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Dumping Practices and Competition as Double-edged Sword: Indonesia Practices

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DUMPING PRACTICES AND COMPETITION AS DOUBLE-EDGED SWORD: INDONESIA PRACTICES

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Abstract

Dumping practices are typically related to business competition, namely predatory pricing. Other state predatory pricing practice in Indonesia lead to loss to Indonesia Economic. The issue under consideration is how the practice of dumping is viewed through the perspectives of business competition law and international trade law, as well as how the Indonesian Commission for the Supervision of Business Competition (KPPU) handles this issue. This article examines and analyzes the relationship between dumping behavior and business competition, as well as the authority with which institutions will handle predatory pricing caused by dumping behavior. The results of the analysis show that dumping is a violation of international trade law under the World Trade Organization (WTO). If the Indonesian Anti-Dumping Committee (KADI) discovers dumping practices, the party will be subject to sanctions in the form of Anti-Dumping Import Duty (BMAD). Aside from that, selling below market prices or carrying out predatory pricing will hinder fair competition from the perspective of competition law. Dumping practices benefit consumers in the short term but harm consumers and similar competing industries in the long term. If the aim is to eliminate competitors, of course, this is unhealthy competition and falls under the supervision and authority of KPPU to enforce the law. This article only focuses on when the dumping practices can become predatory pricing from competition law perspective and who will handle the case.

Keywords: Dumping; Competition Law; Predatory Pricing.

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I. INTRODUCTION

The process of globalization in various fields as well as developments in technology and information are causing symptoms of the unification of the economies of all countries and nations. It also creates business beyond the national jurisdiction.[1] There is an interdependent relationship

[1] Mikaila Jessy Azzahra and Yetty Komalasari Dewi, "Re-examining Indonesia's Nickel Export Ban: Does it Violate the Prohibition to Quantitive Restriction?" *Padjajaran Journal of International Law* 6, no. 2, (2022): 80.

and integration of the national economy into the global economy. This process occurs concurrently with the operation of market mechanisms, which are imbued with competition. Unfair competition between business actors is frequently encouraged, both in the form of price and non-price competition. In the form of price, for example, there is price discrimination known as dumping. Dumping is a type of non-tariff trade barrier that involves price discrimination. Moreover, to aim trade protection represents "firms employ to create barriers for foreign competitors and improve the firm's performance"[2].

The dumping issue is a substance in the realm of rule-making that will become increasingly important for developing countries as they increase non-oil and gas exports, particularly in the manufacturing sector. The act of engaging in dumping practices is considered unfair because it must be rewarded with certain sanctions. However, it should be mentioned that determining what is fair or unfair in the field of trade is difficult. For certain people or groups, an act may be regarded as fair, whereas for others, the same action may be considered unfair. It depends on where we stand to determine whether an action is fair or unfair.

The practice of dumping is an unfair trade practice.[3] This is because dumping practices will cause harm to the domestic business or industry of similar goods in importing countries, with the occurrence of a flood of goods from exporters whose prices are significantly lower than domestic goods, resulting in similar goods being unable to compete. In the end, it will eliminate the country's market for similar goods, resulting in side effects such as mass layoffs, unemployment, and the bankruptcy of the domestic similar goods industry. In other words, the nature of dumping as a fraudulent practice is not limited to the fact that it is utilized to seize markets in other countries. The practice of slashing prices can result in

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[2] Sarah J. Marsh, "Creating Barriers for Foreign Competitors: A Study of the Impact of Anti-Dumping Actions on the Performance of U.S. Firms," *Strategic Management Journal* 19, no. 1 (January 1998): 25, DOI: 10.1002/(SICI)1097-0266(199801)19.

[3] Eunike Trisnawati, Mochammad Farisi, and Doni Yusra Pebrianto, "Implikasi Pencegahan Dumping sebagai Unfair Trade Practices terhadap Negara Berkembang [Implications of Dumping Prevention as Unfair Trade Practices for Developing Countries]," *Uti Possidetis* 1, no. 3, (2020): 262.

undermining or even killing domestic companies that produce similar products.[4]

This action requires the government of a country to impose certain restrictions on various business practices. These restrictions are in the form of numerous laws and regulations that explicitly include various actions as prohibited acts that can potentially be classified as crimes.

One of the obstacles imposed is a tariff barrier that will have an impact, namely the application of price discrimination between the domestic market of the exporting country and the foreign market of the importing country. Price discrimination, for example, is the application of lower pricing for export commodities supplied to foreign markets of importing countries as opposed to the normal prices applied to the domestic markets of exporting countries, which is an example of a basic form of dumping.

Indonesia faces numerous major challenges in the context of global competition. These concerns involve competitiveness in the following areas:[5]

(1) domestic products against products imported by fellow member countries,

(2) domestic products against non-member imported products, and

(3) products covered by preferential tariff schemes with products from global markets.

The issue discussed in this research paper is how the convergence of dumping and business competition practices is viewed from the perspective of competition law and who is the authorized institution Indonesia to resolve the problem.

Based on the previous research has found that as a general rule, anti-dumping can be categorized as a predatory pricing practice with

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[4] Sukarmi, *Regulasi Antidumping Di Bawah Bayang-Bayang Pasar Bebas* [*Anti-Dumping Regulations under Free Trade*] (Jakarta: Sinar Grafika, 2002), 7.

