategy implemented by Grab Indonesia can attract an increase in the number of prospective drivers who want to become partners with PT TPI compared to other Grab Indonesia partners.

PT TPI's partners are given incentives through the Diamond (Berlian) System. In the Diamond System in Jakarta Metropolitan Area, the driver completes one trip of under 5 kilometers, so he is entitled to 7 diamonds, while he terminates one trip over 5 kilometers so that he can reach 18 diamonds. A new driver can receive an incentive of IDR 100,000 for a driver who obtains 85 diamonds, which is the same as 12 trips under 5 kilometers and five trips over 5 kilometers on that day. Based on these calculations implies that the benefits that Grab Indonesia gets through increasing productivity are that the driver is greater than the costs incurred by Grab Indonesia.

3.3 Consumer Impact Analysis

The consumer impact analysis indicates an anti-competitive action that harms consumers. By doing so, the positive impact arising from efficiency must also be taken into account to judge whether consumers are getting better or worse. Therefore, the consumer impact analysis must be compared between the anti-competitive impact on the pro-competition impact (BCSC, 2010, p. 19).

Basically, a prohibited vertical integration agreement is an agreement that aims to control several products that may result in unfair business competition. On this basis, a contract entered into by a company should not harm society and/or an anti-competitive impact. For example, with the holding of this vertical integration agreement, a company producing either goods and/or services cannot control the price of a good and/or service, aiming to take advantage only and harm society as a consumer.

Based on the provisions, the agreement by Grab Indonesia and PT TPI is not allowed to take a margin fee from the initial production process to the final production process which is too high for the end consumer to issue. If this happens, the multiple margin costs from the production process to distribution to the final consumer can cause the selling price to be very high without being able to be controlled by Grab Indonesia. This high price can then have an impact on decreasing the purchase of the company's products by end consumers.

In Article 14 of the Business Competition Law, there is one element, namely controlling production. As mentioned above, the element of controlling a production is aimed at controlling a series of production processes for certain goods from upstream to downstream or the continuing process of a certain service by certain business actors.

In practice, vertical integration is carried out to produce goods and services with better quality and lower costs borne by society. This is of course a positive impact that can be felt by consumers as users of goods and/or services of a company that practices vertical integration in their business activities. In addition, the control of production exercised by the company in this vertical downstream integration agreement benefits consumers in terms of giving discounts or bonuses, or adding after-sales services (BCSC, 2010, p. 12). This is because companies and distributors who enter into vertical integration agreements will think about a good marketing strategy that aims to attract interest and increase purchases from end consumers.

The rental transportation services provided by Grab Indonesia provides two product services, namely the provision of an application called the Grab App and driver services. In supplying its main services, Grab Indonesia is working with PT TPI to supply cars and drivers who are partners of PT TPI In terms of the benefits obtained by end consumers, consumers get many benefits from the Grab application, namely the ease of connecting end users with drivers for transportation to certain destinations. In addition, it is not uncommon for end users or consumers to get promotions in using transportation services to certain destinations as a form of marketing strategy carried out by Grab Indonesia in attracting more end users or consumers.

Based on the analysis conducted by BCSC's Commission Councils as stated in Case No. 13, the agreement between Grab Indonesia and PT TPI is a form of vertical integration agreement, where Grab Indonesia provides an application platform to expand PT TPI's market share in the field of a passenger transportation service business, while PT TPI provides four-wheeled vehicles and drivers to help run Grab Indonesia's online transportation business. In accordance with the aforementioned analysis, Commision Councils finally decided to declare Grab Indonesia and PT TPI have been proven legally and convincingly violated Article 14 of Business Competition Law. Violation of the related article then resulted in the penalty of Grab Indonesia to pay a fine of Rp7.500.000.000,00 (seven billion five hundred million rupiah) and PT TPI has to pay a fine of Rp4.000.000.00,00 (four billion rupiah).

CONCLUSION

The Business Competition Law was born as an embodiment of the fifth principle of Pancasila, namely "social justice for all Indonesian". Previously, there was no legal product that comprehensively regulates the prohibition of monopoly and unfair business competition in society. Apart from that, the monetary crisis is considered as an initial milestone that gives urgency to law enforcers to immediately form laws that are just for all levels of society. This is because one of the causes of the monetary crisis at that time was that there were still many previous government policies that tended to favor only a few groups of society.

Case No. 13 states that Grab Indonesia and PT TPI have conducted unfair business competition, which violates the provisions of Article 14 of the Business Competition Law about Vertical Integration. Grab Indonesia in this case acts as a business actor that provides an online transportation application that connects drivers with consumers. Meanwhile, PT TPI acts as another business actor providing special rental transportation services. The two parties are proven to have entered into an agreement related to the loyalty program.

The decision stated that Grab Indonesia and PT TPI complied with all the elements contained in Article 14 of the Business Competition Law on Vertical Integration. These elements consist of elements of business actors, agreements, other business actors, controlling the production of a number of products, a series of production of certain goods and/or services in which each series of production is the result of processing or further processing in one direct or indirect series, and resulting in unfair business competition.

In order to prove the fulfillment of the above elements, it is necessary to conduct an assessment that the vertical integration agreement between the two business actors has caused a negative impact on business competition. BCSC in the Guidelines on Vertical Integration explains the assessment of the impact of vertical integration which includes three stages of analysis, namely capability analysis, incentive analysis, and consumer impact analysis.

However, according to the author's opinion, the compliance of the vertical integration element where business actors control the production chain is not fulfilled because it is proven that PT TPI's market share is only around 6% in the Greater Jakarta area and below 3% outside the Jabodetabek area. Meanwhile, according to Article 4 paragraph (2) of the Business Competition Law, it is written that market share control occurs when business actors control more than 75% of the market share of a certain type of goods or services. Therefore, the author does not agree with the Decision on Case No. 13 issued by the Commission Council.

In order to prevent the problem of integration vertical from resurfacing, it is best if BCSC becomes one of the parties that is wholly included in formulating the laws that regulate business competition in Indonesia, both on a national and regional scale. Given to know that BCSC is the monitor of this matter. This must be implemented because prevention will be more effective than imposing the sanctions. Thus, the relationship between BCSC and the forming legal institutes can be more prominent and dynamic. By that way, the negative impacts that may occur from the practice of integration vertical such as eliminating the element of fair competition in the market, limiting the production, and increasing prices, can be more easily identified and overcome.

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