Natural Monopoly or Monopoly by Law for State-Owned Enterprises

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Abstract. State-Owned Enterprises which were formed on the basis of the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia, in their journey of carrying out activities in various business fields obtain purchases to carry out monopolies. This exception is further strengthened by Article 51 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. In general, there are natural monopoly and monopoly by law. This paper contains a review of the proper implementation of monopoly for State-Owned Enterprises (SOE’S), as well as business policies implemented by State-Owned Enterprises (SOE’S) so as not to violate provisions related to business competition, the policies referred to are Clusterization, Synergy and Holding. So that in the end the right formula will be found regarding Monopoly Rights from State-Owned Enterprises (SOE’S) correctly, so that both these state-owned enterprises progress because of their Quality (Natural Monopoly) and not only rely on constitutional provisions which provide rights for state-owned enterprises to Monopoly by Law.

1 Introduction

The fact that State-Owned Enterprises (SOEs) may exercise a monopoly can be found in Article 33 of the 1945 Constitution. This provision is clearly contained in; paragraph (2) which states that "productive branches which are important for the state and affect the livelihood of the people at large are controlled by the state ", as well as paragraph (3) which states that: "Earth and air and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".[1] However, what we need to examine is regarding monopolistic practices that may not be carried out by all forms of business entities, including State-Owned Enterprises (SOE’S). The monopoly practice referred to here is a company strategy to eliminate competition.

There are several policies from State-Owned Enterprises (SOE’S) that we need to explore further because these policies have the potential to carry out monopoly practices.

The policies we will highlight are:

a. Synergy of State-Owned Enterprises (SOE’S);
b. Holding State-Owned Enterprises (SOE’S); And
c. Clusterization of State-Owned Enterprises (SOEs)

Because this policy has the potential to eliminate competition, which is no longer in line with the goals of State-Owned Enterprises (SOE’S), namely:

a. Economic goals mean that State-Owned Enterprises (SOE’S) are aimed at managing the business strategy of sectors so that they are not controlled by certain parties;
b. Goals that are social in nature can be achieved through job creation and efforts to revive the local economy.

If the concept of synergy, holding State-Owned Enterprises (SOE’S) and clustering State-Owned Enterprises (SOE’S) is carried out only between State-Owned Enterprises (SOE’S), it becomes contradictory because it will close the opportunity for Private Owned Enterprises to obtain projects from State-Owned Enterprises (SOE’S) or even compete with State-Owned Enterprises (SOE’S) in obtaining government projects. State-Owned Enterprises (SOE’S) synergy is a collaborative concept between several State-Owned Enterprises (SOE’S) working together to improve efficiency and synergy in various business aspects, such as procurement of raw materials, production, distribution and marketing. The aim of the State-Owned Enterprises (SOE’S) synergy is to achieve efficiency and reduce production costs, so as to increase the overall competitiveness and performance of State-Owned Enterprises (SOE’S).

Holding State-Owned Enterprises (SOE’S), on the other hand, is the concept of establishing a holding company that has majority shares in several State-Owned Enterprises (SOE’S) in a particular sector. Holding State-Owned Enterprises (SOE’S) aims to coordinate the activities of State-Owned Enterprises (SOE’S) in certain sectors, so as to increase the efficiency, performance and competitiveness of State-Owned Enterprises (SOE’S) in that sector.

Clusterization of State-Owned Enterprises (SOE’S) is a grouping of State-Owned Enterprises (SOE’S) to increase the efficiency and performance of State-Owned Enterprises (SOE’S) in a particular sector by building collaboration between several State-Owned Enterprises (SOE’S) in one cluster. In the clustering concept of State-Owned Enterprises (SOE’S), several State-Owned
Enterprises (SOE’S) that are interrelated and have different expertise are integrated into one unit that is more efficient and competitive.

The essence of the practice of the three is good Synergy, *Holding* nor *the cluster* is a collaboration between State-Owned Enterprises (SOE’S) whose essence is to strengthen the economy between State-Owned Enterprises (SOE’S) that are joined either in Synergy, *Holdings and Clusters*.

