

Legal Response to the Decision of the Business Competition Supervisory Commission Through Additional Examination Based on Supreme Court Regulation Number 3 of 2021

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Abstract

This study aims to find out about legal efforts to object to KPPU decisions through additional examinations based on Supreme Court Regulation Number 3 of 2021. The problem discussed in this study is the violation of the principle of justice in legal efforts to object to KPPU decisions that occur in the District Court. The data analysis method used in this study is the normative legal analysis method and comparative law. The normative legal method is used to analyze data that refers to legal norms contained in laws and regulations. The results of the data analysis in this study indicate a violation of the principle of justice in legal efforts to object to KPPU decisions. In practice, the burden of proof is carried out in an unbalanced manner, where the applicant cannot provide new evidence while the KPPU can strengthen and clarify the evidence through additional examinations ordered by the judge if the judge feels it is unclear. As a result, the objection applicant cannot strengthen his defense because he cannot add new evidence that can relieve the applicant.

Keywords: Legal Response to Object; Business Competition Supervisory Commission; Additional Examination and Business Competition Supervisory Commission;

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INTRODUCTION

In general, people run business activities to gain profit and income in order to meet their living needs, on the basis of meeting their living needs that encourages many people to run businesses, both similar business activities and different business activities. Such a situation is what actually causes or gives rise to business competition among business actors. Therefore, competition in the business world is a common occurrence. Competition in the business world is important to create a competitive business climate, this must be done because competition can create market prices, so that business actors will make breakthroughs in their businesses so that they can determine prices that can compete in business and can benefit business actors and their consumers.

In essence, the existence of business competition law is to optimally strive to create healthy and effective business competition in a particular market, which encourages business actors to carry out efficiency in order to be able to compete with their competitors. The existence of the Business Competition Law which is based on economic democracy must also pay attention to the balance between the interests of business actors and the interests of the community, so that the Law has a very important and strategic role in realizing a healthy business competition climate in Indonesia. The climate and business opportunities that are to be realized are fully stated in the provisions of Article 3 of Law No. 5 of 1999, which contain:

1. Maintaining public interests and increasing national economic efficiency as one of the efforts to improve people's welfare.

2. Realizing a healthy business climate, thus ensuring certainty of equal business opportunities for large business actors, medium business actors, and small business actors.
3. Preventing monopolistic practices and/or unfair business competition caused by business actors.
4. Creating effectiveness and efficiency in business activities.

The provisions of Article 3 are not only limited to the main objectives of anti-monopoly legislation, namely a free and fair business competition system, where there is certainty of equal business opportunities for all business actors, and there are no agreements or business mergers that hinder competition and abuse of economic power, so that all business actors have ample room to move in carrying out economic activities. In addition, Article 3 states the secondary objectives of anti-monopoly legislation that are intended to achieve a free and fair business competition system, namely to create public welfare and an efficient economic system, so that the final consequence of the objectives of economic policy, namely the provision of consumer goods and services optimally, can be implemented.

In practice, in the business world, there has been a lot of unhealthy competition, for that reason the Business Competition Supervisory Commission or often referred to as KPPU was formed. KPPU itself was formed in 2000 which was regulated by Presidential Decree Number 75 of 1999 concerning the Business Competition Supervisory Commission which has now been amended by Presidential Regulation Number 80 of 2008. KPPU was formed with the aim of becoming the first institution to handle business competition cases, both those filed by the public and KPPU's own initiative.

Since KPPU was formed, issues regarding KPPU's procedural law, starting from the examination process to the determination/decision issued by KPPU, have always been a concern. Many parties question the existence of KPPU, KPPU was formed to accommodate the economic aspects of competition law that may not be accommodated by legal actors.

The existence of the KPPU is not included in the judicial body as is generally the case, but the KPPU exists because it has been regulated in Law Number 5 of 1999. Referring to Article 24 paragraph (3) of the 1945 Constitution, the KPPU is also an institution that carries out judicial functions. In carrying out its judicial functions, the KPPU can only impose administrative sanctions, while the execution will be carried out by the District Court.