[5] Huala Adolf, An An Chandrawulan, *Pengantar Filsafat Hukum* [*Introduction to Philosophy of Law*] (Bandung: Keni Media, 2019), 2.

regards to its indicators and effects.[6] However, the legal consequences and implications of the two are different.[7]

Thus, existence of antidumping law hurts competition both ways, one by forcing exporters to sell at higher prices and other by providing the domestic producers the freedom to charge higher prices than what would be otherwise possible. Thus, inherently antidumping law can be said to be protectionist because it benefits domestic producers at the expense of consumers by limiting foreign competition and is thereby in direct conflict with the objectives of competition law. Very often firms misuse antidumping laws by initiating frivolous investigations.[8]

This article will discuss about the Type of dumping for the first part and for the second part respond of KPPU and KADI regarding Dumping in Indonesia. The third part will discuss about The Convergence of Dumping Practices and Pricing Policies in Indonesia.

This article employs doctrinal legal research methodologies, also known as normative legal research, along with statutory, conceptual, and case approaches. The primary sources of legal materials used in this article are library materials and statutory regulations. In this case, the accumulated legal material comes from the library, specifically in the form of scientific papers, online media, books, and laws and regulations. The statutory approach includes all laws and regulations related to the legal issues discussed in this article. The conceptual approach refers to dumping, anti-dumping, fairness, and unfairness concepts offered by scholars or legal theories relating to the topic in this study.

This scientific article employs the following legal materials: a) Primary legal materials, which include the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 17 of

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[6] Ray Trewin and Malcolm Bosworth, "Anti-Dumping Measures: The Case of Indonesian Exports During the Crisis," *Bulletin of Indonesian Economic Studies* 35, no. 1 (1999): 136, DOI: 10.1080/00074919912331337537.

[7] Zaid, Rininta Gustiyani and Andita Hilmi Kirana, "Can An Anti-Dumping Policy Be Substituted For Predatory Pricing?" *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 185, DOI: 10.37680/almanhaj.v4i2.1683.

[8] Aprajita Bhargava, "Antidumping and Competition Law: A Critique," *International Journal of Legal Developments and Allied Issues* 8, (2022): 28.

2006 on Customs and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and KPPU's decision. b) Secondary legal materials, which are legal materials that have a close relationship with primary legal materials and contain explanations about primary legal materials, in this case in the form of references related to unfair business competition or even opinions put forward by scholars regarding predatory pricing, dumping practices in business activities, and scientific journals. c) Tertiary legal materials, which include legal dictionaries and encyclopedias, as well as publications that explain primary legal materials and secondary legal materials.

II. DUMPING ACTIVITY

Dumping is the practice of selling a commodity in a foreign or international market at a price lower than its fair value. In this instance, the price level is usually deemed to be lower than the price level in one's own country's domestic market or in a third country. Dumping can be considered a form of predatory pricing. Dumping is one of the activities used by a product exporting country to sell its goods to another country at a lower price than the price in the exporting market for the same product. Dumping is a business practice in which a trader engages in unfair competition.[9] This is because dumping activities can directly harm domestic enterprises in importing countries.[10]

Dumping can also be interpreted as a form of pricing discrimination.[11] For example, a producer sells in two different marketplaces at different prices due to market obstacles and differing elasticities of demand between the two markets. In economics, dumping is traditionally defined as selling at a lower price in one national market than in another.[12] In

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[9] Paul R. Krugman, Maurice Obstfeld, and Marc J. Melitz, *International Economics: Theory and Policy*, Tenth Edition (New York: Pearson, 2015), 237.

[10] Kagramant L. Budi, *Hukum Persaingan Usaha* (Sidoarjo: Taman Surya Agung, 2015), 157.

[11] Owais Khan, "Interface Between Antidumping And Competition Law: A Critical Analysis," *Bharati Law Review*, (2016): 132.

[12] John H. Jackson, William J. Davey, Alan O. Sykes, *Legal Problems of Economics International: Cases, Materials and Tax*, Second Edition (United States: West Academic, 2008), 654-655.

general, this practice is considered unfair because it has the potential to harm the market and competitive producers in the importing country.

According to the definitions above, it is dumping if it meets the following three criteria:

(1) The export products of a country have been exported by dumping.

(2) Material losses have occurred as a result of the dumping.

(3) There is a causal link between the dumping carried out and the resulting injury.

There is currently no law that clearly governs the legal basis used to determine the occurrence of dumping practices as a follow-up to the ratification of the WTO Formation Agreement, as stated in Law No. 7 of 1994. Dumping regulations are currently included in Law No. 10 of 1995 concerning Customs (Articles 18, 20), Government Regulation No. 34 of 1996 concerning Anti-Dumping Import Duty (BMAD[13]) and Compulsory Import Duty as material legal provisions, followed by provisions or technical instructions from the Indonesian Minister of Industry and Trade (hereinafter referred to as Kepmenperindag) No. 216/MPP/Kep/9/1996 as amended by Kepmenperindag No. 216/MPP/Kep/7/2001 as procedural (formal) provisions and provisions for the formation of the Indonesian Anti-Dumping Committee (KADI) based on Kepmenperindag No. 427/MPP/Kep/10/2000 and Kepmenperindag No. 428/MPP/Kep/10/2000 and the KADI staffing structure based on the Decree of the Chairman of KADI No. 346/KADI/Kep/10/2000. Judging from the legal provisions both material and formal as mentioned above, dumping is included in the international trade regime.

