



The Position of the Indonesian Competition Commission as a State Auxiliary Organ in the Indonesian Constitutional System

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Abstract

This study aimed to determine the position of the business competition supervisory commission as a state auxiliary organ in the Indonesian constitutional system. Legal writing is included in normative legal research using primary legal materials and secondary legal materials. The techniques for collecting legal materials in this study are primary and secondary legal sources. Meanwhile, the technique of collecting legal sources in this study uses the method of studying legal literature and constitutional law. Legal sources collected from the research results are then processed and analyzed using qualitative processing techniques. The Indonesian Competition Commission is accountable to the President for the performance of its tasks. On the basis of the data analysis, it can be determined that the Indonesian Competition Commission is an independent institution free of the Government's influence and power. The Indonesian Competition Commission is accountable to the President for the performance of its tasks. As one of the institutions responsible for implementing Law Number 5 of 1999, this commission is responsible for the early stages of implementing the Act. Decisions taken by the Oversight Commission can be appealed to a higher court level. This commission has broad jurisdiction and has four main tasks, namely: 1) legal function; 2) administrative function; 3) mediating function, and 4) police function.

Keywords: Analysis, Indonesian Competition Commission, State Auxiliary Organ.

A. Introduction

After the reform movement in 1998 and the amendments to the 1945 Constitution, Indonesia experienced very rapid development of state administration. Two main things became the main agenda after the incident: the check and balance system agenda between state institutions and demands for a government administration free from elements of corruption, collusion, and nepotism (Fadhilah, 2019).

The check and balance system agenda between state institutions is accompanied by a shift in supremacy, from the dominance of the People's Consultative Assembly to the sovereignty of the constitution (Mulyadi & Rusydi, 2017). This is a consequence of the supremacy of the body, where the constitution is positioned as the highest law that regulates and limits the powers of state administration institutions. Thus, the amendment to the 1945 Constitution has also removed the concept of the superiority of a state institution over other state institutions from the Indonesian constitutional structure.

In its development, state institutions also act as auxiliary state institutions or

known as state auxiliary organs. Regarding the emergence of state auxiliary organs, this occurs in various countries in many countries of the world. In addition, these institutions were born because the performance of the main institutions had not worked effectively and was motivated by public pressure to realize good governance. Furthermore, the emergence of state auxiliary organs is also an answer to the impasse of Baron de Montesquieu's theory of *trias politica*, which idealizes the branch of state power to be divided into three purely separate powers, namely executive, legislative, and judicial powers that cannot work optimally when faced with developments. A very dynamic society that wants a state organizational structure that is more responsive to their demands and is more effective and efficient in providing public services and achieving government goals (Tanjung & Siregar, 2013; Achmad, 2021).

One of these state auxiliary organs is the Indonesian Competition Commission (Commission for the Supervision of Business Competition), which is responsible for supervising business competition in an economic period that is still developing due to the expansion of business opportunities. However, the commercial opportunities developed over the last three decades have not enabled the entire community to participate in various economic sectors' development (Sapitri, 2015). On the one hand, the tale of private enterprise during this period was distorted; on the other hand, the development of private enterprise was largely a symptom of conditions of unfair commercial competition.

According to Article 33 paragraph (2) of the 1945 Constitution, the state has jurisdiction over sectors of production that are vital to the state and influence the livelihoods of a large number of people. However, under the New Order regime, the feel of a monopolistic economic system was felt because it was created for it; the corporate world's cronyism system thrived. The business monopoly was given to a few close friends and children of those in power. The practice of state administration shows that the prohibition of trust in business, which the 1945 Constitution has mandated, has been violated and carried out for the benefit of the people, has not yet been implemented, only benefits a few people. Therefore a strong law is needed to prohibit and prevent this unhealthy practice (Effendi, 2020). Law is essential to control all areas of social life, including social, political, cultural, and economic development. Due to the limited financial resources on the one hand and the unlimited demand or need for monetary assistance on the other, the law is required in this economic activity to prevent conflicts amongst fellow citizens over these economic resources. The law has an important role in economic development to realize social welfare (Mahaeswari, 2020).