In conducting an examination of violations in business competition matters, business actors who object to the results of the KPPU's decision can file an objection to the District Court, if the business actor still objects, an appeal can be filed to the Supreme Court. The rules regarding objections have been regulated in Supreme Court Regulation Number 1 of 2003 which is currently amended by Supreme Court Regulation Number 3 of 2021. Legal remedies for objections when compared to the general legal process can be equated with legal remedies for appeal carried out in the High Court.

The provisions for the right to file objections by business actors are regulated in Article 44 paragraph (2) of Law Number 5 of 1999, namely:

"Business actors may file objections to the District Court no later than 14 (fourteen) days after receiving notification of the decision."

The existence of Supreme Court Regulation Number 3 of 2021 concerning Procedures for Submitting Legal Objections to KPPU Decisions is not the right answer in efforts to implement the objection process to the District Court as stipulated in Law Number 5 of 1999. However, the function of Supreme Court Regulation Number 3 of 2021 can at least align the perceptions of judicial institutions as part of the process of enforcing Law Number 5 of 1999 together with the KPPU.

The objection submission by the business actor is submitted to the District Court 14 days after the decision is issued by the KPPU. This objection process will be completed by

the District Court for 30 days. In this case, the KPPU is obliged to submit the decision and case files, then the District Court will examine the decision and case files without any re-examination and there will be no further examination of witnesses and expert witnesses. The examination based on the KPPU's decision and case files is clearly regulated in Article 5 Paragraph 4 of Supreme Court Regulation Number 3 of 2021. The objection examination process is carried out quickly, namely for 30 days, in the examination of the objection there is also an interim decision in the form of an additional examination.

Based on the background of the problem, it is clear that Supreme Court Regulation Number 3 of 2021 does not yet fully regulate the procedural process in the legal remedies for objections that can be submitted by business actors, especially the provisions regarding interim decisions in the form of additional examinations in the event of new evidence and new witnesses. Based on the background of the problem above, the formulation of the problem that will be discussed in this study is how the violation of the principle of justice in the legal effort to object to the decision of the Business Competition Supervisory Commission Through Additional Examination based on Supreme Court Regulation Number 3 of 2021

MATERIALS AND METHODS

This legal research uses normative legal research methods and comparative law. The normative legal method is a library legal research carried out by examining library materials or secondary data alone. This research can be used to draw legal principles in interpreting laws and regulations. In addition, this research is also used to find legal principles that are formulated either implicitly or explicitly.

RESULTS AND DISCUSSION

Overview of the Problems in Additional Examination as Part of the Objection Legal Effort

The objection legal effort is a legal effort that is still relatively new in Indonesia. As we know that previously in Indonesia only recognized two types of legal efforts, namely ordinary legal efforts such as appeals and cassation, and the second is an extraordinary legal effort, namely judicial review. According to Law Number 5 of 1999, the explanation regarding the definition of objection is a request for examination to the Commercial Court filed by the reported party who does not accept the decision of the Business Competition Supervisory Commission. However, the provisions in Article 44 paragraph (2) of Law Number 5 of 1999 emphasize that business actors who do not accept the KPPU decision can file an objection to the District Court within the specified time frame.

Law Number 5 of 1999 does not regulate in detail the applicable legal process for filing an objection, the Law only regulates:

1. That the court must begin the examination within 14 days of receiving the objection.
2. That the objection will be decided within 30 days after the start of the examination

An objection is also not a legal remedy recognized in Indonesian procedural law. The Indonesian procedural law system only recognizes two types of legal remedies, namely ordinary legal remedies and extraordinary legal remedies.

The handling of this objection legal remedy in practice encounters many obstacles, due to the complexity and development of business competition problems in Indonesia. In a book written by Susanti Adi Nugroho entitled Business Competition Law in Indonesia, it is also questioned whether this 30-day period is sufficient to conduct an examination of the objection case submitted, because business competition cases are complicated, complex cases, and require a broad view. In addition, if the judge handling this case does not master the problems of business competition because it is full of considerations and calculations of

economic aspects, of course choosing a judge who is experienced in the field of business competition is rather difficult because District Court judges do not have an economic background but rather a legal education background. Due to the characteristics and complexity of business competition problems, special expertise and experience are required both in the fields of law and economics, therefore the application of the law must be handled by those who are indeed experts and have a broad view of economic analysis.

The main problem of this objection legal effort is regarding the burden of proof, especially in the additional examination. As regulated in Supreme Court Regulation Number 3 of 2021, the procedural law used is civil procedural law unless otherwise specified, in civil procedural law there is a principle of *audi et alteram partem* which means that the judge must listen to both parties, namely the KPPU and the business actor as the objection applicant.

However, in practice, in this legal objection, it is not permitted to add new evidence, new witnesses and other things except those that have been examined in the follow-up examination. The prohibition on new witnesses and evidence is also contained in Supreme Court Regulation Number 3 of 2021, of course this is very detrimental to business actors because the purpose of business actors filing legal objections is to prove that they have not violated Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Before the revision of Supreme Court Regulation Number 1 of 2003, there was a case involving the KPPU with the Garuda Airlines Company, where the panel of judges granted the applicant's request to submit new evidence and witnesses before the trial but was immediately rejected by the KPPU because it contradicted the Supreme Court Regulation, because the regulation explains that the examination of objections is only carried out on the basis of decisions and case files that have been examined by the KPPU. However, the judge considered that if Garuda did not have the opportunity to submit evidence at the trial, it could be said to violate the principle of *audi alteram partem* (hearing both parties). However, in the end, the panel of judges did not give Garuda the opportunity to submit new evidence and witnesses, because after the judge consulted the Supreme Court, this was not allowed and was contrary to the Supreme Court Regulation. Even though Garuda explained that Garuda had evidence of an agreement that could benefit Garuda, of course this was very unfortunate because the Supreme Court regulation actually prevented the applicant from obtaining justice before the trial.

Provisions Regarding Additional Examination in Supreme Court Regulation Number 3 of 2021

Regulations regarding unfair business competition are indeed new in Indonesia, the law regulating monopolistic practices and unfair business competition was only formed in 1999 which is stated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. In cases of monopolistic practices and unfair business competition, they will be directly handled by an independent institution called the Business Competition Supervisory Commission or abbreviated as KPPU. In handling cases of monopolistic practices and unfair business competition, KPPU exercises judicial power, where KPPU will issue a decision stating whether the business actor is proven to have violated Law Number 5 of 1999 or not. If the actor has already objected to the KPPU's decision, the business actor can file a legal objection at the District Court where the business actor is located no later than 14 days after the decision is issued.

The rules regarding the trial process in this objection legal effort are regulated in Supreme Court Regulation Number 3 of 2021 concerning Procedures for Submitting Legal Efforts to Objections to KPPU Decisions. Regarding the procedures for examining objections, this is more clearly regulated in Article 5, which reads:

1. Immediately after receiving the objection, the Chief Justice of the District Court shall appoint a Panel of Judges which, if possible, shall consist of Judges who have sufficient knowledge in the field of competition law;
2. In the event that a business actor files an objection, the KPPU is required to submit the decision and case files to the District Court examining the objection case on the first trial day;
3. The examination is carried out without going through a mediation process;
4. The examination of the objection is carried out only on the basis of the KPPU decision and case files as referred to in paragraph (2);
5. The Panel of Judges must issue a decision within 30 (thirty) days from the start of the examination of the objection;
6. In the event that occurs as referred to in Article 4 paragraph (4), the examination period is recalculated from the time the Panel of Judges receives the case files sent by another District Court not appointed by the Supreme Court.

Comparison of Procedural Law Regulations on Legal Remedies for Objections in Business Competition with Civil Procedural Law and Criminal Procedural Law

Legal remedies for objections are a legal step that can be submitted by the reported business actor against the KPPU's decision results registered at the District Court. This legal remedy for objections is the same as an appeal in a civil case, where the applicant for objections does not agree with the decision results issued by the judicial institution that handles monopoly and unfair business competition issues.

If we look at Law Number 5 of 1999, the Law only regulates that the court shall commence the examination within 14 days of receipt of the objection and shall decide within 30 days after the commencement of the examination. The limitation of the examination time in the objection process for business competition cases both at the District Court and the Supreme Court levels indicates the assumption of the law makers that business competition cases can be resolved in a short time with easy proof.

In the appeal of a criminal case, the applicant may state the weaknesses and inaccuracies of the authority to try, the application, and the interpretation of the law contained in the decision. In this appeal, the applicant may also state new matters or new facts and evidence, and request that the new matters or new facts be examined in an additional examination. In the criminal procedure law regulated in the Criminal Procedure Code, the criminal justice process is systematically contained, including the process of proof and evidence. Proof has a very important role, because this stage determines the fate of a person, both the perpetrator and the victim. Therefore, proof must be carried out seriously so that justice for the parties can be fulfilled objectively. The process of proof is not to find fault with the perpetrator, but also not to avoid the perpetrator from criminal responsibility. The purpose of proof is to seek material truth, so that the court's decision does not deprive or oppress the human rights of innocent people, and the victim of the crime does not become a victim for the second time due to the failure of law enforcement to punish the perpetrator. According to Andi Hamzah, the purpose of criminal procedure law to seek material truth is only an intermediate goal. The ultimate goal is to achieve order, tranquility, peace, justice and prosperity in society.

Violation of the Principle of Justice in Legal Efforts to Object to the Decision of the Business Competition Supervisory Commission Through Additional Examination based on Supreme Court Regulation Number 3 of 2021

Indonesia recognizes a two-tier or two-level judicial system under the Supreme Court. This two-tier judicial body is a first-level court and an appeals level for each of the general judicial bodies, religious judicial bodies, military judicial bodies and state administrative judicial bodies. These two levels of judicial bodies are commonly called *judex facti*. The

judge (*judex*) at first and appeal level examines the facts (*facti*) as the basis of the case and then applies these facts to the law which is the legal basis for the case.

In addition to using the term *judex facti* for the examination of first-level and appeal cases, it is often also called matter of facts. The District Court and High Court as *judex facti* must uphold principles such as fairness, due process of law, and individual rights as the basis for legality. The judge's doctrine is related to moral principles and must decide disputes by recognizing a person's institutional rights. The law must be able to reflect moral principles within the framework of human existential functions. In such cases, the law or law as a whole cannot be made contrary to the nature of humanity. This is different from the Supreme Court as a cassation court which is commonly referred to as *judex jurist*, namely only examining aspects of the application of the law which is often referred to as matter of law. In the examination of the KPPU decision, the District Court does not act as *judex factie*, meaning that the District Court does not re-examine the facts and the main points of the case. The examination in the legal objection at the District Court is carried out in a panel of judges based on the KPPU decision and the case files submitted by the KPPU to the District Court. This means that the District Court in examining, trying and deciding is based on letters or case files without presenting the business actors and the KPPU itself. The court in this case acts as a *judex jurist*, only receiving a copy of the decision from the KPPU and conducting an examination as a mere formality and not seeking the truth of a material nature. Examination with only formal aspects will certainly cause problems for business actors as the applicant for this objection.

In practice, this additional examination often causes difficulties if there are new witnesses and new evidence submitted by the applicant because the Supreme Court Regulation Number 3 of 2021 does not regulate this matter. Of course, this is a problem in itself because the presence of new evidence and new witnesses will certainly have a major impact on the results of the District Court's decision later regarding the alleged violation of Law Number 5 of 1999 committed by the applicant for objection.

Basically, the applicant's purpose in filing an additional examination is to seek the truth about the alleged violation he has committed, which in essence the applicant is asking for justice in the case he is facing. However, if in the additional examination that is examined only on the basis of evidence in the case file in the decision that has been decided by the KPPU, then it is unlikely that a fair and balanced trial will be created because it does not consider statements from both parties.