[13] Idha Mutiara Sari, "Dispute Settlement of Anti-Dumping Legal Aspects in Indonesia Based on GATT/WTO Provisions (Allegations Case Study of Dumping Wood Free Copy Paper Between South Korea and Indonesia," *Lampung Journal of International Law* 2, no. 2 (2020): 92.

A. THE RESPONSE OF KPPU AND KADI TO DUMPING BEHAVIOR

1. Dumping in International Trade Practices

Dumping is often classified into three types by economists: sporadic dumping, persistent dumping, and predatory dumping. Furthermore, the terms diversionary dumping and downstream dumping have emerged.

a. Sporadic Dumping

Sporadic dumping is dumping that occurs when goods are sold on the foreign market (export market) in a short period at a price lower than the domestic price of the exporting country or the cost of producing the goods. Typically, producers sell goods for a limited time at a lower-than-usual price to write off unwanted goods. Because of the uncertainty caused by rapid changes in demand abroad, this sort of dumping can damage the exporting country's domestic market.

This type of dumping involves price discrimination at a specific time carried out by manufacturers who benefit from overproduction. To avoid the accumulation of goods in the domestic market, companies sell their excess production to foreign buyers at a lower price than the domestic price.

b. Persistent Dumping

Persistent dumping, also known as international price discrimination, is the sale of goods on foreign markets at prices lower than domestic prices or production costs that are carried out permanently and continually and are a continuation of past sales. This sale is conducted by goods manufacturers who have a monopoly market in the country to maximize their total profits by selling these goods at a higher price in their domestic market.

c. Predatory Dumping

Predatory dumping occurs when a company temporarily discriminates against specific pricing due to the presence of foreign buyers. Discrimination is the practice of eliminating competitors and then raising the price of goods after the

competition has vanished.[14] Predatory dumping is the worst type of dumping because it is practiced for the sole purpose of seizing monopoly profits and limiting trade for a long period, even if it causes short-term losses.[15]

d. Diversionary Dumping

Diversionary dumping occurs when foreign producers sell their goods to third-country markets at prices lower than the fair price, and these goods are then processed and exported to markets in other countries.

e. Downstream Dumping

Dumping occurs when a foreign producer sells its product at a lower-than-normal price to other producers in the domestic market, and the commodity is then processed and exported for resale to markets in other countries.

According to Robert Willig, it is reviewed based on the objectives of the exporter, market power, and the structure of the import market, as follows:

a. Market Expansion Dumping

Exporting companies can benefit by setting a lower "markup" in the import market because they face a greater elasticity of demand as long as the price offered is low.

b. Cyclical Dumping

The motivation for this type of dumping arises from the presence of extremely low or ambiguous marginal costs, sometimes associated with conditions of excess production capacity apart from manufacturing the related product.

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[14] James C. Hartigan, "Predatory Dumping," *Canadian Journal of Economics* 29, no. 1 (1996): 232.

[15] H.S Kartadjoemena, *GATT dan WTO : Sistem, Forum dan Lembaga Internasional Di Bidang Perdagangan* [*GATT and WTO: Systems, Forum, and International Organisation Trade*] (Jakarta: Universitas Indonesia Press,1996), 91.

c. State Trading Dumping

The background and motivation may be the same as in other dumping categories, but the monetary acquisition stands out.

d. Strategic Dumping

The term was initially used to describe exports that harm competing enterprises in the importing country as part of the overall strategy of the exporting country, either by cutting export prices or limiting the entry of the same product into the market of the exporting country. If each independent exporter's portion of the domestic marketplace is substantial enough in terms of economies of scale, they will benefit from the high costs that foreign competitors must incur.

Competition between business actors is essential in the business and economic sectors. Business competition can be observed from two perspectives: the business actor's or producer's perspective and the consumer's perspective. From the standpoint of the producer, business competition refers to how companies determine their competitive strategy, whether it is mutually beneficial or mutually detrimental. Meanwhile, from the consumer's perspective, business competitiveness is related to how high the price is and how many options are available. Both of these elements will influence the level of consumer or societal welfare. As a result, improving the welfare of individuals by raising the welfare of consumers and producers is one of the purposes of competition policy.

Due to the demands of the free market and globalization, Indonesia enacted Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition to develop an efficient economy.[16] The enactment of this law will certainly affect internal and external trading practices in Indonesia, resulting in better company practices and increased economic efficiency. There are two types of efficiencies to be achieved by the law, namely efficiency for producers and efficiency for society.

[16] Ratna Sumirat and Rianda Dirkareshza, "The Implementation of Pre-Merger Notification in The draft Law on The Prohibition of Monopoly Practice and Unhealthy Business Competition in Indonesia," *Brawijaya Law Journal* 8, no.1 (2021): 71.