**Table 1** Synergy of State-Owned Enterprises (SOE’S) for Product Sales

<table>
<thead>
<tr>
<th>No.</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PT Pegadaian (Persero)</td>
</tr>
<tr>
<td>2</td>
<td>PT Garuda Indonesia (Persero) Tbk</td>
</tr>
<tr>
<td>3</td>
<td>PT Perkebunan Nusantara III (PTPN III) (Persero)</td>
</tr>
<tr>
<td>4</td>
<td>PT Savings and Pension Insurance (Taspen) (Persero)</td>
</tr>
</tbody>
</table>

This table contains Owned Enterprises (SOE’S) that are joined either in Synergy, Holdings and Clusters. Synergy of State-Owned Enterprises (SOE’S) for Product Sales [2]

**Table 2** Infrastructure Services Cluster

<table>
<thead>
<tr>
<th>No.</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PT Adhi Karya (Persero)</td>
</tr>
<tr>
<td>2</td>
<td>PT Semen Baturaja (Persero) Tbk</td>
</tr>
<tr>
<td>3</td>
<td>PT Brantas Abipraya (Persero)</td>
</tr>
<tr>
<td>4</td>
<td>PT Hutama Karya (Persero)</td>
</tr>
<tr>
<td>5</td>
<td>PT Jasa Marga (Persero)</td>
</tr>
<tr>
<td>6</td>
<td>PT Pembangunan Perumahan (Persero) Tbk</td>
</tr>
<tr>
<td>7</td>
<td>PT Semen Indonesia (Persero) Tbk</td>
</tr>
<tr>
<td>8</td>
<td>PT Waskita Karya (Persero) Tbk</td>
</tr>
<tr>
<td>9</td>
<td>PT Wijaya Karya (Persero) Tbk</td>
</tr>
</tbody>
</table>

This table contains Owned Enterprises (SOE’S) that are joined either in Clusters of State-Owned Enterprises (SOE’S) [3]

**Table 3** Holding State-Owned Enterprises (SOE’S) for Tourism (Induk Holding; PT: Aviasi Wisata Indonesia)

<table>
<thead>
<tr>
<th>NO</th>
<th>PT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PT Angkasa Pura I</td>
</tr>
<tr>
<td>2</td>
<td>PT Angkasa Pura II</td>
</tr>
<tr>
<td>3</td>
<td>PT Hotel Indonesia Natur (Persero)</td>
</tr>
<tr>
<td>4</td>
<td>PT Taman Wisata Candi Borobudur, Prambanan and Ratu Boko (Persero)</td>
</tr>
<tr>
<td>5</td>
<td>PT Sarinah (Persero).</td>
</tr>
</tbody>
</table>

This table contains Owned Enterprises (SOE’S) that are joined either in Clusters of State-Owned Enterprises (SOE’S) [4]

The essence of the practice of the three is good Synergy, *Holding* nor *The cluster* is a collaboration between State-Owned Enterprises (SOE’S) whose essence is to strengthen the economy between State-Owned Enterprises (SOE’S) that are joined either in Synergy, *Holdings and Clusters*.

1.1. Formulation of the problem

What about State-Owned Enterprises (SOE’S) Monopolies That Do Not Fight Business Competition?

1.2. Research purposes

To find out the monopoly settlement carried out by State-Owned Enterprises (SOE’S) and does not violate Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

2 Research Methods

The research method used in this research is normative legal research method. The normative legal research method is a scientific research procedure to find the truth based on the scientific logic of law from its normative side.[5] This research uses this method because this research was conducted on the enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition for State-Owned Enterprises or State-Owned Enterprises (SOE’S).

The approach used by researchers is the Statute Approach. This statutory approach conducts an assessment of the relevant laws and regulations related to the research being conducted.

3 Result And Discussion

What about State-Owned Enterprises (SOE) Monopolies That Do Not Fight Business Competition?