Fair business competition will have positive consequences for business actors because it can generate motivation or stimulation to increase efficiency, productivity, innovation, and the quality of its products. In addition to being profitable for business actors, of course, consumers will benefit from healthy business competition, namely by lowering prices, more choices and increasing product quality (Napitupulu, 2021). On the other hand, unjustified competitive competition between business actors has a detrimental effect on both business actors and customers.

For example, Article 36 letter c of the Republic of Indonesia's Law No. 5 of 1999 prohibiting Monopolistic Practices and Unfair Competition empowers the Indonesian Competition Commission to conduct investigations and examinations into allegations of monopolistic practices and or unfair business competition that are reported by the public or business actors or discovered by the commission through its research.

However, the Indonesian Competition Commission has not properly exercised its jurisdiction (Balqis, 2016). One of the more difficult situations for the Indonesian Competition Commission to investigate is an importer who has been implicated in a cartel. This issue emerges as a result of the Indonesian Competition Commission's restricted authority to probe evidence of cartel behavior in the business world. One of the difficulties in finding solid evidence of cartel practices.

In principle, everyone has the right to sell and buy goods and services either 'what', 'with whom', 'how much, or 'how to do transactions and produce'; this is called a market economy. In line with this, market behaviour and structure are sometimes unpredictable, as a result, it is not commonplace for business actors to conduct fraud, enacting limits that result in losses to one or more parties. According to Widjaja & Gunadi (2020), many countries are currently gravitating toward a free market, where corporate players can "freely" meet customer requirements through diversified and efficient products. Market freedom in this system often causes actors to take actions that form a monopolistic or oligopolistic market structure (Wibowo & Luddin, 2019). The formation of a market structure that is monopolistic or oligopolistic is a manifestation of unfair business competition conditions. Monopoly is the main component that will make wealth concentrated in the hands of a few groups to create social and economic inequality (Dewi & Priyanto, 2020).

In October 2020, the Indonesian Competition Commission issued guidelines against mergers, consolidations, or takeovers. Using this procedure, the Indonesian Competition Commission will be able to implement Regulation 3 of 2019 on the Assessment of Mergers or Consolidations of Business Entities or Acquisitions of Company Shares That May Lead to a Monopolistic Market Structure or Unfair Business Competition more effectively. With these instructions, the Indonesian Competition Commission's execution of Regulation 3/2019 is made clearer to the public, specifically by incorporating various inputs obtained by the Indonesian Competition Commission in carrying out its function of evaluating mergers and acquisitions, as it is well known that business actors engaging in mergers and acquisitions must notify this commission. For company transactions that have met the requirements, the Indonesian Competition Commission will assess the transaction (Sihombing, 2021). Therefore, based on this description, it is necessary to review the position of the Indonesian Competition Commission as a state auxiliary organ in the Indonesian constitutional system.

B. Research Method

Legal writing is included in normative legal research using primary legal materials and secondary legal materials. The techniques for collecting legal materials in this study are primary and secondary legal sources, including Article 30 of the Republic of Indonesia's Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Indonesian Competition Commission Decisions, and Decisions in the Indonesian Competition Commission No. 17/Commission, Secondary legal materials such as books, writings of legal experts, scientific works of scholars, both published and those that can be obtained through electronic media such as the internet (Putri & Prananingtyas, 2020). Meanwhile, the technique of collecting legal sources in this study uses the method of studying legal literature and constitutional law.

Legal sources collected from the research results are then processed and

analyzed using qualitative processing techniques, namely choosing legal sources with quality that can answer the problems posed in the introduction. The presentation of the writing is done by using descriptive analysis method, which is compiling systematically so that a scientific conclusion is obtained from the problems that have been proposed.

C. Discussion

1. Background of the Existence of State Auxiliary Organs in the Indonesian Constitutional Structure

Globalization and dynamics in society are moments for the state to perfect an effective state government structure to overcome increasingly complex administrative problems. The breadth of the scope of the state's tasks to realize the welfare of the people sometimes cannot be accommodated by the institutions that conventionally exist in a country, namely the executive, judiciary, and legislature. On this basis, a response from the state is needed to improve quickly and precisely to carry out the transformation of state institutions, which includes working methods and work for an organization following the dynamics of society's needs and global demands.

In response to this situation, the state creates state institutions that support a wider task. Other terms used for these auxiliary institutions include: 1) quasi-state institutions, 2) state auxiliary agencies, 3) state auxiliary bodies, 4) different structural institutions, 5) state auxiliary organs, 6) independent regulatory bodies, and 7) state commission. Following the term given to him, the function of such institutions is as a supporting institution of the main state institutions (Widyanti et al., 2019).

When the state's role is minimalistic and less than optimal, then the antithesis appears in the form of a welfare state, but over time it ends up being excessive. Consequently, there was inefficiency, corruption, and economic depression in the 18th century until the next two centuries emerged. Finally, the antithesis emerged again, namely the presence of a quasi-state institution related to the failure or comparison of the classical concept of *trias politica* to manage the state.

The role of a quasi-independent (quasi) state institution is important as a responsive effort for a country emerging from authoritarianism and the decline of democracy. The quasi-institution carries out the authority that existing state institutions have accommodated. Still, with a state of public distrust (public distrust) to the executive, it is deemed necessary to form an independent institution because it is not part of the three pillars of power. These institutions are usually included in the sectors of power branches such as the judiciary (quasi-judicial) and the executive (quasi-executive). Their functions can be in supervising state institutions in the same industry or taking over several authorities of state institutions in the same industry. The principle underlying the "half" state institution that functions to control the state is the natural law principle of *Nemo Judex in Parte Sua*, namely that in direction, no one has the right to judge himself. As the party with the governing authority, the state cannot consider itself without relinquishing its position as the party with interest. These institutions are principally established with the power to oversee public policy and other possible actions directly related to public rights. These quasi-institutions are semi-independent because they are not bound by structure but are bound by funding (Silalahi & Edgina, 2017). In the Indonesian context, the design of these institutions is

not under the government department; institutions whose authority is given by the constitution and laws are directly responsible to the public in this regard.

2. Background on the Existence of the Indonesian Competition Commission in the Constitutional System

According to Article 30 of the Republic of Indonesia's Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, the Indonesian Competition Commission is an autonomous body independent of the government's control and authority. The President holds the Indonesian Competition Commission accountable for its activities. The Indonesian Competition Commission, however, remains independent of the Government's influence and power. The duty to submit reports is solely administrative in nature. Additionally, the Indonesian Competition Commission is required to submit periodic reports to the House of Representatives (DPR) on its activities pursuant to Article 35 Letter g of the Republic of Indonesia's Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. The direct reporting of the Indonesian Competition Commission to the DPR is consistent with international practice.

The Indonesian Competition Commission is an independent body, not appointed by a court. Judicial authority is exercised by a Supreme Court and its subordinate judicial bodies in a general court environment, a religious court environment, a military court environment, a state administrative court environment, and by a Constitutional Court, according to Law No. 48 of 2009. Business actors that do not agree with the Indonesian Competition Commission's ruling may appeal to the district court. This means that corporate actors' legal actions are subject to the general judicial environment. This is a point of contention in the system for adjudicating business competition issues, particularly regarding the judiciary's role in adjudicating appeals of the Indonesian Competition Commission's judgment. The controversy derives from Article 25 paragraph (2) of the UUKK, which stipulates that the general court has the right to examine, hear, and judge criminal and civil cases in accordance with applicable law. While this public court hears civil and criminal matters on a broad scale, the substance of business competition law is highly particular. Cases involving business competition should also be heard by a special court (Nasution, 2020).

Competition law infractions must first be investigated and prosecuted in and through the Indonesian Competition Commission. Following then, the duty can be delegated to police investigators, who will subsequently go to court if the business actor refuses to comply with the Indonesian Competition Commission's judgment. Regardless of government or other parties' influence or power in supervising business actors, the Government-established Indonesian Competition Commission must be independent, in this case ensuring that business actors conduct their activities without monopolistic practices or unfair business competition. Article 30 paragraph (2) of Law No. 5 of 1999 establishes the status of the Indonesian Competition Commission, which is reaffirmed in Article 1 paragraph (2) of Presidential Decree No. 75 of 1999.

One of the permitted judicial bodies subordinate to the Supreme Court can only be created in accordance with Article 1 point 8 of the UUKK as a special court with the jurisdiction to examine, hear, and determine specific cases. Upon a ruling by the Indonesian Competition Commission, a challenge may be brought before the commercial courts, which is the appropriate venue in this case. As a complementary state institution, the Indonesian Competition Commission has a complex task in supervising unfair business competition practices by business actors.

This is due to the increasingly massive business activity in various fields and the modification of its strategy to win the competition between competitors. This is where the Indonesian Competition Commission plays its role as a watchdog and market surveillance to prevent unfair competition. The development and increase in the activities of business actors in Indonesia, which is dominated by a handful of powerful people, has created an economic gap between small and medium-sized entrepreneurs. The status and membership of the commission are regulated in Article 1 points 18, 30, and Article 31 of Law Number 5 of 1999. The Indonesian Competition Commission members must consist of a minimum of 9 (nine) people, including the chairman and deputy chairman, who concurrently serves as members as stipulated in article 31 paragraph (1) of Law Number 5 of 1999.

3. Duties and Authorities of the Indonesian Competition Commission

The application of business competition law is a must for every country that adopts a modern economic system. In almost all modern economic countries globally, competition law has been applied, although not in a specific form of legislation. The current formation and new occurred massively in many developed countries in the 1980s following the liberalization of the world economy (Bukido & Bamatraf, 2018).

The state's involvement in the field of law, including civil matters, is carried out as long as there are weak parties who need to be protected to avoid exploitation by the strong. The name business competition legislation is deemed the most appropriate since it encompasses the provisions of Law No. 5 of 1999 prohibiting monopolistic practices and unfair business competition, which incorporates antitrust and business competition restrictions in their entirety. Competition must be viewed positively in the corporate sector. In economics, perfect competition is a state of the market that is ideal. At least four assumptions underpin perfect competition in certain markets, including the following: a) Business actors cannot unilaterally set prices for their products or services; b) Business actors' goods and services have the freedom to enter or exit the market; c) Business actors have the freedom to enter or exit the market; and d) Consumers and market participants have perfect information on various matters.

The factors that give rise to monopoly include: a) Having unique resources; b) There are economies of scale; c) Monopoly power obtained through government regulations; d) Patent and copyright regulations; and e) Exclusive business rights. An oligopoly market is a market that consists of only a few producers. There are times when an oligopoly market consists of only two companies, which is called a duopoly market. The way to know an oligopoly market can be seen from several indications, namely producing common goods or goods of different styles. The ability to set pricing varies between times when it is weak and when it is extremely strong. Agreements between corporate actors to jointly control the production and marketing of goods or services are prohibited since monopolistic techniques and unfair market competition would result in such agreements.

According to Sudikno Mertokusumo in his book *Knowing the Law*, the Indonesian Competition Commission can be compared to a ruler in business competition law when performing its tasks because the commission has the right to impose punishments on rule of law violators. One of the entities tasked with carrying out the implementation of Law No. 5 of 1999, this commission is tasked with overseeing the initial stages of the legislation's implementation. The Oversight Commission's decisions are appealable to a higher court. As the only institution in charge of monitoring the implementation of this law, this commission has broad jurisdiction and is tasked with four primary

functions: 1) legal function; 2) administrative function; and 3) mediating function.

The commission receives complaints from the private sector, conducts independent investigations, consults with all parties involved, and makes decisions. In Article 35 of Law number 5 of 1999, the Indonesian Competition Commission has the duties and authorities which are presented in the following table:

Table 1.
Duties and powers of the Indonesian Competition Commission

Task	Authority
Assessing contracts that may lead to monopolistic practices and or unfair competition	Accepting reports of monopolistic tactics and fraudulent competition from the public and business actors
Analyze the activities and/or behaviors of business actors to see if they can lead to monopolistic practices or fraudulent competition.	Conduct investigation into claims of business activity or acts by business actors that could result in monopolistic or fraudulent competition.
Assessing the abuse of dominant position that can lead to monopolistic practices and fraudulent competition	Conducting investigations and examination of cases of alleged monopolistic practices and or fraudulent competition obtained due to a) Public Reports, b) Business Actors' Reports, c) The Supervisory Commission found out by itself from the results of its research.
Take actions following the competence of the competition commission as regulated in the antitrust law.	Concluding the results of investigations and or examinations regarding the existence of a monopoly practice and or fraudulent competition and Summons business actors suspected of having violated the Anti-Monopoly Law
Provide suggestions and guidance to the government on anti-monopoly and anti-competitive policies.	Inquire of government agencies about inquiries and or inspections of corporate actors who breach the Anti-Monopoly Law's provisions
Prepare guidelines and publications related to antitrust laws	Providing decisions or stipulations regarding the presence or absence of losses for other business actors or the community
Submit periodic reports on the work of the supervisory committee to the President of the Republic of Indonesia and the People's Consultative Council	Sanctions in the form of administrative actions against corporate actors who breach the Anti-Monopoly Law's provisions

Source: processed data

According to Article 36 of Law No. 5 of 1999, the Indonesian Competition Commission has the following responsibilities: Receive public and/or company reports alleging monopolistic practices and/or unfair competition in the business world. Examine complaints about monopolistic practices and/or unfair competition caused by company activities and/or actions of business actors. Investigating and/or examining claims of monopolistic activities and/or unfair business competition made by the general public or business actors, or presenting business actors, witnesses, experts or anyone else mentioned in letters (e) and (f) who refuse to comply with the commission's summons Inquire about inquiries and/or exams of business actors who breach this law's provisions from Indonesian government entities.

Determine whether or not other business actors or the community have suffered a loss and notify those suspected of engaging in monopolistic practices or unfair competition of the commission's decision. Get, examine, and/or evaluate letters, documents, or other evidence for investigation and/or examination.

In addition, the Indonesian Competition Commission also plays a role in realizing a conducive Indonesian economy and guaranteeing business certainty, discovering an efficient Indonesian economy through creating a conducive business climate, ensuring equal business certainty for all business actors. Apart from the Indonesian Competition Commission's critical responsibilities and authorities. However, the Indonesian Competition Commission continues to face difficulties in carrying out its mandate. As a result of these impediments, the Indonesian Competition Commission has been unable to perform its tasks properly. The following are some of the barriers that the Indonesian Competition Commission has encountered: 1) Despite the fact that the Indonesian Competition Commission has the authority to request information from government agencies, the Indonesian Competition Commission and government agencies have not cooperated well. As a result, the Indonesian Competition Commission frequently struggles to perform its duties due to a lack of supporting data; 2) While the Indonesian Competition Commission has the authority to summon business actors or witnesses, it cannot compel their presence; and 3) A lack of information dissemination regarding the Indonesian Competition Commission's management in handling business competition.

The obstacles confronting the Indonesian Competition Commission must now be the primary focus of reimagining its role in order for it to achieve its aspired goals, namely realizing an efficient Indonesian economy through the creation of a conducive business climate and the provision of business certainty to the community, particularly entrepreneurs.

D. Conclusion

On the basis of the data analysis, it can be determined that the Indonesian Competition Commission is an independent institution free of the Government's influence and power. The Indonesian Competition Commission is accountable to the President for the performance of its tasks. As one of the institutions responsible for implementing Law Number 5 of 1999, this commission is responsible for the early stages of implementing the Act. Decisions taken by the Oversight Commission can be appealed to a higher court level. This commission has broad jurisdiction and has four main tasks, namely: 1) legal function, as the only institution that oversees the implementation of this law; 2) administrative function because this commission is responsible for adopting and implementing supporting regulations; 3) mediating function, because this commission receives complaints from the private sector, conducts independent investigations, conducts inquiries with all parties involved, and makes decisions, and 4) police function, because this commission is responsible for implementing the decisions it makes.

According to Article 36 of Law No. 5 of 1999, the Indonesian Competition Commission has the following responsibilities: Receive public and/or company reports alleging monopolistic practices and/or unfair competition in the business world. Examine complaints about monopolistic practices and/or unfair competition caused by company activities and/or actions of business actors.

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