In order for competition to occur, the national economic policies of developing countries must first establish a functional market and price mechanism. It involves the provision of as much free market access as possible while also providing incentives to increase the number of national entrepreneurs. Finally, a stability-oriented monetary policy is a prerequisite for the functioning of a competitive economy.

To realize a conducive competitive order, legal prerequisites are highly considered. Entrepreneurs face both profit and loss prospects in a competitive economy. However, the principle of free-market responsibility, which ensures entrepreneurs' prudent behavior and the economical use of resources, is contingent on the legal framework allowing private ownership of the means of production.

Within the framework of supporting the theory of competition policy, which until today has not been able to offer a clear and conclusive concept regarding the requirements of competition policy and the implementation of antitrust laws. Therefore, the role of competition supervisory institutions is the only instrument that can be used to secure the competition process.

An established competitive economy is under threat from two sides: the government and its economic policies, and private market actors who strive to avoid competition through different anti-competitive strategies. To avoid the trend of losing the market economy due to anti-competitive behaviors, it is necessary to formulate official competition regulations for the sake of competition protection.

Legal competition legislation must include standards aimed at preventing the development or expansion of market dominance positions, as well as the abuse of existing market dominance, namely:

1. Standards that avoid cartel agreements that inhibit competition, including conformity conduct;
2. Standards governing vertical agreements;
3. Standards that prevent anti-competitive mergers;
4. Standards that prevent the abuse of market power by powerful corporations.

In Article 3, it is stated that the purposes of establishing Law No. 5 of 1999 are as follows:

1. Safeguard the public interest and increase the efficiency of the national economy as part of efforts to improve people's welfare.
2. Creating a conducive business climate through fair business competition legislation in order to assure the certainty of equitable commercial opportunities for large, medium, and small business actors.
3. Prevent business actors from engaging in monopolistic behaviors or unfair business competition.
4. Improving the effectiveness and efficiency of business activities.

The core regulatory framework for Law No. 5 of 1999 is per se illegal and violates the rule of reason, and it employs both structural and behavioral policy instruments. A regulation that is per se illegal in nature is no longer required to prove the impact of the prohibition, so if a business actor does something that is explicitly stated to be prohibited by law, the business actor is declared to have violated it, with no need to demonstrate the results or consequences of the actions taken. Meanwhile, provisions that are the rule of reason require evidence of an action taken by a business actor, regardless of whether the action is anti-competitive or detrimental to society.[17]

The structural approach focuses on regulating market share and linking it to industry concentration, whereas the behavioral approach focuses on combating anti-competitive behavior and business practices such as attempts by business actors to gain a dominant position as well as pricing policies and other anti-competitive business practices. The increase in shipments of goods from exporters with lower nominal pricing than domestic goods will make similar goods unable to compete, eventually leading to the death of the domestic market for similar goods, with side consequences such as termination of employment. The pricing factor is important in the business sector.[18]

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[17] Jhonny Ibrahim, *Hukum Persaingan Usaha: Filosofi, Teori dan Implikasi Penerapannya di Indonesia* [*Competition Law: Philosophy, Theory, and Enforcement in Indonesia*] (Malang: Bayu Media, 2007), 219.

[18] Muhajir La Djanudin, "Mekanisme Penyelesaian Sengketa Dumping Antar Negara

Mastery of a banned market, as defined in Law No. 5 of 1999, can take the form of selling goods and/or services at a loss (predatory pricing) with the purpose of destroying competitors. According to Article 20 of Law No. 5 of 1999, business actors are prohibited from supplying goods or services by selling at a loss or setting extremely low prices with the intent of eliminating or killing their competitors' businesses in the relevant market, which can result in monopolistic practices and/or unfair business competition.[19] Lower prices are particularly destructive to other business actors because they cannot compete in terms of price fixing and business competition in the market, but consumers profit because the cost of goods is relatively low. In the long term, customers suffer indirectly because there are no other business actors and only dumping actors own the commodity. If the price of the product rises, the producer has no choice but to purchase it at any cost, especially if you are already addicted. Predatory pricing business activities are frequently carried out in trading practices carried out by exporters by selling goods and services internationally at prices less than the fair value or lower than the price of these goods in their own country or the selling price to other countries.[20]

There are two major reasons why dumping is prohibited in Article 7 of Law No. 5 of 1999:

a. Dumping has the potential to destroy small to medium-scale business actors attempting to gain market share; and

b. Dumping business actors deliberately lower prices below market to turn off competitors and become business actors with a dominant position and full price control in the hands of dumping actors.

[Dispute Settlement Mechanism on Dumping Between States]," *Lex Administratum* 1, no. 2 (2013): 127. Christophorus Barutu, "Dumping Dalam Perdagangan Internasional dan Mekanisme Penyelesaian Sengketa Dumping Melalui World Trade Organization [Dumping in International Trade and WTO Dispute Settlement Mechanism]," *Indonesian Journal of International Law* 4, no. 2 (2007): 389.

[19] Indonesia. Undang-Undang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat. UU No 5 Tahun 1999. (Law on Prohibitation of Monopolistic Practice and Unfair Business Competition), art. 20.