Competitive neutrality requires that government businesses through State-Owned Enterprises (SOEs) may not use their legislative or fiscal powers to make strategies profitable for their own businesses over the private sector. If governments benefit their businesses in this way, it will distort the competitive process and reduce efficiency, especially if the business of State-Owned Enterprises (SOEs) is technically less efficient than their private sector competitors. [6]

State-Owned Enterprises (SOE’S) or State-Owned Enterprises in the provisions of Article 1 point (1) of Law Number 19 of 2003 concerning State-Owned Enterprises, it is stated that State-Owned Enterprises (SOE’S) are business entities that are wholly or the capital is owned by the State through direct equity participation originating from separated State assets. [7] State-Owned Enterprises (SOE’S) were established as a form of government participation on the demands of Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that production branches which are important for the state and those who control the livelihood of many people is controlled by the state. It is on the basis of this article that, implicitly, in this case, State-Owned Enterprises (SOE’S) may exercise a monopoly over the
field of raw material production which controls the livelihoods of many people. Monopoly as a condition where there is only one seller who offers (supply) a particular good or service. [8] Pursuant to the provisions of Article 1 paragraph (1) of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, Monopoly is control over the production and or marketing of goods and or over the use of certain services by one business actor or one group businessmen. Meanwhile, monopolistic practices based on Article 1 paragraph (2) of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition state that monopolistic practices are the concentration of economic power by one or more business actors who resulting in the control of the production and or marketing of certain goods and or services resulting in unfair business competition and may be detrimental to the public interest. [9]

Monopolistic practices are activities that are prohibited because they can cause factors that will harm consumers and other business actors engaged in the same goods or services. [10] However, in the case of State-Owned Enterprises (SOE’S) carrying out a monopoly, it is permissible because of a rule of law and is obtained from the government, which is called Monopoly By Law, in the sense that State-Owned Enterprises (SOE’S) have monopoly rights but are not allowed to practice monopolies. This Monopoly By Law means that monopoly or control over a certain field of business is based or based on statutory provisions. This monopoly by law is based on several statutory provisions, including Article 33 of the 1945 Constitution of the Republic of Indonesia which essentially states that the branches of production which are important for maintaining the livelihood of people are mostly controlled by the state. In addition, there is a provision in Article 50 letter (a) of Law Number 5 of 1999 concerning Prohibition of Unfair Business Competition which contains several elements that must be met, namely:
- Actions and/or agreements;
- Aims to implement certain regulations;
- Certain regulations. [11]

Besides that, other provisions that discuss monopoly are Article 51 of Law Number 5 of 1999 concerning Unfair Business Competition which is the implementation and implementation in carrying out monopoly. This limitation is based on Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Pursuant to the provisions of Article 51 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, it states that monopoly and or the concentration of activities related to the production and or marketing of goods and or services which affect the livelihoods of many people as well as branches of production which important for the state to be regulated by law and organized by State-Owned Enterprises and or bodies or institutions established or appointed by the Government. Article 51 is very closely related to Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Efforts to avoid exploitation or forms of "monopoly by the state" which are not condoned are carried out by providing for the implementation of monopolies and/or centralization of production and/or marketing activities of goods and services which affect the livelihoods of many people and branches of production which are important for the state, the implementation of which is regulated by law. and organized by State-Owned Enterprises (SOE’S) and or other bodies or institutions established and or appointed by the government. [12]

Then Article 51 is a invention for monopoly carried out by State-Owned Enterprises (SOE’S) as well as a reinforcement of Article 33 of the 1945 Constitution. can be classified into 3 namely:
- Allocation, goods or services originating from natural resources;
- Distribution of community needs in general when they cannot be met by the market;
- Stable sasi.

