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Annotations to Article 50 Letter (I) Law Number 5 of 1999 on The Prohibition of Monopolistic Practices and Unfair Business Competition

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Abstract
The discourse regarding the exception of cooperatives as an institution that is not an object in Article 50 letter i in Law Number 5 of 1999 on the prohibition of monopolistic practices and unfair business competition has been going on for a long time. The annotation of this article is seen from the incompleteness of the explanatory norm in article 50 letter i, as well as the facts on the KPPU's decisions rejecting cases that use this article as a shield. This research used normative research methods to analyze the existence and usefulness of article 50 letter i of Law No. 5 of 1999. The results of this research were in the form of juridical incompleteness and the irrelevance of this article with the sociological conditions existing in society today. Based on the economic analysis of the law, this article did not fulfill the element of effectiveness because it would only increase the submitted cases. The recommendation of this study is that there are no more exceptions to cooperatives because they are no longer in accordance with the exception reasons by the legislators at that time

Keywords: cooperative; unfair business competition; KPPU verdict.

Abstrak
Diskursus mengenai pengecualian Koperasi sebagai institusi yang tidak menjadi objek dalam Pasal 50 huruf i yang ada dalam UU Nomor 5 tahun 1999 tentang larangan praktik monopoli dan persaingan usaha tidak sehat telah cukup lama terjadi. Anotasi atas pasal ini dilihat dari ketidaklengkapan norma penjelas pada pasal 50 huruf i, maupun fakta atas putusan-putusan KPPU yang menolak perkara yang menggunakan pasal ini sebagai perisai. Penelitian ini menggunakan metode penelitian normatif untuk menganalisis eksistensi dan kedayaguna-an pasal 50 huruf i UU Nomor 5 tahun 1999. Hasil dari penelitian ini berupa ketidaklengkapan yuridis dan tidak relevannya pasal ini dengan kondisi sosiologis yang ada di masyarakat saat ini. berdasarkan analisis ekonomi terhadap hukum, pasal ini tidak memenuhi unsur efektifitas karena hanya akan memperbayak perkara yang masuk. Rekomendasi dari penelitian ini adalah tidak adanya lagi pengecualian kepada koperasi karena tidak sesuai lagi dengan alasan pengecualian oleh pembentuk undang undang saat itu.

Kata kunci: *koperasi; persaingan usaha tidak sehat; putusan KPPU.*

Introduction

Market mechanism has three main factors that support and determine the market, namely market structure, market behavior and market performance (Lopez, 2009). Competition policy is a policy regarding efforts to achieve maximum efficiency of resource management and protection of consumer interests. In competition policy, there is an interaction between Market Structure, Market Conduct, and Market Performance with General Common Policy. All these policies are an effort to create conditions for fair

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competition. Fair competition is a condition that allows optimal utilization of resources through innovation, in which the competition will benefit consumers because it provides many alternative options of products circulating in the market. From a macroeconomic perspective, it is useful to avoid deadweight loss of the public due to production restrictions by monopolist to keep prices high so that the expected outcome is able to the maximize consumer welfare (Lubis, 2009).

As a state based on positive law construction, Indonesia has its own set of configuration regulation overshadowing business competition. At the level of macro law politics, Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition are the common norms used as references in terms of business competition in Indonesia. In structure, a central institution authorized to settle cases related to business competition is the Business Competition Supervisory Commission or in Indonesia is called KPPU, which is not only effectively and efficiently supervises business competition in Indonesia, but also plays a significant role in providing technical regulations related to business competition (Lubis, 2009).

The recognized integrity of the Business Competition Supervisory Commission as an independent body in handling, investigating, and deciding a case which are very independent and not influenced by anyone, either the government or other parties concerned, despite the accountability of the Business Competition Supervisory Commission (KPPU) is aimed at the president according to the mandate of laws and regulations (Dudung, without year). Tasks and authority of the Business Competition Supervisory Commission is as public institutions, enforcers and supervisors of implementation and independent referees in order to resolve cases related to the prohibition of monopolistic practices and unfair business competition (Alum, 2012). The Business Competition Supervisory Commission through its authority has a big role in maintaining and encouraging the market economy system to be more efficient in terms of production, consumption and allocation, so in the end it is expected to contribute in increasing the level of community welfare in general (Asmah, 2017).

The Business Competition Supervisory Commission also has an indirect relationship with corruption in the private sector (Meita, 2019). The authority of Business Competition Supervisory Commission allows detection of corruption problems related to procurement of goods and services through a tender mechanism particularly those which have direct contact between Business Competition Supervisory Commission and Corruption Eradication Commission (KPK). So that it is increasingly apparent that KPPU is playing an important role not only from the private sector but also the public sector. Such contact leads to the problems of business competition which is not only in the scope of economic aspects but also to the public interest, especially state finances (Asmah, 2017).

The aspect of business competition is different from corporate crime in the context of Indonesian positive law, although according to the writers there are only few contacts between business competition and corporate crime. In some countries, there are forms of violation against business competition included in the corridor of criminal law such as the

United States and several European countries which categorize Cartel as a form of corporate crime. The pattern used is a combination of several corporations in order to dominate the market so that the corporation can easily control the prices (Asmah, 2017).

The legal entity in theory perspective is a legal subject that is recognized by law to have rights and obligations (Setiono, 2003). However, the conception of the legal subject in corporate crime and business competition have differences. In corporate crime, legal subjects attached to criminal acts are the corporations. In criminal law terminology, it means an entity or business consisting of a group of people who have their own identity, have separated wealth from the member assets, have a legal subject and their activities lead to specific goals (Abidin, 1983). Legal subjects in business competition law is business actor defined as every individual or business entity in the form of a legal or non-legal entity, which is established and domiciled or carrying out activities in the Republic of Indonesia.

The difference can also be seen from the objectives of criminal law and business competition even though it has a point of contact. Criminal law aims to protect individuals, communities and country (Zuleha, 2017). Meanwhile, business competition protects public interest in the macroeconomic dimension in relation to the national economy from unfair business competition (Suhartin, 2018). However, the difference lies in the specifications of society, which are consumers and business actors (Alfarizi, 2014).

Business competition in Indonesia has broad dimensions that have been comprehensively regulated in Law Number 5 of 1999 on Business Competition. In this law, there are three main categories of action that are prohibited to do by companies against the market. These include a prohibited agreement, prohibited activities, and abuse of dominant position. The three prohibitions are imposed in order to protect fair competition in the market (Mardjani, 2005).

Several large cases have been recorded as a form of violations of fair business competition in the history of Business Competition Supervisory Commission or KPPU. For example, cases of abuse of the dominant position held by PT Arta Boga Cemerlang who dominate the AA type battery market through its branded products ABC. They conclude a prohibited agreement with distributors in order to create barriers to entry. This case is recorded in the Decision of the Business Competition Supervisory Commission Number 06/KPPU-L/2004 (Siswanto, 2008). In addition, there are also the case of vertical integration which causes monopolistic practice regarding the provision of an airplane ticket booking system that ensnares PT Garuda Indonesia with its subsidiary that engaged in providing air transportation services based on Computerized Reservation System (CRS), namely PT Abacus. This case is handled by the Business Competition Supervisory Commission through Decision of the Business Competition Supervisory Commission Number 01/KPPU- L/2003 (Usman, 2013).

The enforcement conducted by Business Competition Supervisory Commission in order to create condition of fair competition also extends to the international scope such as the punishment of Temasek Holdings for the violation of share cross ownership (Azis,

2018). The history records that two cellular operators in Indonesia have a large market share which are PT Telkomsel and PT Indosat (Mochtar, 2013). The problem is that there are stakeholders behind it who control share cross ownership in the two operators namely Temasek Holdings which controls PT Telkomsel 35% through Singapore Telecommunications (Sing Tel) and PT Indosat through Singapore Technologie Telemedia (STT) by 43.06%. Temasek Holdings' investment percentage recorded in the telecommunication sector of Indonesia has reached 26% in 2005 (Udin, 2018). KPPU sentenced Temasek Holdings through Business Competition Supervisory Commission Decision Number 07/KPPU-L/2007 (Suyekti, 2008).

Based on this reputation, the Business Competition Supervisory Commission is ultimately trusted by the community because it gives the maximum contribution in increasing public welfare and creating healthy business competition and participates in providing understanding of business competition (Business Competition Supervisory Commission, 2017). This includes following up the reports from the public as the source of the inclusion of cases of business competition violation, in addition to the monitoring carried out directly by the Business Competition Supervisory Commission. Most cases which are followed up by the Business Competition Supervisory Commission are the result of public participation in guarding the business competition (Wizna, 2020).

Another problem lies on the several articles in the law on unfair business competition, where their existence is questionable specifically whether they are still relevant or not. One of which is article 50 letter i that provides an exception to cooperatives as subjects that are not the object of this law. In reality, the Business Competition Supervisory Commission is an established institution with guaranteed credibility and integrity as has been explained earlier by the writers. Still, many have neglected the subject mentioned in the article and use it as an argument. However, in the end, the Business Competition Supervisory Commission still ensnare them.

The writers give an example of one sector, i.e. the transportation sector which has *Poskupau* or Air Force Cooperative Center at Indonesia, which has been ensnared lot by Business Competition Supervisory Commission even though they act on the behalf of cooperative (Admin, 2017). Either Airport in Makassar, Pekanbaru, and other airports that have been ensnared by Business Competition Supervisory Commission often argue that an exception should have been given to them because they are a cooperative and serve the members, although it cannot be proven. It can be said that the existence of cooperatives as stated in article 50 letter i has started to no longer exists, in which cooperative whose business is intended only for the welfare of its members cannot be found (Julkifli, 2014).

In addition, the meaning of the cooperative's ability to compete unfair business on the condition that it only benefits its members alone, in the era of the industrial revolution 4.0 (Klaus, 2017), will become serious problems in enforcing business competition law (Prasetyo, 2018). This is because the current business pattern with digitalization no longer recognizes space and time, the result is construction of a cooperative that only serves its members can be widely carried out, where the members are not limited to people in a

certain area but also from all regions in Indonesia only with the help of technology (Radar Tasikmalaya, 2018). If this article still excludes cooperatives with its members later, according to the writers it becomes irrelevant because some parties with certain interest will appear. These people are looking for legal loopholes to legitimize the existence of their cooperative with welfare of members obtained massively with technology, and then doing business ways that are not justified by the law, but as a cooperative which serves its members legally it will not be able to be the object of the Unfair Business Competition Law (Wirana, 2009). Based on the above background, the normative research that will be done by the writer is related to annotation of Article 50 letter i of the Business Competition Law excluding "specifically cooperative business activities that aims to serve its members".

Research Problems

The research problems in this paper are: *first,* what is the scope of article 50 letter i of the Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition? and *second*, how to reconstruct cooperative regulation in the context of enforcement against suspected business competition violations?

Research Methods

The type of this research is normative juridical or also called doctrinal law research (Sukismo), where the researcher examines the material of secondary law (Soemitro, 1988). Then it is continued with research on primary data in the field to answer problems that are the focus of conceptual research law as a rule acting as a benchmark for human behavior that are deemed appropriate and inappropriate. As for the approach method, this research used legislation or Statute Approach (Marzuki, 2007) and Conceptual Approach (Ibrahim, 2007). Type of law material used in this study was secondary data as the main data in the form of laws and regulations and supported by data from literature and opinions of experts and dictionaries.

Discussion

The scope of article 50 letter i of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

Based on the chapter about the general explanation of Law number 5 of 1999 on the prohibition of Monopolistic Practices and Unfair Business Competition regarding the politics of law in the formation of laws, this law focuses on the existence of private business development that has started to dominate since the early 1990s which is also accompanied by the globalization of the economy and dynamics. As a result, it reduces the community participation towards economic development in Indonesia. Moreover, the constitution in Article 33 has explicitly given mandate that the existence of equal participation in

democratic economic system must be given to the whole society in carrying out the economic development together.

The development of private businesses brings up the monopolistic characteristics. In addition, there is a domination of power that take sides to the strong group of entrepreneurs at that time. Consequently, it encourages the establishment of this law to re-direct the fair business system and fair business climate to avoid domination of certain groups who deviate from their ideals of justice as contained in the 1945 constitution.

However, when viewed from the year of formation, this law is old enough to make it unable to follow the quick flow of business competition. The content of this law is a reflection of conditions at that time, which make the legislators have not been able to see the acceleration of the business climate that is already leading to the era of digitalization as it is today. In short, it does not led to future studies, despite the fact the existing digitization era is already moving towards integration between technology and intelligence that gives birth to the new actors who run a business technologically.

One of the actors who is currently a player in the business climate in Indonesia is the emergence of a good start-up industry in the form of e-commerce and financial technology. This era has created new innovative products can bring together consumers and manufacturers in just one platform with business coverage that is beyond space and time. Several examples of the player in the transportation sector are Grab and Gojek, whose pace has been able to beat the industry of conventional transportation. This phenomenon is still not in the minds of legislators at that time.

Therefore, the writers in this study will try revising one of the substances in the Law with the development of the current era, which come to the conclusion that the substance of the article is no longer available to be used in the current era. The intended substance that the writers examine refers to the Article 50 letter (i) that excludes "Cooperatives that run businesses for their members", which have been excluded from the object of unfair business competition so that the law is no longer able to enforce its authority on the case.

Indeed at that time the spirit brought by the founder of the law to exclude cooperatives was that cooperatives were supporters of a popular democratic system mandated in Article 33 of the 1945 Constitution. This was also stated in the Decree of the People's Consultative Assembly of the Republic of Indonesia No. XVI/MPR/1998 on Political Economy in the context of economic democracy, which mandated that national economic development is based on people's economy that involves development for micro, small, medium enterprises and cooperatives (Mubyaro, 2000). However, this spirit was also motivated by socio-cultural conditions that existed at that time where the cooperative was still a small industry that was deliberately built together to form a joint venture aiming for the welfare of its members. Therefore the principle that gives birth to cooperatives is the principle of mutual cooperation and kinship. At that time, the legislators had predicted that there would be a cooperative business that did not only serve its members but also the community.

In the end, the prediction was put in prerequisites in article 50 letter i, where not all cooperatives could be excluded but the excluded cooperatives could not be ensnared by law where "Cooperative business activities specifically aims to serve its members

> Then the meaning of terms "serving its members" is as follows: "What is meant by serving its members is giving service only to its members and not to the general public for the procurement of basic necessities, production facilities, including credit and raw materials, as well as services to market and distribute products made by the members that do not result in monopolistic practices and or unfair business competition" (Lubis, 2017).

The existence of this article is relevant to the existing conditions, thus it makes the writers want to see the existence of a cooperative which serve its members and cannot be subject to the bondage of this article. The writers will see this existence from one sector that often has problems in committing violations of unfair business competition i.e. the transportation sector. In Indonesia there are many industrial cooperatives in the transportation sector, particularly airport cooperatives called *Poskupau* or Air Force Cooperative Center. If observed from the cooperative cases at the airport reported to Business Competition Supervisory Commission, the cooperative was almost closed by Business Competition Supervisory Commission for its violation of unfair business competition. In this case, the cooperative used article 50 letter i as a shield to argue their defense.

One example is the cooperative at the regional airport of Batam. The alleged violations of Law no. 5 of 1999 began from the existence of taxi services in the Batam area carried out by taxi business actors and managers of port as well airport areas. The taxi business actors who were the members of cooperatives arranged and divided the taxi operating area in seven port and airport areas. They also made arrangements by setting the prices from the port/airport to the destination (Lubis, 2017).

This fixed price was set partly because the enactment of the meter system that should be enforced by the local government based on a Decree Mayor of Batam was delayed. Arrangement and division of this territory resulting in unlicensed taxis were operated and the members in these areas could not transport passengers from the area. The pricing, division, and control of the taxi's operating area is considered as violation of Article 5, Article 9, Article 17, and Article 19 of Law no. 5 1999 (Lubis, 2017).

In order to apply the rule of reason approach in such cases, the Commission divides the concerned market areas into 8 (eight) parts, consist of 1 airport area and 7 port areas which are treated as a geographic market area. Meanwhile those who market the product in this case is taxi service. Business Competition Supervisory Commission's decision stated that there was a violation of Article 5 of Law no. 5 1999 on fixed price at Hang Nadim Airport, Sekupang International Harbor, Marina City and Harbor Bay. In addition there were violations of Article 9 of Law no. 5 of 1999 on the division of territories at Hang Nadim airport, Ports Sekupang International, Sekupang Domestic, Batam Center, Telaga Punggur, Sekupang Domestic, Marina City, and Nongsa Pura. As for violation of Article 17 of Law no. 5 of 1999 on monopoly, it was committed by the Employee Cooperative of

Batam Authority at Hang Nadim airport. Meanwhile, almost all ports and airports violated Article 19 letter a and d of Law no. 5 of 1999 (Lubis, 2017).

In addition, violations were also indicated at Juanda airport, where since 2016 until now, special rental transportation had been prohibited from operating at Juanda Airport (Ayu, 2019). This prohibition raised an indication of unfair business competition in the form of market control as regulated in Article 19 letter a and Article 19 letter d of Law of the Republic of Indonesia Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Kartika, 2019).

Besides, it took a long time until the Supreme Court ruling pleaded guilty to PT Angkasa Pura Makassar Airport branch although previously there were differences in the decisions issued by the Business Competition Supervisory Commission, District Court of Makassar, and the Supreme Court regarding alleged violations of Article 17 and Article 19 letter (a), (c), and (d) of Law No. 5/1999 on taxi services at Sultan Hasanuddin International Airport by PT. Angkasa Pura I (Persero) Sultan Hasanuddin International Airport, Makassar Branch. (Scientific, 2019)

From the previous and frequent verdicts and allegations, the article that was passed was article 19. In this case the Article 19 has the following description:

> Business actors are prohibited from doing one or several activities, either alone or with other business actors, that can result in monopolistic practices and/or unfair business competition in the form of: a) rejecting and/or preventing certain business actors from carrying out the same business activities in the relevant market, b) inside or outside the competitors in the relevant market so that it can result in monopolistic practices and/or unfair business competition c) limiting circulation and/or sale of goods and/or services in the relevant market; or d) committing discriminatory practices against certain business actors.

The first identified element in the article is the business actor. Based on Article 1 point 5 of Law no. 5/1999, business actors are individuals or business entities either in the form of a legal or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the unitary state of the Republic of Indonesia, both individually or jointly by means of an agreement to organize various business activities in the economic sector. While the Other business actors are business actors who carry out one or several activities together in the relevant market. Business actors according to the explanation of Article 17 paragraph (2) letter b of Law no. 5/1999 are those who have the ability to compete in significant market in the relevant market. Then certain business actors are disadvantaged by the activities as stated in Article 19 letter a and d of Law no. 5/1999.

The last one, namely Competing Business Actors is a business actor who are in the same relevant market. Then, consumer according to Article 1 number 15 of Law no. 5/1999, is every user and/or user of goods and/or services for self-interest or for the benefit of other parties. Besides, there is also a Customer as a user or a user of goods and/or services for self-interests or other party interests who use it on an ongoing basis, regularly, continuously either through written or unwritten agreements. Then it also consists of Action Elements, namely:

a. Mastery of Market which is the capability of business actors in affecting the formation of prices or production quantities or other aspects of a market. These other aspects are not limited to marketing, purchasing, distribution, use of or access to certain goods or services in the market concerned. This activity can be carried out by the business actors themselves or jointly with other business actors and can consists of one or several activities at once
b. Monopolistic Practices which are based on Article 1 item 2 Law no. 5/1999, are convergence of economic strength by one or more business actors resulting in the control of production and/or marketing certain goods and/or services that cause unfair business competition and can harm the public interest.
c. Unfair business competition based on Article 1 number 6 of Law no. 5/1999, is a competition between business actors in carrying out production and/or marketing activities goods and/or services performed in a dishonest manner or against the law or hinder business competition.
d. Relevant market based on Article 1 number 10 of Law no. 5/1999, is a market related to the range or specific marketing area by business actors for the same or similar goods and/or services or substitution of these goods and services. In line with the understanding above and from the economic point of view, there are two principal dimensions which should be considered in determining the meaning of the market concerned. These dimensions consist of product (product or service in question) and geographic area.
e. Do it yourself or do it together are activities carried out by the business actors themselves, and it is also an independent decision or action without cooperation with other business actors. Activities performed collectively constitute activities carried out by the business actors in the same relevant market where the business actors have a relationship in the same business activities.
f. Doing one or more activities means one or several activities carried out in the form of separate activities or several activities at once aimed at the business actors.
g. Same Business Activities which are business activities similar to those carried out by business actors.
h. Business relations are economic activities between business actors in the form of various transactions and/or collaborations.
i. Item based on Article 1 number 16 Law no. 5/1999, is every object, both tangible and intangible, movable or immovable which can be traded, used, used or utilized by consumers or business actors.
j. Services based on Article 1 number 17 Law no. 5/1999, are every service in the form of work or achievement traded in the community to be used by consumers or business actors.
k. Refuse occurs when the business actor is not willing to carry out business activities with other business actors.

l. Obstruction occurs when a business actors carry out activities that create obstacles for other business actors or business competitors to enter the same concerned market.
m. Restricting the circulation is an activity carried out by business actors with the aim of controlling distribution or distribution area of goods and/or services.
n. Discrimination Practice includes totally refusing to have business relations, refusing to do business relations, refusing certain conditions or other actions, where the other business actors are treated differently. There is a difference of treatment by certain business actors to other business actors in a relevant market.

If identified from the case of land transportation at the airport based on the fulfillment of these elements according to the writers, the existence of the exception article is increasingly irrelevant, i.e. article 50 letter i relating to cooperative. Because if the cooperative cannot perform the elements in the business competition article, it will not be subject to the articles in the unfair business competition regulation. This will become more and more difficult by adding the work of Business Competition Supervisory Commission to identify a cooperative. Especially if viewed from the current similar cases which are still ongoing, for example is the Garuda Air Force Cooperative Center (PUSKOPAU) which is at Abdul Rachman Saleh Airport Malang. This time, there are reports on the alleged monopolistic practice submitted to Business Competition Supervisory Commission along with 134 incoming reports to Regional Office IV throughout 2019 (Suprianto, 2020). Business Competition Supervisory Commission followed up the 17 suggestions and 23 studies including reviewing the alleged violation of Abdul Rachman Saleh's taxi business competition in Malang (Andira, 2020).

Reconstruction of Cooperative Regulation in Enforcing the Alleged Violation of Business Competition

Etymologically, *kerja sama* comes from the word "cooperation" from English which means working together. In general, cooperative is a joint venture company which is engaged in economy consists of those with weak economies join voluntarily on the basis of equal rights, have obligations in undertaking a business that aims to meet the needs its members. A cooperative is a joint venture entity that strives to take a proper and steady path with a goal to free its members from the common economic difficulties (Kartasapoetra, 2001).

In Article 2 of Law Number 25 of 1992 on Cooperative, it explains that "Cooperative is based on Pancasila and 1945 Constitution as well as the principle of kinship." In addition, cooperative as a form of the place for manufacturers is accepted by our nation's values of justice (Gie, 1995). This is also in line with Article 33 paragraph 1 that economy is structured as a joint effort based on kinship principle (Secretariat General MPR). The specialty of cooperatives is the function of cooperatives as the main bearer of equitable development and the results. Meanwhile, BUMN or state-owned enterprise tends to carry out activities as stabilizer and pioneer of the Indonesian economy. BUMS or private-owned enterprise tends to do a major action in the field of national economic growth

(Sitio, 2001). Cooperatives are able to change the colonial economic context into the national economy. Colonial economy here connotes exploitative and paternalistic economic system. In an economic system like this, there is a "master" who colonizes and "servants" who are colonized, and their derivations in the form the "employer-coolie" or "employer-laborer" relationship. There was a preserved economic system that sucked the economic value-added from the bottom to the top which was called *cultur stelsel* as a concrete form (Suwasno, 1996).

Meanwhile, what is meant by "national economy" as an ideal independence is an “non exploitation economic democracy”, rejecting the "principle of the individual", that is based on "the principle of togetherness and kinship". With rejection of the "individual principle" (Asep, 2018), then automatically liberalism as the spirit of capitalism is also emphatically rejected. The "economic democracy" system emphasizes that, "The main concern is the interest of the people, not the personal interest.” Prioritizing the interests of people does not mean that personal interest is ignored because it is still maintained (Suwasno, 1996).

Thus, cooperative has a clear position as the pillars of the Indonesian economy both historically, conceptually, as well as constitutionally. The position of the cooperative has been formulated by our founding father in a clear and detailed manner in terms of philosophy (Pancasila), structural explanation (1945 Constitution), the translation of Broad Guidelines of State Policy (GBHN), even after that until now, it has been operationally formulated (Law of Cooperatives). The economic system based on mandate and spirit of Article 33 of the 1945 Constitution of the Republic of Indonesia makes cooperatives the pillar of economy and the state as the ruler of the earth, water and wealth nature contained therein, as well as the branches of production which are important for the country and controlling the lives of many people (Hamid).

On the other hand, cooperatives in the Indonesian economy have a crucial position and strategic role in the growth and development of people's economic potential. The role of cooperatives in the macro economy is increasing social benefits and economy for society and the environment, increasing production, income, welfare, and increasing work opportunities (Ketaren, 2017). The role of the cooperative is marked by the increased awareness among the public to build power based on collective bargaining (Wijaya, 2004). In that way, the existence of cooperatives is expected reduce farmers' dependence on middlemen. Another added value from a legal perspective is cooperatives have the legality of being non-middlemen. Cooperatives are also able to provide capital and are capable to help the distribution of crops without going through a long process (Ibrahim, 2000).

With the existence of cooperatives, especially the Agricultural Cooperative, it breaks the farming chain that originally start from 3-4 agents involved in the market into 2-3 agents only. This is highly profitable for farmers because of the capital spent on the planting process can come back in the form of a profit (Agustia, 2017). The function of cooperatives, according to Mohammad Hatta, in a radio-speech entitled *Building a Cooperative and Cooperative Building* is that cooperatives according to time, place, and

state, is a seven-encompassing state, which are: *first,* multiply production; *second,* improve the quality of goods; *third,* fix distribution; *fourth,* fix prices; *fifth,* get rid of exploitation from loan sharks , strengthen capital integration, and maintain rice storage barn...".

Of all the seven aspects, over a century this millennium is still relevant; especially from the view of people's economic resilience by using Cooperatives as a forum and vehicle to run a business. So, if the seven aspects are carried out consistently in the cooperative, it is possible for the cooperative that has been established a lot in throughout Indonesia to function as a 'vehicle' and 'platform' where its members gather to raise the level of their economic life.

In terms of discussion about cooperative purpose, cooperative has its own important function as follows: *first,* being a "vehicle" for its members to improve both income and economic status within the scope of togetherness by organizing. For example, people can be a village unit cooperative (KUD) member that provides assistance to various type of farm production. The village unit cooperative in turn serves its members by providing fertilizer, seeds, agricultural tools, and other principal necessities as well as distributing the agricultural products of the members. The village unit cooperative as the "vehicle" of the members, can sell the product to the consumers or national logistic institutions such as Indonesia Bureau of Logistic (Bulog) or Logistic Depot (Dolog).

With this "vehicle", the members at least have their own "institution", so that each member does not have to deal with middlemen or other collecting traders. Because Indonesia Bureau of Logistic or Logistic Depot is an institution formed by the Government to ensure the needs of farmers as producers and consumers, the buying price and selling price are scalable and does not make farmers and cooperative members miserable in the sense that their income can be better than they are still related to middlemen.

Second, as an institution, cooperatives can also absorb skilled manpower both from an administrative and technical point of view, to manage and run the cooperative; in the sense of being able to participate in "accommodating" workers who are not yet working or unemployed; *Third,* become a place to gather and organize in running the economic activities. Here, the members can be trained and practice organization to achieve their goals in this fields, in order to meet the economic needs as well as to increase their own economic capacity both individually and collectively or in groups.

Then, *fourth,* it can be used as a place to educate the members in running the organization in the economic field by making some "efforts" to improve their economic welfare. Furthermore, *fifth,* cooperatives can be a place "educate" its members to carry out a deep "democracy" in running an economic organization in a cooperative (Hadikusuma, 2000). Accordingly, in the "organization" of Cooperative, the members can learn about "economic democracy" in a people's economy where it can be a "vessel" to "provide shelter" and "escape" from the economic system based on "strong capital" (Asep, 2018).