[20] Djoko Hanantijo, "Praktek Dumping [Dumping Practice]," *Jurnal Mimbar Bumi Bengawan* 5, no. 11 (2013): 4.

Article 1 point 5 of Law No. 5 of 1999 defines business actors as any individual or business entity, whether in the form of a legal entity or not.[21] Taking into consideration the provisions of Article 20 of Law No. 5 of 1999, not all business activities are inevitably illegal. If there is evidence of a predatory act, it must be determined whether there are grounds to accept and justify the action and whether the activity can genuinely result in unfair business competition.[22] The following factors must be addressed before accusing a business actor or company:

1. It must be investigated and verified that the company is selling its products at a low price or at a loss (selling at a cost less than the average). If the company sells at a low price but does not lose money, then it is competing fairly. Because it is far more efficient than its competitors, the company can sell at low prices;
2. If it is proven that the company is selling at a low price or a loss, it must also be proven that the company has the ability and potential reasons to sell at a loss because there are times when the seller sells at a loss to avoid further potential losses or simply to obtain funds to exit the market (business);
3. It has been demonstrated that a company will only use predatory pricing if it is confident that it will be able to cover losses in the initial stage by charging a very high price in the subsequent stage.[23]

The enforcement of the predatory pricing law is by taking into account the provisions of Article 20 of Law No. 5 of 1999, that not all trading activities at a loss or very cheap are not automatically unlawful acts. If there is an indication of a predatory acts, it must be examined whether there are reasons that are acceptable and justify the said action,

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[21] Indonesia. Undang-Undang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat. UU No 5 Tahun 1999. (Law on Prohibitation of Monopolistic Practice and Unfair Business Competition), art. 1 point 5.

[22] Dewa Gede Pradnya Yustiawan, ”Perlindungan Industri Dalam Negeri Dari Praktik Dumping [Protection for Domestic Industry from Dumping],” *Jurnal Analisis Hukum* 1, no. 1 (2020): 170.

[23] Rizki Tri Anugrah Bhakti, ”Perlindungan Hukum Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dari Praktek Dumping Akibat Perdagangan Internasional [KPPU Legal Protection from Dumping],” *Jurnal Cahaya Keadilan* 6, no. 1 (2018): 73.

and whether the said action can result in unfair business competition. The elements that must be considered before accusing a business actor or company of using this strategy:

(1) It must be proven that the company sells its products at a loss (selling below average cost). If a company sells at a low price but does not make a loss, then the company is competing fairly. The company can sell at low prices because it is much more efficient than its competitors;

(2) If it is proven that the company is selling at a loss, it still has to be proven that the company can sell at a loss because there are times when the seller sells at a loss to avoid further potential losses or to simply get funds to exit the market (business);

(3) It has been shown that a company will only apply predatory pricing if the company believes it can cover losses in the early stages by charging very high prices in the later stages.

As mentioned above, the KPPU can only decide that an action is declared as dumping for its resolution because this concerns business actors from abroad as well, KPPU needs KPPU to synergize with anti-dumping institutions, namely:

(1) Anti Dumping Commission (KADI);
(2) Minister of Industry and Trade of the Republic of Indonesia;
(3) Minister of Finance of the Republic of Indonesia;
(4) Director General of Customs and Excise;
(5) Tax Dispute Settlement Agency.

Protection of local industries from dumping practices. KPPU cannot work alone and requires the role of the government and institutions to deal with anti-dumping. There needs to be satisfactory and comprehensive coordination to overcome this dumping practice.

2. KPPU and KADI Response to Dumping Behavior

KPPU has a position as an independent institution in its duties and obligations, apart from the influence and power of the government and other parties. This is a very heavy and noble task in the effort to build a prosperous economic system. The independence of KPPU comes not only from being free of the influence and pressure of the authorities but

also from a variety of other parties, including business actors and the general public. KPPU must also be independent of monetary authorities or management. Therefore, KPPU can avoid any type of co-optation from outside parties.

The duties of KPPU are detailed in Article 35 of Law No. 5 of 1999, as follows:

1. As specified in Articles 4 to 16, evaluate agreements that may result in monopolistic practices or unfair business competition.
2. Conduct an assessment of the business activities and/or actions of business actors that may result in monopolistic practices and/or business competition that is not as specified in Articles 17 to 24.
3. Determine whether there has been an abuse of the dominant position, which may have resulted in monopolistic practices and/or unfair business competition, as specified in Articles 25 to 28.
4. Take action in accordance with the authority of the commission as regulated in Article 36
5. Provide advice and considerations on government policies related to monopolistic practices and/or unfair business competition.
6. Prepare guidelines and/or publications related to this law.
7. Provide periodic reports on the results of the work of the commission to the president and the People's Representative Council.

KPPU is directly responsible for its performance for the President. So far, KPPU has operated independently from the time commission members are nominated until they are appointed. KPPU makes decisions independently as well.

KPPU also has the authority outlined in Article 36 concerning the tasks specified by the law. The following are the specifics of the KPPU's legal authority:

1. Receiving reports alleging monopolistic behavior and/or unfair business competition;

2. Conducting research on business activities or acts of business actors;
3. Investigating and/or examining reported situations and projects;
4. Summarize the results of the investigation and/or examination;
5. Summon business actors;
6. Summon and present witnesses, expert witnesses, and anyone else who is suspected of violating the law;
7. Requesting the assistance of investigators to bring in anyone who refuses to comply with the Commission's summons;
8. Requesting information from government agencies;
9. Collect, examine, and/or evaluate letters, documents, or other evidence;
10. Determine whether or not other business actors or the community have suffered a loss;
11. Notify the commission's decision to business actors who are suspected of engaging in monopolistic practices and/or unfair business competition;
12. Impose sanctions in the form of administrative actions.

Meanwhile, KADI is an institution under the Ministry of Industry and Trade. It was formed based on Kepmenperindag No. 136/MPP/Kep/6/96 concerning the Establishment of the Indonesian Anti-Dumping Committee (KADI), as renewed by Kepmenperindag No. 427/MPP/Kep/10/2000. KADI is in charge of handling issues related to measures to combat the importation of dumped goods and goods containing subsidies under Articles VI and XIV of the WTO Agreement.

The duties of KADI are to investigate dumping goods and goods containing subsidies; collect, examine, and process evidence and information; and propose antidumping and reciprocal import taxes. KADI also has the responsibility of carrying out other tasks assigned by the Minister of Industry and Trade, as well as reporting on task completion. In addition to these primary responsibilities, KADI is responsible for defending Indonesian products accused of dumping.

KADI is the only legal instrument to protect domestic industries from unfair competition from imported goods that enter Indonesia at subsidized or dumping rates. Furthermore, KADI protects and defends Indonesian export products accused of dumping in export destination countries.

KADI is an independent government organization. The Minister of Industry and Trade chairs KADI, while the Minister of Finance serves as vice chairman. The Secretary General of the Ministry of Industry and Trade is the Secretary of KADI, while its members consist of the Directorate General of International Trade, the Director General of Customs and Excise, the Deputy Ministry of Agriculture, and the Head of the Anti-Dumping Operational Team (TOAD).

Based on the explanation above, it is clear that the KPPU and KADI have distinct duties and authorities, as well as distinct objectives. In Law No. 5 of 1999, KPPU is designated as an enforcement agency, while KADI is the government's technical implementer in terms of investigating dumping commodities.

III. THE CONVERGENCE OF DUMPING PRACTICES AND PRICING POLICIES IN INDONESIA

According to Article 20 of Law No. 5 of 1999, business actors are prohibited from supplying goods and/or services at a loss or at extremely low prices with the intent of eliminating or killing their competitors' businesses in the relevant market, which can result in monopolistic practices and/or unfair business competition. This lower price fixing is very detrimental to other business actors because they are unable to compete in terms of price fixing and market competition. For customers, this is obviously advantageous because the cost of goods is quite low. In the long run, consumers suffer indirect consequences. This is because no other business actors own the product, and just dumping actors do. If the price of the product rises, the producer has no choice but to buy it at any price, especially if you are already addicted. Predatory pricing business activities are frequently carried out in trade practices carried out by exporters by beginning to sell goods and services internationally at prices less than the fair value, lower than the price of these goods

in their own country, or lower than the selling price to other countries. Dumping is strictly prohibited in Article 7 of Law No. 5 of 1999 for two reasons:

a. Dumping has the potential to destroy small to medium-scale business actors attempting to gain market share; and
b. Dumping business actors deliberately lower prices below market to turn off competitors and become business actors with a dominant position and full price control in the hands of dumping actors.

Article 1 point 5 of Law No. 5 of 1999 defines business actors as any individual or business entity, whether in the form of a legal entity or not. Taking into consideration the provisions of Article 20 of Law No. 5 of 1999, not all business activities are inevitably illegal. If there is evidence of a predatory act, it must be determined whether there are grounds to accept and justify the action and whether the activity can genuinely result in unfair business competition. The following factors must be addressed before accusing a business actor or company:

1. It must be investigated and verified that the company is selling its products at a low price or at a loss (selling at a cost less than the average). If the company sells at a low price but does not lose money, then it is competing fairly. Because it is far more efficient than its competitors, the company can sell at low prices;
2. If it is proven that the company is selling at a low price or a loss, it must also be proven that the company has the ability and potential reasons to sell at a loss because there are times when the seller sells at a loss to avoid further potential losses or simply to obtain funds to exit the market (business);
3. It has been demonstrated that a company will only use predatory pricing if it is confident that it will be able to cover losses in the initial stage by charging a very high price in the subsequent stage.

People frequently believe that the dumping problem must also be resolved by KPPU. Some academics believe that the dumping problem derives from business competition. Globally, this is correct; yet, when

viewed through the lens of business competition law, this is not the case. For the purpose of comprehension, the following cases linked to the dumping problem will be given from the perspective of business competition law.