However, there are important limitations that need to be considered by State-Owned Enterprises (SOE’S) that in discrediting the mandate of State-Owned Enterprises (SOE’S) the Constitution must also submit and comply with the provisions contained in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, because this law is not only aimed at the private sector but also includes State-Owned Enterprises (SOE’S) in it, so it needs to be underlined that State-Owned Enterprises (SOE’S) must and must subject to the provisions of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. This is very prone to occur in practice, so it is necessary to pay attention to the fact that 49 State-Owned Enterprises (SOE’S) were caught in cases of unfair business competition because since the establishment of KPPU there were around 49 State-Owned Enterprises (SOE’S) which have been examined and decided by KPPU. This means that around 15 percent of the cases in KPPU from 49 State-Owned Enterprises (SOE’S) involved cases of unfair business competition. It is clear that it is not only the private sector that has the potential for fair business competition, but State-Owned Enterprises (SOEs) are also quite likely to have fair business competition. Monopoly By Law carried out by State-Owned Enterprises (SOE’S) will be very different from what is called natural monopoly. If Monopoly By Law is carried out as a form of the existence of statutory provisions which require branches of production which concern the livelihoods of many people controlled by the state. While natural monopoly is a type of market monopoly that occurs naturally or naturally and sometimes cannot be detrimental. [13] Natural monopoly is a monopoly that is born because of a pure mechanism in the market. This monopoly was born fairly and naturally because of the objective conditions owned by a company, which caused this company to excel in the market without being adequately matched and defeated by other companies.
This natural monopoly can occur in two ways, namely:
- When one company reaps all the benefits of strict business restrictions in a particular field;
- Making goods and services in large quantities or on a large scale so that production costs can be reduced and more efficient.

This type of natural monopoly is actually open because other companies have the same opportunity to enter the same industry as long as these other companies can compete with superior companies, but in many cases these other companies cannot compete with superior companies in dominating the market, in the same type of industry.

A company can be said to be a natural monopoly because the products or services it produces only exist in certain areas, for example a Private Companies has authentic, unique and distinctive bags that are not owned by State-Owned Enterprises (SOE’S) companies or other Private Companies, so allows the company to monopolize the basic uniqueness and uniqueness of the company. Or another example PT. PLN Persero as an electricity provider company where other companies cannot so that PLN fully controls the electricity supply sector, besides being regulated by statutory provisions that electricity is a production branch that concerns the lives of many people. So in this case PT. PLN is still a company that excels in providing electricity and no other company can match it.

Technology that develops in terms of natural monopoly keeps up with the times and modernization, in the form of social media, search engines, and online retail. For example, the Facebook company has now turned into Meta, which also includes WhatsApp and Instagram.

Apart from that, Google and Amazon are also online services in searching for various information.

Our concern is with the unregulated natural monopolist. His market power flows from the cost and demand characteristics of the market in which he is selling, rather than from unfair or restrictive tactics or from legal privileges. Moreover, we shall see that the natural monopolist is well-situated to adopt a method of pricing discrimination that maximizes profit without necessarily restricting output. [15]

If we compare between State-Owned Enterprises (SOE’S) and the private sector, in the same position and circumstances it is very clear that State-Owned Enterprises (SOE’S) are far more dominant when compared to the private sector because State-Owned Enterprises (SOE’S) are business entities that there is no need to think about a really strong business strategy to dominate the market because the 1945 Constitution of the Republic of Indonesia has mandated State-Owned Enterprises (SOE’S) to control certain business sectors so that State-Owned Enterprises (SOE’S) should not need to violating the provisions of fair business competition considering that without committing any violation State-Owned Enterprises (SOE’S) have been destined to become King in certain business sectors. So there is no need to strengthen anything because the provisions of the Constitution are more than sufficient for State-Owned Enterprises (SOE’S) to control important business sectors, even State-Owned Enterprises (SOE’S) actually do not need to have really strong cooperation with State-Owned Enterprises (SOE’S) Others because State-Owned Enterprises (SOE’S) actually exist under special circumstances and strong reasons are supported by the mandate of the Constitution. In carrying out State-Owned Enterprises (SOE’S) business activities, it is also necessary to pay attention to what the real business sector is because in a State-Owned Enterprises (SOE’S) business there are often other businesses in it, such as PT Angkasa Pura whose business sector is related to aviation, which has monopoly rights in terms of airports, including the authority to carry out airport cooperation. In principle, airport services are the responsibility of the Airport Business Entity (BUBU) which cannot be separated, but BUBU in carrying out their activities can cooperate with other parties as long as they have the ability and competence in airport matters. M alias should only focus on flights considering that in an airport there are other supporting businesses such as canteens, supporting transportation, maintenance of parking lots and other services that are not so crucial that tenders must be carried out and State-Owned Enterprises (SOE’S) do not need to annexing the business sector outside of its main business. Related to ground handling at Ngurah Rai Airport, that PT. Angkasa Pura gave executive rights to PT. Execujet Indonesia as the party that manages ground handling services at Ngurah Rai Airport based on an agreement. That actually PT. Angkasa Pura and PT. Execujet Indonesia is carrying out State-Owned Enterprises (SOE’S) synergizes, this is based on consideration of the competence possessed by PT. Execujet Indonesia regarding the management of ground handling services which is in line with the provisions of Article 233 paragraph (1) Law Number 1 of 2009 in conjunction with Article 30 PP Number 70 of 2001.

