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ANTICOMPETITIVE BEHAVIOR IN EARLY PARENT STOCK SORTING

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ABSTRACT

The indication of anticompetitive behavior that carried out by several large companies in the poultry industry has become an obstacle for other business actors that do not have power to entry the market. The regulation relates to the poultry industry has been regulated, one of which is in the Law Number 18 of 2010 concerning Agriculture and Animal Health. In addition, the Ministry of Agriculture Circular Letter Number 15043/FK.010/F/10/2015 is also closely related to the regulation implementing by large poultry breeding business actor. Although, these regulations have been issued, the indication of anticompetitive behavior still takes place. Therefore, this study reviews the regulations that have been established. This study aims to review the indication of anticompetitive behavior in the early parent stock sorting by breeding company. Besides that, this study also aims to review the regulation related to the adjustment of the parent stock population and its conformity with the direction of business legal policy. Government policy through the Ministry of Agriculture Circular Letter No. 15043/FK.010/F/10/2015 concerning the adjustment of the parent stock population unintentionally limits the movement of local business actor to get parent stock with low prices. The existence of the Ministry of Health letter becomes a policy gap that is pro-anticompetitive to be used by large poultry breeding company and is indicated to be contradicted with the direction of business competition law in accordance with the principles of economic democracy.

INTRODUCTION

The poultry industry can be said to play a very important role in encouraging the economy in Indonesia. At present, the poultry industry is an industry whose existence relates to the fulfillment of food needs for every people in Indonesia, especially in East Java region. This is possible because currently the poultry

industry is able to produce self-sufficiency in poultry meat and eggs. In this era, the poultry industry holds several sectors which not only for poultry breeding, but also for the manufacture of animal feed until the processing of chicken meat ready for consumption. Another important thing is the poultry business plays a role in improving the health and intelligence of the people, through their consumption product of chicken meat and egg.

The chicken meat trade has an oligopolistic form of market, thus it is vulnerable to the existence of monopolistic practices. Even though chicken meat is one of the important food sources to fulfill the nutritional needs of the Indonesian people, especially in East Java region. It is intended in order to be easier to fulfill the current economic necessity in accordance with situation. Nutrition sources such as chicken meat can be affordable by all the levels of people, if it is supported by business actors who carry out fair business competition in this field (Anggraini, 2013).

Although, business competition is a matter among business actors (private economic power) and the state does not interfere, but to create a level playing field or fair play among business actors, and to protect weak parties, namely consumer, it is quite reasonable if the state needs to interfere within the business competition, in which it is based on the state as a policy maker or provision maker in the economic field (power of economic regulation) (Ais, 2011). If the monopolistic practice and unfair business competition occur, the chicken meat trade is very easy to experience price fluctuation, thus the prices can skyrocket and then it cannot be easily reached by the majority of Indonesian people, also the scarcity of chicken supply in the Indonesian market.

Indonesian law does not provide a legal basis for regulating or guaranteeing prices for any product (Prihandono and Relig, 2019). However, various kinds of regulations which regulated economic activities and the work of developing and enforcing these regulations are in the hands of the government. At the global level, economic law carries the greater quality considering its scope and the economic actors who involved (Niyobuhungiro, 2019). Economic law is the branch of law that regulates the public economic relationship among the government, its economic administrative institution, economic organization and their citizen. The Law Number 5 of 1999 concerning the prohibition of monopolistic practice and unfair business competition based on the economic democracy is to maintain a balance between the interests of business actor and the public interest that protects consumer. In this case, the government is trying to foster a conducive business climate through the fair business and ensuring the certainty of business opportunity for everyone (Kumalasari, 2013).

The position of the Business Competition Supervisory Commission in the context of constitutional governance is as a state auxiliary organ (Kagramanto, 2012) which has the authority based on the Law Number 5 of 1999 to enforce business competition law. The existence of Law No.5 of 1999 which based on economic democracy by looking at the balance between the interests of business

actor and the public interest has a very important and strategic role in realizing a fair business competition climate in Indonesia (Ais, 2011). Thus, the existence of Law Number 5 of 1999 needs to be encouraged in order to realize the concept of Law as a Tool to Encourage Economic Efficiency (Nugroho, 2012).

The Business Competition Supervisory Commission suspects that there is indication of chicken cartel towards the Ministry of Agriculture Circular Letter Number 15043/FK.010/F/10/2015 on October 15, 2015 concerning the Adjustment of Parent Stock Population related to the early parent stock sorting to reduce chicken stock life to the 12 (twelve) Poultry Breeding Companies in Indonesia which caused soaring chicken prices and scarcity of day old chick in the market.