KPPU conducted monitoring in 2002 after observing the controversy over the application for BMAD carbon black by a limited liability company, PT. Cabot Indonesia (hereinafter referred to as PT. CI). The focus of monitoring was the dominant position of PT. CI in the carbon black market in Indonesia. PT. CI, as the sole producer, had a strong bargaining position when dealing with consumers. It was hardly surprising that PT. CI was frequently accused of abusing its dominant position in order to exert pressure on consumers in several of its commercial activities. As a result, the tire company, through the Association of Indonesian Tire Companies (hereinafter referred to as APBI), which was PT. CI's largest customer, benefited from the presence of imported products. The existence of imported products was regarded as a significant threat to PT. CI, as PT. CI's market share was gradually eroding. PT. CI, on the other hand, believed that imported producers engaged in dumping practices, resulting in PT. CI's inability to compete. As a result, PT. CI filed an anti-dumping petition, which KADI approved but the government dismissed. [24]

In relation to the aforementioned issues, KPPU uses its power of initiative to carry out a monitoring process (Article 36 of Law No. 5 of 1999) on carbon black business actors to assess market conditions, competition maps, and dominant position holders' behavior. It is commonly known that holders of dominant positions are accused of engaging in acts that contravene Chapter V on dominant positions (Articles 25 to 29). The monitoring data led to the following conclusion:[25]

1. The emergence of imported carbon black has disturbed PT. CI, which has been a monopolist. On the other hand, for consumers, this is very beneficial considering that alternative manufacturers that provide products have emerged. From a competition

[24] The reason for "Dismiss decision" is the action could be categorized as predatory pricing under Article 20 Act No 5 Years 1999.

[25] The monitoring purpose is to prevent further behaviors from predatory pricing due to dumping action.

standpoint, this development is quite positive because consumers will have a better bargaining position than when a monopoly existed. As a result, PT. CI cannot act arbitrarily in an attempt to control market conditions.

2. The facts reveal that despite the presence of imported products in Indonesia, consumers' reliance on PT. CI remains high, owing to the natural advantages possessed by PT. CI. This natural advantage will be lost, and imported products will simply replace it.
3. In fact, the low utility of PT. CI was caused not only by the influx of imported goods, but also by the relatively modest scale of domestic (market) demand. This market is significantly smaller than the capacity of PT. CI. Thus, PT. CI has a lot of idle capacity, even without imported products.
4. PT. CI's dominant position appears to be abused to maximize profits. Some data and facts have shown how these rights occur, for example, by imposing trade restrictions that may contravene Article 25 paragraph 1a.
5. The data collected during the Temporary Anti-Dumping Import Duty (BMADS) implementation period, December 2000–April 2001, revealed that the implementation of BMADS did not reach its target. This resulted in the emergence of obstacles to the entry of imported carbon black in an effort to increase the market share of local products. This can be seen from the constant emergence of carbon black in the market.
6. In the relationship between carbon black producers (such as PT CI) and consumers, the government tends to side with the producers. As a result, this strengthens the market power owned by producers.
7. There is empirical data in the field that shows that the BMADS proposal by PT CI is part of Cabot Corporation's global strategy as a multinational company to maximize market exploitation. This appears in the form of BMAD submissions by companies under the vertical integration of the Cabot Corporation in every country, including Malaysia and the European Union.

The suggestions and recommendations submitted by KPPU to the government include advice not to use BMAD on carbon black, considering the following matters:

a. The implementation of BMADS will strengthen PT. CI's market power, which previously held the dominant position in the carbon black product market. This growth in market power is harmful since it can lead to unfair business competition, considering the data indicating that PT. CI has abused its dominant position. The monopoly position will be returned to PT. CI if the BMAD is implemented. If this occurs, it will be a step backward in business competition.

b. On one hand, the presence of imported products provides an alternative for carbon-black consumers. On the other hand, the presence of imported carbon black can improve the bargaining position of carbon black consumers, preventing PT. CI from acting arbitrarily against consumers.

c. The results show the low-capacity utilization of PT. CI is caused not solely by the presence of imported products, but also by the excessively large capacity of PT. CI, even when compared to overall domestic market demand.

d. PT. CI has natural advantages in the form of location proximity, which enables carbon-black consumers to rely on PT. CI.

In 2008, KPPU monitored business competition in the detergent industry. This measure is related to the government's plan to use BMADS as a raw material for detergent sodium tripolyphosphate (STTP) from China, which is suspected of dumping and threatening the stability of the domestic STTP producers (such as PT. Petrocentral).

Dumping is very profitable for consumers in terms of business competition because there are many alternative goods and competitive prices. Based on the examples of KPPU's monitoring results provided above, dumping practices can be stated to result in unfair business competition if the sole objective of imposing BMADS or BMAD is to obtain a dominating position in the relevant market, leading to a monopoly or oligopoly. It is required to prove whether or not dumping practices have an impact on unfair business competition. Meanwhile, to

assert that there is unfair business competition, it must be proven that there is competition between business actors that is dishonest, illegal, or hinders business competition (Article 1, point 6).

The provisions in Law No. 5 of 1999 address prohibited agreements as well as illegal activities. The prohibited agreements related to price fixing are included in Article 5, Article 6, Article 7, and Article 8. However, the approach used in Article 5 differs from that used in Articles 7 and 8. Article 5 is per se illegal, whereas Articles 7 and 8 are subject to the rule of reason. Article 20 (the rule of reason) prohibits illegal activities such as selling below the market price.

If you consider the concept of dumping as explained above, the practice of dumping must fulfill the three criteria mentioned above, which means that to use BMAD, you must meet the following conditions:

(1) The export products of a country have been exported by dumping.