From the five functions above, we can narrow it down again. Cooperative is very useful and suitable for the economy conditions of Indonesian people, the majority of whom live in rural areas and live from farming with all its derivatives. Cooperative can be

a place that protects the interests of economy and people's economy; and its existence serves as a "counterweight" to the domination of strong capital owners which only makes the people as their production and industrial factor. Due to the position of cooperative as a place for people who are classified as "weak capital", within the scope, it is logical if its existence is "under the protection" of the State and Government. Thus, as a whole, cooperative is an economic institution in the sense that before the law it must be appointed as a Business Entity with the status of Legal Entity; so that its existence is one level with the Business Entity that exist in Indonesia.

The concept of fair business competition contains three main points that at the same time serves as a "prohibited" object which is made into a "territory" to see whether there is unfair business competition or not. The three main points here are scope of conspiracy or agreement, scope of activities; and scope of domination. So, the concept of fair business competition which is regulated in Law No.5 of 1999 is to maintain harmony or balance between producers (including: distributors and traders) with consumers. Especially for producers, there is a fair competition concept that can be a "driving force" factor to achieve more in terms of quality, creativity, service, and efficiency. As for consumers, the benefits are there is a guarantee from the manufacturer in terms of quality, available goods and services, and reasonable prices in accordance with the quality.

Specifically for cooperatives (which generally have limited capital capacity), there is a healthy competitive situation that opens wide opportunities for it to be able to participate and be involved into the activity of opening and running a business. In addition, the provisions on prohibitions of this unfair business competition has provided space of the exception "to cooperatives that serve the "needs" of its members.

Thus, cooperative should be able to carry out any open business activities in the field provided that it is able to do so in the sense of applying the economic principles in running a business (Afifudin, 2018). Exception to cooperatives in the provisions concerning Unfair Business Competition, has a "red thread" of mandate of the State Constitution as formulated in Article 33, 1945 Constitution.

Therefore, cooperative can legally run business well without worrying about prohibiting monopolistic practices as regulated in Law No. 5 of 1999 and does not close fair competition. Special treatment for these cooperatives has been listed in the national economic arrangement making cooperative as one of the pillars. "For this reason, the government in this case must be consistent with the mandate of the constitution about the system and behavior of overall economic actors in running the national economy. At this level, the "exception" given by the regulator should be read in the context of "building" the people's welfare through the system of cooperative economics.

Based on the form of institution, cooperative in its function can run a business. For this reason, the continued task of the government as the supervisor of cooperatives should be consistent to provide portions of strategic business fields that only can be run and owned by the cooperative as an institution (Wiraha, 2009). In the Antimonopoly Law, there are exception rules, one of which is the exception to Cooperative as business entity.

The exception of cooperatives from the Antimonopoly Law is listed in Article 50 Letter i. This exception, of course, has many implications including how to provide an easy interpretation understood by cooperative so that it does not deviate from the philosophy which is basically not to harm the people and its implications for cooperative empowerment efforts. Furthermore, it is because in practice, many of business actors use this exception article to smooth their monopolistic practices under the legal standard.

In the position of granting the exception by the Antimonopoly Law to this cooperative, many business actors abuse this exception article (Fannyza, 2019). Many cases are involving business actors, where they hide behind the cooperative name. By doing this, they can facilitate, legalize and expand their business by using the name of cooperative which both served as legal entity to attract public interest (Amaliyah, 2019). Case like this certainly has legal consequences. If this cooperative is proven to be fake, then automatically the exception of Article 50 Letter i becomes invalid. Moreover, the business license can be canceled and this cooperative will receive certain sanctions that apply according to the deed that has been done. This phenomenon cannot be separated from the concept the initial granting of the exception itself, so many disadvantaged recorded in that article. The weakness of Article 50 letter i is that there are no clear time restrictions against the exceptions given to cooperatives, unclear criteria for cooperatives that can be excluded from Antimonopoly Law, and the absence of related guidelines for the implementation of Article 50 letter i.

The future conception that can be implemented in Article 50 letter i founded by the writers in the research is recommendation regarding the existence of an article on the clear time restrictions of exception, cooperation criteria. In addition to prevent multiple interpretation, it is also necessary to create implementation guidelines (Arini, 2013). However, according to the writers, the idea of this research is concerned more with abolishing article 5 letter i about the existence of these exceptions because of it is no longer used. It also has to do with history and the historical foundation of the cooperative as the writers explain above, in which the building is different from the existing developments today (Agus, 2019). Cooperatives as the pillar in economy will change its paradigm, shape, and pattern when intertwined with the technological aspect, as the exception in that article is no longer relevant. Therefore, the "exception" which is actually given by the regulator is interpreted in the context of "building" the people's welfare through a cooperative economic system, specifically to serve its members and not to serve the community. Finally, when faced with technology, the conventional business paradigm can change into modern with a wide market range and business patterns which are completely different from conventional business.

Conclusion

Article 50 letter i which is in Law Number 5 of 1999 on the prohibition of monopolistic practices and unfair business competition, has raised annotations when viewed from the already existing Business Competition Supervisory Commission's decisions that

marks the collapse of the article's existence. Suggestions from this research is to eliminate the exceptions to cooperatives either in terms of lack of juridical aspects, interpretation and explanation of the article, as well as projections of digitization which change the cooperative order, so that it is not in accordance with the philosophical basis of cooperative exception created by legislators at that time.

