

Conference Paper

Unfair Business Competition in Bankruptcy Institutions and Suspension of Debt Payment Obligations in Indonesia

Halida Rahardhini, Joni Emirzon, Hasim Purba, Dedi Harianto

Universitas Sumatera Utara, Medan, Indonesia

ORCID

Halida Rahardhini: <https://orcid.org/0009-0006-6771-0973>

Abstract.

Unfair business competition in the business world is not uncommon even though there has been a law on the prohibition of monopolistic practices and unfair business competition, namely Law Number 5 of 1999. Basically, in carrying out business activities, it is natural for business actors to compete with other business actors, but must comply with legal signs governing such competition. Along with the increasingly complex development of the business world and the ever older anti-monopoly and unfair business competition laws, unfair business competition practices are also developing. On this occasion, unfair business competition practices will be discussed by bankrupting competing business actors. The study in this paper uses the normative juridical research method which prioritizes literature studies through the applicable laws and regulations in Indonesia as well as several related book references and uses an analytical descriptive approach. Based on the studies carried out, along with the results of his research, competition for market share control for business actors is a very strategic matter as a result of which business actors often use unhealthy methods as stipulated in the anti-monopoly and unfair business competition law. Unfair business competition in the perspective of bankruptcy law as mentioned above can occur due to weaknesses in regulatory patterns regarding bankruptcy requirements as stated in Article 2 paragraph (1) UUK & PKPU.

Keywords: unfair business competition practices, bankruptcy

Corresponding Author: Halida
Rahardhini; email:
halida.rahardhini@gmail.com

Published 5 January 2024

Publishing services provided by
Knowledge E

© Halida Rahardhini et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

1. INTRODUCTION

The phenomenon of unfair business competition in the business world is not uncommon even though there has been a Law on the Prohibition of Monopolistic Practices and Unfair Business Competition, namely Law Number 5 of 1999. The purpose of the law is essentially to present an orderly and efficient business atmosphere. conducive environment through fair business competition, which is then expected to guarantee certainty in equal business opportunities for business actors, starting from large and medium business actors, to small business actors.[1] Business actors in Indonesia in

 OPEN ACCESS

carrying out their business activities are based on economic democracy by taking into account the balance between the interests of business actors and the public interest.

The existence of the Anti-monopoly and Unfair Business Competition Law is not intended to eliminate competition, because competition in the business world is necessary and very useful. Competing should be carried out in a fair (read “healthy” way) to create a conducive business climate, as well as to create effectiveness and efficiency in the activities of the business world towards realizing national economic efficiency and people’s welfare. In carrying out business activities, it is natural for business actors to compete with other business actors, but must still comply with legal signs governing such competition. It is also understandable that every business actor has a business instinct that is oriented towards “profit-oriented” and the desire to expand their market share, so that one of the business strategies they carry out is a strategic problem in the form of a desire to overcome competition problems. “Competition aimed at controlling market power does not only occur between single companies, but can also occur between single companies and group companies or between small companies and conglomerates, and between conglomerates and conglomerates.”[2] Starting from this situation, it cannot be denied the phenomenon of “unfair business competition” (unfair competition). This situation once hit the Republic of Indonesia during the “New Order” era. Along with the increasingly complex development of the business world and the ever-older Anti-Monopoly and Unfair Business Competition Laws, unfair business competition practices are also developing. On this occasion, the practice of unfair business competition will be discussed by bankrupting the competing business actors.

This phenomenon, among others, has occurred in the case of the bankruptcy of the airline company “Batavia Air”. To discuss this, this paper is entitled Unfair Business Competition in Bankruptcy Institutions and Suspension of Debt Payment Obligations in Indonesia. Furthermore, so that the discussion can be more focused, two problems are formulated, namely:

1. What is the difference between business competition and unfair business competition in Bankruptcy Institutions in Indonesia?
2. What is the regulatory pattern for Bankruptcy Institutions in an effort to anticipate unfair business competition?

2. METHODOLOGY

The material object of this study is Unfair Business Competition in Bankruptcy Institutions and Suspension of Debt Payment Obligations in Indonesia. Therefore, this study uses a normative juridical research method that prioritizes literature studies using data based on laws and regulations and other book references. Data analysis in this study uses an analytical descriptive approach to construct, discover and develop theories built through data so that hypotheses can be found in the form of relationships between symptoms. The data collection method in this study is documentation, namely the study of primary and secondary data. Simultaneously with data collection, data analysis was carried out by selecting, focusing attention, abstracting and transforming data.

3. RESULTS AND DISCUSSIONS

3.1. Differences in Business Competition and Unfair Business Competition in Bankruptcy Institutions

In economics, competition or competition is “competition of sellers who are both trying to get profits, market share, and the number of sales. Sellers usually try to outperform the competition by differentiating prices, products, distribution and promotions.”[3] “Competition in a market is differentiated into perfect competition and imperfect competition”[4]. A market that has no competitors is called a monopoly. The existence of competition causes commercial companies to develop products, technologies and services, resulting in more choices, produce better products, and lower prices. “One form of competition in the economic field is “business competition”, namely competition between sellers in “grabbing” buyers and market share “[5].