(2) Material losses have occurred as a result of the dumping.

(3) There is a causal link between the dumping carried out and the resulting injury.

Meanwhile, the following criteria or elements must be met in predatory pricing or price fixing:

- The presence or absence of an agreement between business actors. If no agreement is reached, the supervision outlined in Article 20 will be enforced.
- The price is lower than the market price by considering the relevant market, the market position of the cartel members, and comparison with the market price.
- Unfair business competition.

Dumping practices are included in the International Trade Law regime, and matters involving dumping in Indonesia are handled by KADI. As for the problem of price fixing and predatory pricing, this is included in the Business Competition Law. KPPU is the entity in charge of this matter. Article 47 of Law No. 5 of 1999 explains the sanctions imposed on business actors who engage in price fixing and

predatory pricing.[26] In order to be handled by KPPU, legal subjects (business actors) must be domiciled and carry out economic activities in the territory of the Republic of Indonesia.[27]

Therefore, the provisions of the Indonesian Business Competition Law do not apply to business actors who conduct their operations in other countries. According to Law No. 17 of 2006 concerning Customs, in articles 102A and 102B, anyone who: a) exports goods without submitting a customs declaration; b) intentionally informs the wrong type and/or quantity of exported goods in the customs notification as referred to in Article 11A paragraph (1), resulting in non-fulfillment of state levies in the export sector; c) loading export goods outside the customs area without permission from the head of the customs office, as intended in Article 11A paragraph (3); d) unloading export goods in the customs area without permission from the head of the customs office; or transporting export goods without being protected with valid documents in accordance with the customs notification, as referred to in Article 9A paragraph (1), shall be punished for smuggling in the export sector with a minimum imprisonment of 1 (one) year and a maximum imprisonment of 10 (ten) years and a minimum fine of Rp. 50,000,000 (fifty million rupiahs) and a maximum of Rp. 5,000,000,000 (five billion rupiahs). Article 102B states that violations referred to in Articles 102 and 102A that cause disruption of the state economy will be punished with a minimum of 5 (five) years in prison and a maximum of 20 (twenty) years in prison, as well as a minimum fine of Rp. 5,000,000,000 (five billion rupiahs) and a maximum fine of Rp. 100,000,000,000 (one hundred billion rupiahs).

However, since dumping is a business competition issue and the language of anti-dumping laws has the same objectives as business competition law, this study concluded that anti-dumping regulations can be substituted into competition law. This study later discovered that anti-dumping policies can be incorporated into business competition

[26] Indonesia. Peraturan Komisi Pengawas Persaingan Usaha tentang Tatacara Penanganan Perkara Di KPPU, No. 1 Tahun 2006. (Commission for The Supervision of Business Competition Regulation, No 1 Years 2006).

[27] Indonesia. Undang-Undang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat. UU No 5 Tahun 1999. (Law on Prohibitation of Monopolistic Practice and Unfair Business Competition), art. 1 point 5.

legislation. This is consistent with Bank Indonesia's assertion that the anti-dumping law has or should have the same justification as the competition law.[28]

IV. THE INVOLVEMENT OF KPPU IN DUMPING PRACTICES IN INDONESIA

Dumping practices are subject to KPPU oversight if the impact of the dumping practices is demonstrated to result in unfair business competition. Law No. 5 of 1999 is the measure or tool utilized to assert that dumping practices can result in unfair business competition. The determination of an industry's concentration is the first stage in determining the amount of market share to determine how far the concentration of the industry and the concentration of economic power are in the hands of one or more companies. Knowing the industry concentration and the size of the market share controlled by a company will reveal whether monopolistic practices, the concentration of economic power, or abuse of a dominant position have occurred, which can hinder fair competition. Therefore, there is a correlation between industry concentration and the quantity of fines.

Thus, KPPU must be able to determine whether the goal of the dumping practice or predatory pricing is that there are indeed business competitors who are members of the cartel agreement attempting to remove other business competitors from the market (at extremely low market prices). This is a classic barrier strategy in which business competitors no longer compete on the basis of bidding instruments, but instead rely on non-competitive instruments to thrive in the market.

Dumping practices are detrimental to business competition. If the goal of dumping practices is to eliminate competitors and there are barriers to competition or the desire to gain a dominant position (abuse of dominant position), then KPPU can handle the matter.

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[28] Tran Viet Dung, "Anti-Dumping Policy from a Competition Perspective: An Artificial Shield for National Champions in Open Market What to Do About It?" *Asia Competition Law Bulletin* 2 (2006): 59.

V. CONCLUSION

Selling below market pricing or charging predatory prices in violation of competition law will hinder fair competition. Dumping practices benefit consumers in the short term but harm consumers in the long term, including competitors in sectors with similar goods industries. Of course, if the goal is to eliminate competitors, this is clearly unhealthy competition and falls under the supervision of KPPU.

There is an urgent need for a more in-depth understanding of Law No. 5 of 1999 and the problem of WTO provisions among business actors and the general public. It is essential for KPPU and KADI to collaborate on socialization in order to equalize perceptions of dumping practices and business competition laws in the business community and the wider community.

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