That the KPPU has decided on this case in case decision number 13/KPPU-I/2014, which states that the agreement made between PT. Angkasa Pura and PT. Execujet Indonesia had to be canceled due to fears that there would be a monopoly on the executive rights granted to PT. Execujet Indonesia. Executive rights owned by PT. Execujet Indonesia can set prices/tariffs that are quite high on Ground Handling services and other related services. Which in the end will result in unfair business competition. The collaboration between PT. Angkasa Pura and PT. Execujet Indonesia remains in the corridor that it must do, PT. Angkasa Pura should not give executive rights to PT. Execujet Indonesia, because PT. Angkasa Pura which has monopoly rights related to airports, the cooperation is only as needed by PT. Angkasa Pura without granting executive rights which are considered too broad, so that the business competition being conducted is healthier and the synergy of State-Owned Enterprises (SOE’S) is in line with its objectives.

As is the case with Pertamina whose main business is h ene gas and gas which are natural resources and must be carried out by State-Owned Enterprises (SOE’S). However, Pertamina also owns the Pertamina Hospital, which will reduce the Private Companies market, whose main business is in the health sector, to gain profits in the
health business for healthy business competition. This needs to be considered and rearranged to improve fair business competition.

**How can State-Owned Enterprises (SOE’S) continue to monopolize but not kill the private sector?**

Business competition in simple terms can be interpreted as two or more business actors competing with each other to achieve goals in a particular business. Business competition in this case can take 2 forms, namely:

- Fair business competition;
- Unfair competition.

Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition applies to all business actors including State-Owned Enterprises (SOE’S) and Private Companies. As we know, there are not only state-owned enterprises or State-Owned Enterprises (SOE’S) but also private-owned enterprises or Private Companies. Both of course carry out business competition to achieve their respective objectives in the field of business, namely to gain profit.

In the context of State-Owned Enterprises (SOE’S) and Private Companies, both compete fairly but in essence, both are in different positions because State-Owned Enterprises (SOE’S) are in a dominant position compared to Private Companies because legally, State-Owned Enterprises (SOE’S)) is granted the right by the constitution to exercise a monopoly on trade in certain business sectors. This is enough to say that State-Owned Enterprises (SOE’S) are in a dominant position when compared to Private Companies.

Synergy, **Holding** and State-Owned Enterprises (SOE’S) **Clusters** are all three collaborations between State-Owned Enterprises (SOE’S) whose essence is to strengthen the economy between State-Owned Enterprises (SOE’S) and Private Companies. As we know, there are not only state-owned enterprises or State-Owned Enterprises (SOE’S) but also private-owned enterprises or Private Companies. Both of course carry out business competition to achieve their respective objectives in the field of business, namely to gain profit.

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5 Recommendation

Monopoly by law cannot be used as an excuse for State-Owned Enterprises to carry out monopolistic practices, because this will damage the climate for fair business competition. Eliminating monopolies related to industries that are important to society is indeed impossible, but State-Owned Enterprises are forced to be more efficient, more effective and capable of mastering sophisticated technology, it is a must. So in general SOEs are expected to carry out corporate strategies aimed at achieving a natural monopoly.

6 Reference

[7] Article 1 point (1) of Law Number 19 of 2003 concerning Agency State Owned Enterprise
[9] Article 1 paragraph (1) and (2) of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition