



Legal Implications of the Amendments to Business Competition Law Provisions in Law Number 5 of 1999 Following the Enactment of the Omnibus Law

Christopher Hartono¹

¹Magister Sains Hukum dan Pembangunan, Sekolah Pascasarjana, Universitas Airlangga, Surabaya, christopher.hartono-2024@pasca.unair.ac.id

Corresponding Author: christopher.hartono-2024@pasca.unair.ac.id

Abstract: Law Number 11 of 2021 on Job Creation changes the regulations related to business competition law as regulated in Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. This amendment aims to improve the business competition climate to generate a positive impact on business actors and the community. Various issues and the development of changes to this law are presented in the form of seminars and scientific studies that carry topics on changes in business competition that need to be corrected immediately. After the enactment of the Omnibus Law, which changes the five articles of business competition, it needs to be studied with the main objective of business competition itself. This study will start by looking at the background and discussing the impact after the enactment of the new law for business actors, the community, and all related parties such as regarding the change in filing an objection to the Commercial Court. The method used in this paper is normative juridical by analyzing the applicable law and the impact that occurs. And the research approach used is a statutory approach and a conceptual approach. The result of this paper is that this change does not completely solve the problems that occur in the realm of business competition.

Keywords: Impact, Business Competition, Job Creation, Commercial Court.

INTRODUCTION

The enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition ("UU 5/1999") was due to various main factors since the enactment of Law Number 5 of 1984 concerning Industry, which states that the government regulates, fosters, and development of industry to realize better, healthy and successful industrial development in order to prevent the concentration or control of industry by one group or individual in the form of a monopoly that is detrimental to society.¹ Moreover,

¹ Frank Fishwick, *Seri Strategi Manajemen Strategi Persaingan*, Jakarta: PT. Elex Media Komputindo, 1995, hlm. 35-37.

the Indonesian economy has long been influenced by monopolistic practices conducted by business actors competing for excessive profits.

The monetary crisis, with its peak in 1997-1998, plunged the Indonesian economy into chaos and was caused at least by market externalities that gave companies the market power to destroy competitors (competitor elimination) and government policies that indirectly perpetuate fraud by perpetrators. effort.² Therefore, the International Monetary Fund (IMF) urges the Indonesian government to make legal products, one of which is the law on business competition as a condition for the IMF to provide assistance to Indonesia to overcome the crisis.

For more than twenty years since the enactment of Law Number 5 of 1999, no amendments have been made. In fact, the activities of business actors and the Indonesian economy continue to grow. Until the issuance of Law Number 11 of 2021 concerning Job Creation ("Law 11/2021") which is certainly expected to be able to improve the economic climate of business competition through changes to the provisions of Law 5/1999 which are adjusted to the development of actual conditions.

There are at least 5 (five) points of amendment to Law 5/1999 in Law 11/2021. First, with regard to the change in filing an objection to the decision of the Business Competition Supervisory Commission (KPPU), which was originally made through the District Court to the Commercial Court. Second, the abolition of the time period for handling the appeal by the Supreme Court which was previously mentioned 30 (thirty) days to be implemented in accordance with the provisions of the legislation. Third, the abolition of sanctions or the maximum fine limit which previously amounted to Rp. 25,000,000,000 (twenty five billion rupiah) and then added the minimum imposition of a fine of at least Rp. 1,000,000,000 (one billion rupiah). Fourth, Law 11/2021 only regulates fines for violations of Article 41. The last is the elimination of additional penalties.

Based on this background, it is necessary to study the reasons and background for the changes in the five points above so as not to deviate from the purpose and spirit of the establishment of Law 5/1999. Because if we talk about the problems in Law 5/1999, of course, it is not only the five points, so it is necessary to study further considerations regarding changes to the five points. Even the changes in Law 11/2021 do not address the KPPU at all, which has been in the spotlight all this time. In addition, it is necessary to study comprehensively about the impact of these changes, both legally and in implementation in the field, whether it really answers existing problems or creates a new problem.

METHOD

This study employs a normative juridical method, which is grounded in legal principles and doctrinal analysis. This method is used to study and analyze legal reviews regarding the alignment of changes in regulations regarding business competition with the principles of business competition law itself. This approach is used to examine the impact on business actors and the community by referring to the laws and regulations. This means that this paper analyzes the conformity between regulations and practice.

In carrying out this research, the statute approach and conceptual approach are used. In the legal approach, this research is carried out by examining the laws and regulations relating to the Business Competition Law. The second approach is used. in this study is a conceptual approach, which is one type of approach in normative legal research in which researchers try to build legal arguments in the perspective of concepts that occurred after the Omnibus Law.

² Faisal H. Basri, *Kebijakan Persaingan di Era Otonomi*, diakses pada <https://www.hukumonline.com/berita/baca/hol2735/kebijakan-persaingan-di-era-otonomi/>, 25 Mei 2001.

RESULT AND DISCUSSION

Amendment to Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition after the enactment of Law 11 of 2020 concerning Job Creation.

Law 11/2020 which was formed using the omnibus method has in fact made various changes to various sectoral laws including the business competition law sector. The presence of Law 11/2020 is inseparable from the bad condition of the investment and business climate in Indonesia which occurs due to hyper regulation and complicated bureaucratic procedures such as licensing, when carrying out investment and business activities in Indonesia. Therefore, the presence of Law 11/2020 is expected to be a solution to these problems by making various regulatory changes through deregulation and de-bureaucratization.³, including in the business competition sector.

Comprehensive and effective business competition regulations are essential to ensure the sustainable growth of fair competition. This reflects the function of law as an instrument of social engineering. Legal regulations as the rules of the game will guide, direct, and provide boundaries for economic actors in the market.

Regulations on business competition regulated in Law 5/1999 underwent crucial changes in several articles after the enactment of Law 11/2020. If we look closely at the macro, the changes involve five things as mentioned in the introduction, namely first, relating to the change in the submission of an objection to the decision of the Business Competition Supervisory Commission (KPPU), which was originally carried out through the District Court to the Commercial Court. Second, the abolition of the time period for handling the appeal by the Supreme Court which was previously mentioned 30 (thirty) days to be implemented in accordance with the provisions of the legislation. Third, the abolition of sanctions or the maximum fine limit which previously amounted to Rp. 25,000,000,000 (twenty five billion rupiah) and then added the minimum imposition of a fine of at least Rp. 1,000,000,000 (one billion rupiah). Fourth, Law 11/2021 only regulates fines for violations of Article 41. The last is the elimination of additional penalties.

An examination of the five amendments indicates that Law Number 11 of 2020 primarily focuses on procedural aspects of resolving business competition disputes. The existence of legal norms that regulate dispute resolution in the field of business competition is indeed a very crucial thing. This is very relevant to the condition of the business world which is very risky and has the potential for various frauds. As the opinion of Marshall B Clinard and Peter C Yeager in their book *Corporate Crime* illustrates that there are so many different intensities of fraudulent and illegal acts that have bad consequences because companies are intentionally committed to consumers, workers and rivals, not caring about trading partners. In addition, what Edelhertz said, corporate crimes are often committed through non-physical means involving concealment or deception to gain financial or competitive advantages.⁴ These conditions are also captured by Law 5/1999 as described in the Memory of the General Explanation.

Settlement of business competition disputes in Indonesia based on Law 5/1999 is resolved by a special quasi-judicial institution, namely the Business Competition Supervisory Commission (KPPU),⁵ which consists of not an-sich people with legal backgrounds but also with economic and business expertise. The KPPU is given a fairly broad authority as regulated in Article 36 of Law 5/1999, namely conducting investigations, prosecutions, and giving

³ Surya Mukti Pratama, *Pengaturan Baru Keputusan Fiktif Positif Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Dan Kaitannya Dengan Kompetensi Ptun*, Jurnal RechtsVinding Online, 2020, hlm. 1

⁴ Mirwansyah, *Masalah dan Hambatan Penegakan Hukum Praktik Monopoli dan Persaingan Usaha Tidak Sehat*, Jurnal Justicia Sains - Vol. 02 No. 02, 2007, hlm.200.

⁵ Alum Simbolon, *Kedudukan Hukum Komisi Pengawas Persaingan Usaha Melaksanakan Penegakan Hukum Persaingan Usaha*, Jurnal Mimbar Hukum, Vol.2,No.3, 2012, hlm. 540

decisions on cases of violations of Law Number 5 of 1999. This summarizes all the authorities of other law enforcers, namely the police, prosecutors and judges, so that the authority of the KPPU is often referred to as a super body. However, the KPPU's decision in enforcing business competition law by Law 5/1999 is not constructed as a final and binding decision, but a decision that is possible to be challenged again by an appeal mechanism.⁶ According to Law 5/1999, the KPPU's decision can be appealed to the general court. This is fully regulated in Article 44 paragraph (1) jo. (2) Law 5/1999 which states; (1) Within 30 (thirty) days after the business actor receives notification of the Commission's decision as referred to in Article 43 paragraph (4), the business actor is obliged to implement the decision and submit a report on its implementation to the Commission. (2) Business actors may file an objection to the District Court no later than 14 (fourteen) days after receiving the notification of the decision.

According to Siti Asinah, filing an appeal to the district court on the KPPU's decision is a matter of controversy in the procedure for handling business competition disputes.⁷ This controversy arises because of Law 5/1999 Article 25 paragraph (2) which states that the general court has the authority to examine, hear criminal and civil cases in accordance with the provisions of the legislation. This general court is general in nature while the substance of business competition is specific. So that the ideal thing if the court that is given the authority to settle objections to the KPPU's decision in business competition disputes is a special court as well.

In addition, normatively, Law 5/1999 does not specify at all how to examine objections to the KPPU's decision, so that in practice this often creates problems and obstacles in the examination of appeals which in the end clearly harms business actors.⁸ In an attempt to fill this legal vacuum, the Supreme Court has made a breakthrough by establishing Supreme Court Regulation Number 3 of 2005 concerning Procedures for Filing Objections to the KPPU's Decision.

In Law 11/2020 at the normative level it seems that it is trying to answer the above problem by making changes to the provisions of Article 44 of Law 5/1999, so that after Law 11/2020 objections to the KPPU's Decision are submitted not to the general court but to the commercial court. The provisions of Article 44 paragraph (2) of Law 5/1999 jo. Law 11/2020 reads as follows; Business actors may file an objection to the Commercial Court no later than 14 (fourteen) days after receiving the notification of the decision. This means that Article 44 paragraph (2) is the basis for the expansion of the absolute competence of the commercial court to enforce business competition law.

The expansion of the authority of the commercial court can actually be said to be linear with the design of the commercial court itself as a court that specializes in resolving business disputes. Looking at the idea and structure of the establishment of a Commercial Court, it can be concluded that the establishment of a Commercial Court at the Central Jakarta District Court was not intended to make the Commercial Court stop merely as a "court for bankruptcy cases". There appears to be a long-term plan to use the Commercial Court as a vehicle to improve judicial performance against the demands of the world economy as a whole. In general, the plan can be seen from two paths, namely development from the point of absolute authority and development from the point of relative authority.⁹ So that in the future the Commercial Court will not only have absolute authority to only accept applications for bankruptcy statements, but also be open to other matters related to the settlement of business disputes.

⁶ Binoto Nadapdap, *Hukum Acara Persaingan Usaha*, cet 1, Jala Permata Aksara, Jakarta, 2009, hlm. 75.

⁷ Siti Asinah, Permasalahan seputar Tata Cara Pengajuan Keberatan terhadap Putusan KPPU, *Jurnal Hukum Bisnis*, Vol 24, no.5 2005 hlm.4

⁸ Wafiya, Politik Hukum Pembentukan Undang-Undang Larangan Praktik Monopoli dan Persaingan Tidak sehat *Jurnal Ilmu Hukum* Vol.8 no., 2014, Hlm.677

⁹ Agus Iskandar, Kewenangan Pengadilan Niaga Dalam Penyelesaian Sengketa Bisnis, *Jurnal Pranata Hukum*, Volume 7 Nomor 1 Januari 2012 hlm. 73

However, it is necessary to note that the authority of the commercial courts also needs to be limited with the intention that the presence of the commercial courts will in fact distort the traditional role of the general courts that have been established in the judicial power system. Mardjono Reksodiputro emphasized the function of the Commercial Court as an exclusive court to deal with issues that are truly urgent and significant. According to him, the jurisdiction of the Commercial Court is limited by several criteria, namely:¹⁰

- a. There must be a minimum transaction value;
- b. The legal issues in dispute must involve complex commercial transactions, or
- c. the legal issue in dispute involves one of the parties who is a bank or other financial institution (including insurance institutions,
- d. legal issues that become disputes concerning laws and regulations regarding capital receipts or capital markets, or
- e. concerning the laws and regulations concerning intellectual property rights, including disputes regarding the transfer of technology.

Furthermore, Law 11/2020 also regulates changes to the procedure for resolving objections processed by the commercial court. Such as the provisions for the settlement period of objections which must be resolved within 14 days of receipt of objections as regulated in Article 45 paragraph (1).

In addition, Law 11/2020 stipulates that parties who are dissatisfied with the appeal decision in the commercial court can take legal action in the form of a cassation to the Supreme Court, where the time period for the completion of the cassation in the Supreme Court is not limited to only 30 days as originally stipulated in Law 5 /1999. The abolition of this time period is feared to have the potential to create uncertainty for business actors over the resolution of their objections. The Commercial Court can examine the evidence of a dispute and determine the *Judex Facti* properly.

Another amendment concerns Article 47 of Law 5/1999 which regulates the imposition of fines with a minimum amount of 1 billion and a maximum of 25 billion. Since the enactment of Law 11/2020, the provisions regarding maximum fines have been removed. Until now, there is no implementing regulation for this change. It is hoped that the abolition of the maximum fine limit can provide sanctions and fines for business actors who violate the law in accordance with the losses experienced by the community and the business world. KPPU has regulations, namely KPPU Regulation No. 4 of 2009 concerning Guidelines for Administrative Actions in accordance with the provisions of Article 47 of the UULPM. KPPU's consideration in imposing fines is the percentage of the operating turnover of the related company.

Law 11/2020 also makes fundamental changes, namely imposing depenalization by removing the criminal provisions in Article 48 paragraphs (1) and (2) and removing additional penalties contained in Article 49 of Law 5/1999. Originally Article 49 contained additional penalties in the form of:

- a. revocation of business license; or
- b. prohibition on business actors who have been proven to have committed a violation of this law to hold the office of director or commissioner for at least 2 (two) years and for a maximum of 5 (five) years; or
- c. cessation of certain activities or actions that cause loss to another party.

The de-penalization of the rules of Law 5/1999 shows that the legal politics of Law 11/2020 has indeed transformed into a very soft or friendly rule for entrepreneurs. This of course cannot be judged as something completely bad or completely good. Of course there are

¹⁰ *Ibid.*

positive and negative impacts from the emergence of such norms. But of course that is a handicap. In the writer's opinion, additional criminal abolition in the form of revocation of license is not justified. This is because the revocation of permits is actually the most effective means of sanction to control and correct the actions of entrepreneurs who violate the norms of business competition law, so the mechanism should be maintained.

In addition, Law 11/2020 amends the provisions of Article 48 paragraph (3) regarding minimum fines for business actors who violate the provisions of Article 41 of Law 5/1999 (the obligation of business actors to submit the necessary evidence and in connection with investigations and examinations and is prohibited from refusing checked). Article 48 paragraph (3) provides for a minimum fine of 1 billion and a maximum of 5 billion, but with Law 11/2020 abolishing the provision for a minimum fine of 1 billion for business actors who violate the provisions of Article 41. Elimination of the minimum and maximum amount of fines for business actors according to the author is necessary welcomed positively because with the abolition of the minimum or maximum fines, the amount of fines can really be adjusted to the real losses that have been experienced. It's just that the imposition of fines must consider the aspects of proportionality, expediency and justice.

The impact of the enactment of Law Number 11 of 2021 concerning Job Creation on changes to the regulation of monopolistic practices and business competition is related to the applicable law in Indonesia

After discussing the changes after the enactment of Law 11/2021 related to business competition, it will be studied further about the impact of these changes by taking into account the background changes by the formulator of the rules. This is important because in drafting a regulation at the level of legislation, it is based on philosophical, sociological, and juridical studies. This paper will limit the discussion of the sociological study of the amendments to Law 5/1999. Based on the Attachment of Law 12/2011, the sociological basis contains matters relating to the fact that a regulation is formed in principle to realize the needs of the people.¹¹ In terms of business competition, the people referred to in addition to the people in general, also refer to business actors as the subjects most affected by this change.

The first relates to changes in the submission of objections from the district court to the commercial court. Before discussing this, of course, it is necessary to first consider the procedural law that applies to business competition. The provisions of the procedural law in business competition cases are not regulated explicitly whether based on civil or criminal procedural law or instead are separate procedural law arrangements, so that if there is a legal vacuum or incomplete arrangements, they will not be able to directly apply the existing procedural law. In some literature it is found that in general, business competition procedural law relates to all matters governing the submission of reports, research, investigations, examinations, and making decisions against business actors who violate business competition law.¹²

Meanwhile, Law 5/1999 gives the KPPU the authority to enforce the business competition law, which is basically also limited in its authority. It should be noted that the KPPU is not the perpetrator of judicial power as stipulated by Law Number 48 of 2009 concerning Judicial Power. This is an interesting thing and distinguishes business competition law where the KPPU's decision has a strong position and if there is no objection to the KPPU's decision, then the decision has permanent legal force. Whereas as previously mentioned, KPPU is not a judicial or judicial institution. This means that the KPPU's decision is equivalent to the

¹¹ Appendix 1 of Law No. 12 of 2011 concerning Formation of legislation in the Systematics section of Academic Papers..

¹² I Made Sarjana, Pokok-Pokok Hukum Acara Persaingan Usaha, 2016, Bali: Fakultas Hukum Udayana, 2016, hlm. 2.

decision of the court of first instance, but with a note that prior to Law 11/2021, an objection was submitted to the District Court, which is a court of first instance. This is also a record of procedural law in Indonesia where the court is involved in handling KPPU cases.¹³

In processing business competition cases, KPPU has the authority to handle public reports or independently (initiatively) investigate cases suspected of violating business competition. Details of the KPPU's authority have been regulated in Article 36 of Law 5/1999 starting from receiving reports from the public, conducting research, investigations, to imposing sanctions on business actors who violate business competition. By looking at the process of enforcing business competition cases, it can be concluded that the process is related to criminal procedural law because civil procedural law does not recognize examination or investigation. In addition, the important element is that the KPPU seeks material truth which is a characteristic of criminal procedural law.

After the promulgation of Law 11/2021, the submission of objections to the KPPU's decision becomes the authority of the Commercial Court. The Commercial Court itself is a special court as part of the general court that decides cases in the field of commerce such as bankruptcy, postponement of debt payment obligations, and others.¹⁴ This means that with the existence of Law 11/2021, the authority of the Commercial Court has expanded by handling business competition cases other than previously only dealing with bankruptcy cases, intellectual property rights and others.

The opinion that approves this change is based on the idea that the issue of business competition is a legal issue in the business economy sector so that judges at commercial courts are considered to have more capacity to handle business competition cases than judges at district courts. The author agrees with this argument, moreover that judges in commercial courts have more control and have more often handled cases that are relevant to business economics law, such as bankruptcy, and others. Of course, the principle of right man on the right place¹⁵ or the placement of each person based on ability and expertise can be implemented properly so as to create a fairer decision.

If you see the accuracy of the change in the authority of the commercial court in handling objections to the KPPU's decision, then the answer is correct if it is based on the competence of the judge. This is apart from the position of KPPU itself which is still problematic as described previously. However, other factors also need to be studied regarding the facts on the ground so that these changes are in accordance with the legal order and application in society.

The author finds that although the concept of procedural law in business competition cases has shown a change for the better, unfortunately the number of commercial courts in Indonesia is very limited. As of this writing, there are no more than 5 (five) commercial courts in Indonesia, namely the Jakarta Commercial Court, Makassar Commercial Court, Medan Commercial Court, Surabaya Commercial Court, and Semarang Commercial Court. Surely, this is very different from the number of District Courts which reached 347 (three hundred and forty-seven) courts.¹⁶

Based on KPPU's annual report data, in 2020, as the first year of the emergence of the corona virus disease-19 ("covid-19") pandemic, KPPU decided 15 (fifteen) cases with objections of 2 (two) cases.¹⁷ Then in 2019, KPPU decided 33 (thirty-three) cases with 16

¹³ Siti Anisah, "Permasalahan Seputar Tata Cara Pengajuan Keberatan terhadap Putusan KPPU", *Jurnal Hukum Bisnis*, Vol. 24, No. 2, 2005, hlm. 4.

¹⁴ Simbolon, *Op.Cit*, hlm. 532 (377-569).

¹⁵ Bahrian, "Studi tentang Prinsip-Prinsip Penempatan Pegawai pada Kantor Kelurahan Air Putih Samarinda Ulu", *Jurnal Administrasi Negara*, Volume 5, Nomor 3, 2014, hlm. 1779.

¹⁶ https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/prosedur_pembentukan_pengadilan_dan_peningkatan_kelas_pn.pdf.

¹⁷ <https://kppu.go.id/wp-content/uploads/2021/04/Laporan-Tahunan-KPPU-2020.pdf>

(sixteen) cases which were objected to the District Court.¹⁸ For the years 2002-2018 there were 161 objection decisions by the District Court.¹⁹

From this data, excluding data in 2020 due to special conditions, namely the COVID-19 pandemic, it can be seen that filing an objection to the District Court is not a small number. This shows that it is also something that should be considered by transferring the authority to handle objections to the KPPU's decision to the commercial court. A good legal order, of course, will not be complete if it cannot be implemented or even makes it difficult for the community. In the author's view, by looking at the number of commercial courts in Indonesia, which only exist in 5 big cities, it will certainly have an unfavorable impact on the enforcement of business competition law. People who are dissatisfied with the KPPU's decision will of course add a variable of consideration to file an objection if the location of the court is far away which clearly adds to the costs that must be incurred for business actors. Ideally, laws and regulations must be good, harmonious, and easy to apply in society.²⁰

In other words, the author assumes that at least the change in the transfer of authority must be accompanied by an increasing number of commercial courts for the convenience of the public in filing objections to the KPPU's decision. As of this writing, this year KPPU has decided 22 (twenty-two) cases.²¹ It is this negative impact that should be considered and a solution immediately sought so that justice seekers do not feel more difficult with the amendments to Law 5/1999, which of course from the start was expected to address the problems faced by business actors and society in general.

Currently, with increasingly rapid technological developments coupled with tightening regulations to prevent the spread of the COVID-19 pandemic, online trials are being anticipated to be conducted in various courts in Indonesia with the issuance of various regulations such as Supreme Court Regulation Number 1 of 2019 concerning Case Administration in Courts. Electronically and Business Competition Supervisory Commission Regulation Number 1 of 2020 concerning Electronic Case Handling. However, there are still many obstacles that must be overcome to conduct justice electronically because procedural law in Indonesia has not accommodated this. Electronic management as previously mentioned is only limited to the registration process, payment, and has not yet reached the realm of the court process.

Even further, in order to achieve a better quality of business competition law enforcement, it should be possible to have a special judge who handles business competition cases. With the continuous development and complexity of problems in society, it would be better if the judges who handled business competition cases were competent judges who have special knowledge in the field of business competition. Likewise with other cases such as bankruptcy, it would be better if the judge who handles it is a special judge who is competent in the field of bankruptcy. This does not mean that judges in commercial courts are incompetent in the field of commerce, but the specificity or concentration of judges in certain cases will result in better and fairer quality of law enforcement.

With the explanation of the change in authority, it is hoped that online trials can also apply to commercial courts as a whole or to a greater number of commercial courts in order to minimize the negative impact of changes to Law 11/2021 and actually improve the quality of business competition law enforcement in Indonesia.

Furthermore, regarding the abolition of the period for reading objections and cassation decisions which until now has not been regulated by the Supreme Court with the still enactment of Supreme Court Regulation Number 3 of 2019 concerning Procedures for Filing Objections

¹⁸ https://kppu.go.id/wp-content/uploads/2020/06/Laporan-Tahunan-KPPU-2019_ok.pdf

¹⁹ <https://kppu.go.id/wp-content/uploads/2020/06/Laporan-Tahunan-2018.pdf>

²⁰ Maria Farida Indrati S, *Ilmu Perundang-Undangan: Proses dan Teknik Pembentukannya* (dikembangkan dari Perkuliahan Prof. Dr. A. Hamid S. Attamimi, SH.), Yogyakarta: Kanisius, 2007, hlm. 23.

²¹ <http://putusan.kppu.go.id/simper/menu/>.

to KPPU's Decisions. A critical note on this abolition is legal uncertainty because the Supreme Court has not immediately regulated the follow-up regulations from the promulgation of Law 11/2021. This technical matter will cause confusion and uncertainty for business actors and reflect the unpreparedness of law enforcement in dealing with changes to laws that can reduce public confidence in law enforcement. The improvement in the quality of business competition law enforcement as previously described is not optimal.

Furthermore, it is related to the elimination of additional criminal and criminal sanctions. If viewed as a whole regarding the abolition of criminal sanctions, it is certainly in accordance with the spirit of business competition, namely by emphasizing on administrative sanctions. The author assumes that this is in accordance with the spirit of Law 5/1999 which basically talks about preventing losses from the economic sector and the consequences of cheating business actors are material losses considering that the behavior of business actors is indeed based on economic motives.²² However, what needs to be considered is the existence of legal leniency that can make business actors not carry out the KPPU's decision and choose to file an objection to the Commercial Court for further action by police investigators and subject to sanctions contained in the criminal rules which are clearly less sanctioned than Law 5/2003. 1999.

In addition, in Law 5/1999 prior to the amendment it was also unclear about the authority of KPPU in investigating and investigating, but on the other hand, KPPU was not authorized to search, collect evidence or force business actors to submit evidence. It is interesting that KPPU has the authority to investigate as well as to enforce the law, which is actually the authority of the prosecutor and the police. This means that KPPU needs superior resources to carry out the heavy duty and authority in order to properly enforce the rules of business competition.

Strengthening the authority and role of the KPPU has become an issue that continues to be discussed by experts, legal observers, academics and the general public. Some opinions are of the opinion that KPPU's function is considered to be strengthened and its employment status clarified because the position and status of KPPU is not yet clear. On the other hand, KPPU is considered as a super power institution and its authority must be limited. This can be understood because KPPU acts as a regulator, namely by making interpretations of Law 5/1999 and also making various guidelines as implementing regulations for Law 5/1999, KPPU also acts as an executive and decides cases. Even though Indonesia adheres to the Montesque separation of powers to avoid arbitrariness.²³

However, this KPPU issue is not mentioned in the amendment to Law 11/2021 at all. If it is recalled whether the amendments to Law 11/2021 really answer the problem in the realm of business competition, the answer is of course no. Law 11/2021 only changes 5 points which are not substantive in nature and only regarding procedural provisions. In fact, according to the author, the moment of enactment of copyright is the right time to improve the provisions of business competition to create a better business climate.

CONCLUSION

Based on the explanation above, it can be concluded that the Job Creation Law changes at least five articles in the Business Competition Law. The five changes are changes to the procedure for business competition disputes, not substantive issues. These changes reap the pros and cons of various parties. The expansion of the authority of the commercial court actually shows an improvement in the quality of business competition law enforcement because

²² Andi Fahmi Lubis, *Hukum Persaingan Usaha Antara Teks dan Konteks*, Jakarta: Deutsche Gesellschaft für Technische Zusammenarbeit, 2008, hlm. 21.

²³ Rio Satriawan, Rony Setyawan dan Taufik Dwi Paksi, "Analisis Kedudukan Komisi Pengawas Persaingan Usaha dalam Sistem Ketatanegaraan Indonesia", *Gema*, 2015, hlm. 1723.

it is handled by a more competent party. Then the abolition of the criminal aspect is considered positive because it is in accordance with the initial spirit of the establishment of this law. However, regarding the additional penalty in the form of license revocation, according to the author, this is unfortunate considering that it is certainly effective in giving control to business actors.

Then the impact of these changes does not fully reflect the original purpose of the amendment to the Business Competition Law. Conceptually, it is true that the authority to object to the Commercial Court has been delegated, but with the fact that the number of commercial courts in Indonesia is limited compared to the number of business competition disputes, it is certainly something to worry about because there will be obstacles in its implementation. Then, in the absence of a replacement rule from the Supreme Court, it will certainly confuse business actors and create legal uncertainty. Furthermore, these changes have not fully answered the various problems that exist in the realm of business competition.

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