Based on this understanding, it can be seen that in a business competition there are several parties that aim to achieve certain business objectives such as profits, sales, or market share. Competition as a characteristic of a market economic system tends to be preferred to conditions without competition, although the latter condition cannot be said to be completely bad. From a juridical aspect, competition is a right that is inherent in every individual to try to meet the needs of everyday life, namely a right to try to get more than what other individuals get, to get the opportunity to produce today better than yesterday and tomorrow. better than today by all walks of life.” [6]. Along with the right to compete in humans.

Unfair business competition is competition carried out between business actors in the same field in carrying out production and/or marketing activities of goods and/or services that are carried out in a dishonest or unlawful manner or impede business competition[7]. As explained in Article 1 number 6 of the Anti-Monopoly and Unfair Business Competition Law. If people wish to exercise their right to compete, they must also comply with that competition obligation towards the competing rights of others. Broadly speaking, the types of unfair business competition that exist in an economy are basically:

- (1) Cartel
- (2) Closed agreement
- (3) Mergers
- (4), Monopoly, and
- (5) Abuse of Dominant Position,

There is also unfair business competition that usually occurs by utilizing Bankruptcy Institutions. In order to obtain an overview of each of these forms of unfair business competition, they are briefly described below.

First, the usual unfair business competition, namely horizontal barring activities or known as cartel activities, means that these activities are carried out in a written or unwritten agreement[8] between several of the same business actors to control the production or marketing of goods or services, so that high prices are obtained. The cartel itself is carried out with the aim of trying to maximize the profits of business actors where the cartel is an obstacle to competition that is the most detrimental to society, so that among the Monopoly Laws in many countries cartels were outlawed. As a result of the existence of cartel activities can change the market structure to become monopolistic. Apart from that, cartels can also be carried out in the form of dividing marketing areas or limiting (quota) of goods or services. It should be noted that in good economic conditions cartels will easily form, while cartels will split if economic conditions are experiencing a recession, other than cartels. It will also be easy to form if the goods being traded are mass goods which are homogeneous in nature so that they can easily be substituted for similar goods while the market structure is maintained.

Second, The second form of unfair business competition is a closed agreement (exclusive dealing) which is a vertical barrier in the form of an agreement between a producer or importer and a retailer stating that a retailer is only allowed to sell certain brands of goods, for example it is not uncommon to find that specifically for Certain brands of perfume may only be sold in exclusive locations. In the case of unfair

business competition through this closed agreement, the concession is made with retail traders who are prohibited from selling goods with brands other than those specified by the producer, supplier of goods and/or certain importers in the relevant market. The existence of closed agreement activities provides losses that are not only felt by business actors but also felt by the community and will lead to a monopoly market structure. The third type of unfair business competition is merger. "In general, a merger can be defined as a merger of two or more business actors into one business actor." [7].

Third, Merger activity is an activity known as a takeover or acquisition, where in the event of an unwanted merger of business actors, two or several similar business actors join and create horizontal integration whereas if two business actors become suppliers of other business actors it will form vertical integration. Merger activities basically have benefits, namely increasing the productivity of new business actors, but if mergers or takeovers do not get supervision and control then bad impacts will actually be produced, because takeovers can lead to a concentration of power which in the future can affect the market structure so that it can lead to monopolistic market.

Fourth, the fourth type of unfair business competition is monopoly. It should be noted that unfair business competition will give rise to monopoly. height." [8]. Furthermore, in the Anti-Monopoly and Unfair Business Competition Law, monopoly is defined as control over the production and or marketing of goods and or over the use of certain services by one business actor or a group of business actors (Article 1 point 1 of the Anti-Monopoly and Unfair Business Competition Law). **Fifth**, the fifth unfair business competition is the abuse of a dominant position. Dominant position, namely a situation where a business actor does not have the same competitors and means in the relevant market, in this case there is a connection with the market share controlled, or the business actor has the highest position among his competitors in the relevant market, in other words, a business actor whose position is higher means that concerned has the financial capacity, the ability to access supply or sales, as well as the ability to adjust the supply or demand for certain goods or services. (Article 1 number 4 of the Anti-Monopoly and Unfair Business Competition Law). In addition to these five forms, in bad faith, Bankruptcy Institutions can be used to get rid of business actors, thus this situation is actually a form of unfair business competition.

3.2. Bankruptcy Institutions in Anticipating Unfair Business Competition Activities

1. Implementation of Bankruptcy Arrangements in Indonesia against Unfair Business Competition Activities

Law Number 37 of 2004 is Concerning Bankruptcy and Suspension of Obligations for Payment of Debt (hereinafter referred to as UUK & PKPU). This law is a substitute for Law Number 4 of 1998 which regulates the same matter, while Law no. 4 of 1998 itself was originally Perpu No. 1 of 1998 concerning Amendments to STb Bankruptcy Regulations. 1905 jo Stb. 1906. The issuance of the Perpu was actually to overcome the monetary crisis that occurred at that time, but until now the implementation of the UUK & PKPU often causes problems. Basically these problems occur due to weaknesses in the law, mainly stemming from the editorial formulation of the norms of Article 2 paragraph (1) UUK & PKPU which regulates the conditions for bankruptcy.