Business actors who are indicated to carry out the cartel themselves are a number of business actors that have the business related to the breeding until the processing chicken meat, parent stock breeding, day old chick breeding which ready for sale, poultry feed business, poultry feed raw materials business, commercial broiler breeding business and chicken breeding business in partnership with the provision made by the Plasma Nucleus Company and opening the stand to sales the life broiler chicken in traditional markets, and striving the processing of ready-to-serve chicken. As the producer of day old chick, these business actors have the latest technology to produce day old chick's feed and have the access to the raw materials for day old chick breeding. Based on the problems above, this study aims to review the indication of anticompetitive behavior in the early parent stock sorting by breeding company. In addition, this study also aims to review the regulation related to the adjustment of the parent stock population and their conformity with the direction of business legal policy.

RESEARCH METHOD

This study used the type of normative research, namely the method of study approach towards the legal principles and legal systematic in regulating the laws and regulations (Wiratraman, 2019). Thus, this normative research was focused on positive legal inventory, and legal discovery (Marzuki, 2017). This type of normative research used the qualitative analysis by explaining the data with words or statements rather than with numbers.

The legal approaches used were statute approach, conceptual approach, and case study. The legal sources used were primary and secondary legal sources. Primary legal materials included the civil law code, the law and the regulation of Business Competition Supervisory Commission, namely the method of study approach to the principles of law and systematics of law in regulating laws and regulators. Thus, this normative research is focused on positive legal inventory, and legal discovery. This type of normative research uses qualitative analysis by explaining data with words or statements rather than with numbers.

RESULTS AND DISCUSSION

Circular letter which issued by the Ministry of Agriculture relating to the adjustment of parent stock population was a group of regulation that was more technical and there was no explanation as the laws and regulations, thus the existence of this circular letter has the permanent legal force in regulating the regulation and policy which issued by the government relating to the poultry industry.

The policy which taken by the Ministry of Agriculture with the issuance of the Directorate General of Animal Husbandry and Animal Health Letter Number 15043/FK.010/F/10/2015 on October 15, 2015 concerning the Adjustment of Parent Stock Population, the Directorate General of Animal Husbandry and Animal Health instructed the breeders to immediately:

1. Making an adjustment to the early broiler parents stock sorting as many as 2 million proportionally throughout the breeding farm location for the first stage.
2. Controlling each other among the business actors and supervising by the Government and universities in implementing population reduction.
3. After implementing the early parent stock sorting, the business actor immediately reported the result of adjustment to the Directorate General of Animal Husbandry and Animal Health through an association of poultry breeding company as the implementing coordinator.
4. If it was reviewed, the regulation which issued by the government was less competitive. In this case, the regulation hampered the new business actor from entering. Specific regulation unintentionally provided obstacles for other business actors to compete in certain market or sector. Relating to the poultry industry sector, the regulation and policy which issued by the government through the adjustment of the parent stock population circular letter, besides the limitation of parent stock population, unintentionally there was limitation for the supplier of day old chick to some large business actors who have market power in relevant market.

In addition, that regulation also limited or intervened the market price fixing. Fair business competition could also be caused by a number of regulations and policies that regulated price fixing or tariff. The circular letter of the Agriculture Ministry did not determine price fixing in the contents of the issued policy. But, business actors who fixed the price through the Association of Poultry Breeding Business Actor for the companies that were incorporated in that association, it affected the market price which was very high and caused the price of chicken in the market to soar high due to the limited of one-day chicken or day old chick for the parent stock adjustment.

Another impact of that regulation was to limit import production to a certain extent, thus it opened up the potential for cartels. Regulation that did not support the fair business competition could also in the form of regulation that limited the number of production and provided discrimination in the range of services or products that benefit certain parties. The circular letter of the Agriculture Ministry regarding Adjustment of Parent Stock Population, was one of the main

points which instructed by the Directorate General of Animal Husbandry and Animal Health to the poultry breeder business actors to carry out the early sorting or extermination of 2 (two) million parent stock breeding in the first stage and 1 (one) million in the second stage. The objective for the enactment of this regulation was to regulate the price of chicken in the market that had dropped. This regulation was anti-competitive because the objective of reducing supply through early parent stock sorting was to increase chicken prices in the market and to help the poultry industry business actors that suffered losses in production, but it was very influential for consumers because the price of chicken in the market was very expensive. The large number of early sorting which instructed to make the price of chicken in the market soared due to lack of supply. If the reduction in production was carried out by business actor, it could be indicated that there was a cartel among them. But in this case, the reduction in chicken supply due to the extermination of the parent stock breeding, it essentially became a cartel that was indicated by regulation (cartel by regulation).

Business actor in the industry sector was one of the sectors that received the instruction regarding government policy through the Directorate General of Animal Husbandry and Animal Health letter Number 15043/FK.010/ F/10/2015 on October 15, 2015 concerning Parent Stock Population Adjustment, it could be seen that there was the policy from the government that benefit only for some business actors. Some of these business actors had a market power that could affect the production of people's needs and it would be related to the fulfillment of basic food needs, namely chicken meat. Regarding this matter, several large poultry breeding companies eliminated these business actors including local or independent breeders who were deemed not to have full market power.

Through government's policy which influenced the market power of some business actors, the government's policy through a circular letter of the Agriculture Ministry had an impact that caused violation of the rights for other business actors who did not have market power and consumers who were disadvantaged over the limited production result, thus, it affected the price of chicken in market currently. Besides the existence of the circular letter of the Agriculture Ministry, it strengthened by the existence of Law No. 18 of 2009 concerning Animal Husbandry and Animal Health. The government argued that it could regulate everything related to the animal husbandry sector to provide protection and balance between business actors with the result obtained for the production of chicken that would be traded in the relevant market. The government intended to provide assistance by issuing the policy in order to protect business actors both the large or small business actors. the Law Number 18 of 2009 concerning Animal Husbandry and Animal Health, especially in article 2 which stated that the organization of animal husbandry could be carried out in integrative and could be carried out based on the benefit and sustainability, safety and health, society and justice as the source of poultry problems, in which there was no division of market segmentation which intended for independent and integrated animal husbandry. In this case, it

became an indication for the Ministry of Agriculture in issuing the circular letter as a shortcut to overcome the fluctuation of chicken prices in the market and was detrimental to business actor as the producer.

The government often issued the policy or allowed business actor to carry out monopolistic action or unfair business competition. The regulation which provided by the government, indirectly made the competition among business actors was unfair. Based on the article 11 of Law No. 5 of 1999, cartel was generally practiced by trade association, together with their members. The implementation of Law No.5 of 1999 would depend on the government's political will and political commitment to implement it (Kumalasari, 2013). Regarding poultry breeding of day old chick, poultry industry business actors were incorporated in the Association Trade of Poultry Breeding Business Actor. Poultry breeding company that was incorporated in the association has agreed with the Ministry of Agriculture to conduct the early sorting with the intention of controlling production and prices through the circular letter regarding Parent Stock Adjustment. Relating to the Article 15 of Law No. 5 of 1999, the agreement which made between the government and business actor that controlled the East Java's chicken market share, indicated that there were several request realizing for the sake of the large company interest which caused the main objective of the agreement made between the government and the Association of Poultry Breeding Business Actor. In the case of the dominant position abuse, several large companies that carried out early parent stock sorting, the rest have controlled the market share of more than 80%, which initially only limited to 50% in market control and the large poultry breeding company was deemed to be a very influential market ruler in Indonesia especially East Java region.

Dominant position was actually not a problem if it was not abused (Singh, 2014). However, if an abuse has been occurred, the Business Competition Supervisory Commission had the duty to assessing the agreements that may cause monopolistic practices and/ or unfair business competition and issuing warning letter on poultry breeding industry policy both from the government and/ or business actors. If there has been an indication of monopolistic practice and/ or unfair business competition by business actor with the government, then the Business Competition Supervisory Commission had the authority to take the concrete action to handle it. The Business Competition Supervisory Commission had the right to initiate without public reports in the terms of taking concrete action relating to the parent stock sorting which has been agreed and made by several large companies.

The Business Competition Supervisory Commission had the function of legal enforcement, especially business competition law for poultry industry business actors who were indicated to create unfair business competition with the government. This was based on the position of the Business Competition Supervisory Commission as an administrative institution, in which the inherent

authority of the Business Competition Supervisory Commission was in the administrative authority.

The cartel indication which carried out by several poultry breeding companies in East Java dominated the relevant market. Market power which owned by several large poultry breeding business actors, was used as a benchmark for market control that could harm some parties, including other business actors, namely the local or independent breeder who did not has market power and consumer. There was the indication of anti-competitive behavior which carried out by some of the breeding companies including the indication of cartel in accordance with the article 11, an exclusive agreement in accordance with the article 15, and abuse of dominant position in accordance with article 25 of Law no. 5 of 1999 concerning Monopolistic Practice and Unfair Business Competition. The indication of anti-competitive behavior in East Java could be proven through several approaches, including the economic approach that was related to business competition law and the provision of Law No.5 of 1999. Relevant market, market power, barrier to entry and price strategy was the benchmark which became the proof that there was an indication of anti-competition which carried out by large poultry breeding company in East Java region.

CONCLUSION

Government Policy through the Ministry of Agriculture Circular Letter Number 15043/FK.010/F/10/2015 on October 15, 2015 concerning the Adjustment of Parent Stock Population related to the early parent stock sorting to reduce day old chick stock to the large poultry breeding companies, actually it could lead to soaring chicken prices and scarcity of day old chick in the market. The Ministry of Agriculture circular letter, besides the limitation of the parent stock population, accidentally there was limitation for the supplier of day old chick to some of the large business actors who have market power in the relevant market, thus, business actors or local breeders were very difficult to get parent stock with the low prices and consumer got the price of chicken which was very expensive in the market. The existence of the Ministry of Health letter become a policy gap that was pro-anticompetitive to be used by large poultry breeding company and was indicated to be contradicted with the direction of business competition law in accordance with the principles of economic democracy.

ETHICAL CLEARANCE

This research does not involve any participants, rather it is descriptive study. This research was carried out in accordance with the research principles. This study implemented the basic principle ethics of respect, beneficence, nonmaleficence, and justice.

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