Article Number 8 of Supreme Court Regulation Number 3 of 2021 stipulates:

"Unless otherwise specified in this Supreme Court Regulation, the applicable Civil Procedure Law shall also be applied to the District Court"

If the procedural law used in this Objection Legal Effort is Civil Procedural Law, it can be compared with the Appeal Legal Effort in Civil Law cases in the High Court. By using civil procedural law in this objection legal effort, it will not be separated from the main principle in civil procedural law, namely *audi et alteram partem* (statements from both parties must be heard). Hearing statements from both parties is useful for finding the material truth in a case. The right to be heard as a manifestation of the principle of *audi et alteram partem* is also a right that is guaranteed and protected by the 1945 Constitution, namely the right to be heard and considered, both based on arguments and evidence submitted before an independent, impartial and equal judicial body for each party. The principle of *audi et alteram partem* exists in every procedural law in Indonesia, although with different names but basically the same, from criminal procedural law, civil procedural law, to procedural law at the Constitutional Court.

The material submitted for re-examination in additional examination can be caused by many factors, one of which is the lack of clarity in the burden of proof. The principle of proof

cannot be separated from justice, a sense of justice will be achieved if in the judicial process the principle of proof can be realized. Justice is one of the objectives of the law, so the judge also determines to what extent a person's rights can be granted and can be used, do not let the person's rights be granted and can be used until the rights interfere with the rights of others. The Panel of Judges examining the objection case will then order the KPPU to clarify this matter, but this examination only concerns previously existing evidence. However, if the applicant has new evidence or witnesses, this is not allowed. In fact, the purpose of holding this objection examination is to request the justice requested by the applicant business actor. If there is new evidence that can mitigate or eliminate it, it should be a consideration for the Panel of Judges in issuing a decision. Thus, in the practice of the trial process regarding legal remedies for objections to the KPPU's decision, there is a principle of justice that is not implemented properly, so that there are parties who feel disadvantaged because their rights are not fulfilled. The principles that are not implemented include:

The principle Equality Before the Law formulated in Article 28D paragraph I of the Second Amendment to the 1945 Constitution and Article 4 Paragraph (1) of Law Number 48 of 2009, is a universal principle. Article 7 of the Universal Declaration of Human Rights explains that "all are equal before the law and are entitled without discrimination to equal protection of law". Linked to the integrated justice system, it can be stated that gender, religion, race, skin color, ethnicity, social status, economic status or political ideology should not be the basis for treating people differently. The doctrine put forward by Dicey states that "all persons who are high officials or ordinary citizens are subject to the same law administered by ordinary courts", further strengthening this principle. Article 14 of the International Covenant on Civil and Political Rights strengthens that 'all persons shall be equal before the court and tribunals'. 2. Principle of Human Rights Protection

There is constitutional protection of human rights with legal guarantees for demands for its enforcement through a fair process. Protection of human rights is widely publicized in order to promote respect and protection of human rights as an important characteristic of a democratic constitutional state.

To obtain this justice, the Supreme Court should make a legal effort that can be taken by business actors to prove that they do not violate Law Number 5 of 1999 with the note that they may add new evidence or witnesses, considering that in civil and criminal law the legal effort taken, namely the appellate law, does not prohibit adding new evidence and witnesses for the appellant, if in a business competition case, legal efforts such as this appellate legal effort can also be taken.

CONCLUSION

In the examination of the KPPU decision, the District Court did not re-examine the facts and the main points of the case. The court only received a copy of the decision from the KPPU and conducted an examination purely as a formality and did not seek the truth of a material nature. In practice, the trial process has a principle of justice that is not implemented properly, the principle that is not implemented is: The principle of equality before the Law and the Principle of Protection of Human Rights. As a country of law, recognition and protection of human rights have a primary place and are the goal of a country of law. Legal remedies for objection are the only way that can be taken by business actors in filing legal remedies against the KPPU decision with all limitations. Legal remedies for objections to cassation at the Supreme Court level are business actors' objections to the KPPU decision, where these legal remedies are not allowed to add new evidence or witnesses. Business actors have no place to obtain justice by providing new evidence and witnesses that can mitigate. Suggestion

In conducting an examination of objections at the KPPU, it is best to also consider the existing principles of justice in order to achieve a fair trial. The Supreme Court should be able to form a forum for business actors to be able to obtain justice by being allowed to submit additional witnesses and new evidence like an appeal in criminal and civil cases. For business actors, it is also better to be able to make Judicial Review efforts to improve the Supreme Court Regulation on Additional Examination, so that business actors can provide new testimony or evidence to eliminate or reduce the charges.

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