“A debtor who has two or more creditors and does not pay off at least one debt that is due and payable is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors.”

Based on these provisions, in order to be declared bankrupt by the Court, two conditions must be met, namely: the debtor has two or more creditors, and the debtor does not pay at least one debt that is due and payable. This provision does not require that the party wishing to go bankrupt must be in an “insolvent state”. This basically indicates that UUK & PKPU are more in favor of creditors. In addition, there is no requirement that the party who wants to declare bankruptcy is insolvent, basically not in line with the nature of bankruptcy. The provisions of Article 2 paragraph (1) UUK & PKPU are popularly used to force parties who are deemed to be in debt for one reason or another to pay their debts. UUK & PKPU are more used to force debtors to pay debts even though the debtor is in a solvent position.”[9]. The ease with which the requirements to be declared bankrupt as stipulated in the provisions mentioned above have implications for business actors with bad intentions to use bankruptcy law as a tool to collect debts and to get rid of competing business actors.

2. Misuse of Bankruptcy Arrangements in Business Competition

Intense competition among business actors often causes them to do everything they can to “seize” market share, so that they engage in competition that is actually unhealthy, including using the institutions of bankruptcy law to get rid of their

competing business actors. “Bankruptcy legal institutions should be used as a last resort (*utimum remidium*), not as *premium remidium*, after other avenues cannot be taken to provide settlement for creditors’ receivables.”[10]. Furthermore, it is also said that the provisions of Article 2 paragraph (1) UUK & PKPU are very oppressive to debtors, and can be used to play debtors who are not yet insolvent, even in bad faith can be used to get rid of competing debtors.

4. CONCLUSIONS AND RECOMMENDATIONS

The rapid development of an increasingly complex business, accompanied by increased product innovation and market domination, can trigger increasingly fierce competition, which often creates unhealthy competition. Competition for market share control for business actors is a very strategic matter as a result of which business actors often use unhealthy methods as stipulated in the Anti-Monopoly and Unfair Business Competition Law. Unfair business competition in the perspective of bankruptcy law as mentioned above can occur due to weaknesses in regulatory patterns regarding bankruptcy requirements as stated in article 2 paragraph (1) UUK & PKPU. Article 2 paragraph (1) is very in favor of the interests of the creditors. This is not in line with the principle of equal legal protection between debtors and creditors. UUK & PKPU should protect the interests of debtors and creditors equally. In order to create a balanced legal protection, in the pattern of bankruptcy regulation, it is necessary to have a pattern of bankruptcy law that protects both debtors and creditors in a balanced way. The regulatory pattern regarding the requirements for bankruptcy applications submitted by creditors should contain the requirement that there is no business competition relationship between the creditor and the debtor. In order to prevent bankruptcy law from being misused in the form of eliminating competitors, a regulatory pattern is needed regarding debtor bankruptcy requirements that contain “inability”. This can be done by conducting a debtor inability test (insolvency test), which is carried out by an independent party, for example by a legal consultant,

References

- [1] Article 3 of Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition.
- [2] Emmy P. Economic law analysis of competition law: Prohibition of monopolistic practices and unfair business competition, based on Law no. 5 of 1999. Yogyakarta:

- Gajah Mada University; 2013.
- [3] Anindita. Improving writing ability of students of Law Business Department of Bina Nusantara; 2013.
- [4] Siswanto A. Business competition law. PT. Jakarta: Ghalia Indonesia; 2002. p. 14.
- [5] Widjaja G. Mergers in a Monopoly Perspective. Jakarta: PT Raja Grafindo; 2002.
- [6] Ellipse. Elliptical economic law dictionary. Ellipse Project, Jakarta; 1997.
- [7] Riani S, Nurhasanah P, Afwa U. Pertanggungjawaban Hukum Direksi Induk Terhadap Risiko Bisnis Anak Perusahaan pada Holding Company BUMN. Indones. Law Reform J. 2021 Nov;1(3):303–17.
- [8] Anggraeny I, Tongat T, Rahmadanti WD. URGENSI PELAKSANAAN TAHAPAN PERSIAPAN PENYUSUNAN KONTRAK OLEH PELAKU BISNIS DALAM MENINGKATKAN HUBUNGAN BISNIS. Yurispruden J. Fak. Huk. Univ. Islam Malang. 2020 Jan;3(1):1–11.
- [9] Ellipse. Business competition and laws that regulate it in Indonesia, Ellips Project, Jakarta; 1999.
- [10] Hikmahanto Juwana. Legal politics of law in the economic sector in Indonesia. Journal of Business Law. 2004;23-61.
- [11] Remy S. History, principles, and theory of bankruptcy law understanding Law no. 37 of 2004 concerning bankruptcy and postponement of debt payment obligations. Jakarta: Prenadamedia Group; 2016.
- [12] Teti Marsaulina. Corporate debt from an economic policy perspective. 2002.