Suggestions

The People's Consultative Assembly is expected to consider doing revisions to the elimination of Article 50 letter i of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition based on the considerations that the writers have described above. The Business Competition Supervisory Commission is expected to create a mechanism of tighter supervision regarding cooperative businesses. Cooperative-based companies are expected to be careful so as not to cause harm to the community who is running a certain business.

References

Afifudin, A. (2018). Monopoli Bisnis Koperasi Simpan Pinjam di Tinjau dari Undang – Undang No. 25 Tahun 1992 tentang Perkoperasian. *Jurnal USM Law Review*. 1(1). 106-126.

Agustia, D, et.al. (2017). Studi Empiris Perilaku Usaha Koperasi Pertanian: Kasus Koperasi di Dataran Tinggi Gayo, Provinsi Aceh. *Jurnal Manajemen & Agribisnis*. 14(1). 12-21.

Amaliyah, A., et.al. (2019). Tantangan dan Perkembangan Jasa Taksi Online: Perspektif Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat. *Amanna Gappa*. 27(1), 14-22.

Asmah. (2017). *Hukum Persaingan Usaha "Hakikat Fungsi KPPU di Indonesia"*. Makassar: Penerbit Social Politic Genius (SIGn).

Azis, N. J. A. (2018). Kepemilikan Saham Silang Perusahaan Marketplace dalam Perspektif Hukum Persaingan Usaha. *Jurnal Jurist-Diction*. 1(2). 668-674.

Bambang, A. (2018). Politik Hukum dalam Demokrasi Ekonomi Indonesia. *Selisik Jurnal Hukum dan Bisnis*. 4(1). 4-28.

Fadhilah, M. (2019). Penegakan Hukum Persaingan Usaha Tidak Sehat oleh Komisi Pengawas Persaingan Usaha (KPPU) dalam Kerangka Ekstrateritorial. *Wawasan Juridika*. 3(1). 55-72.

Fannyza, A. (2018). Perlindungan Terhadap Investor Pada Koperasi Yang Dibekukan Kegiatan usahanya (Studi Pada Koperasi Cipaganti Karya Guna Persada). *Pactum Law Journal*. 1(3). 220-232.

Ganisa, W. (2020). Penanganan Perkara Pre-Notification oleh KPPU dalam Kerangka Hukum Persaingan Usaha di Indonesia. *Jurnal Yustisiabel*. 4(2). 140-154.

Hilmiah, H, et.al. (2019). Proses Penyelesaian Perkara Persaingan Usaha (Studi Putusan Kppu No.18/Kppu-I/2009). *Alauddin Law Develompent (Aldev)*. 1(2). 23-30

Kartasapoetra, G. (2001). *Koperasi Indonesia yang Berdasarkan Pancasila dan UUD 1945*. Jakarta: Penerbit Rineka Cipta.

Kartika, A. A. (2019). Larangan Pengoperasian Angkutan Sewa Khusus di Bandar Udara Juanda dalam Perspektif Hukum Persaingan Usaha. *Jurist-Diction*. 2(6). 1979-2006.

Ketaren, N. (2017). Faktor-Faktor yang Memengaruhi Keberhasilan Koperasi Credit Union dalam Pemberdayaan Masyarakat (Studi Kasus: Koperasi Credit Union Sukamakmur Kecamatan Sibolangit, Kabupaten Deli Serdang). *Jurnal Harmoni Sosial.* 1(3). 138-146.

Lubis, A. F, et.al. (2017). *Hukum Persaingan Usaha, Buku Teks*. Jakarta: Komisi Pengawas Persaingan Usaha (KPPU).

Mochtar, D. A. (2013). Penyalahgunaan Posisi Dominan dalam Kepemilikan Saham Silang. *Jurnal Cakrawala Hukum*. 18 (2). 116-126.

Mulyadi, D & Rusydi, I. Efektivitas Peran Komisi Pengawas Persaingan Usaha (KPPU) dalam Penanganan Kasus Persaingan Usaha Tidak Sehat. *Jurnal Ilmiah Galuh Justisi*. 5(1). 1-20.

Prasetyo, B & Trisyanti, U. (2018). Revolusi Industri 4.0 dan Tantangan Perubahan Sosial. *IPTEK Journal of Proceedings Series*. 5. 22-27.

Pribadiono, A. (2016). Transportasi Online Vs Transportasi Tradisional Nononline Persaingan Tidak Sehat Aspek Pemanfaatan Aplikasi Oleh Penyelenggara Online. *Lex Jurnalica*. 13(2). 126-138.

Silalahi, Udin. (2018). Single Economic Entity: Kajian Persaingan Usaha di Indonesia. *Jurisdictie: Jurnal Hukum dan Syariah*. 9(1). 1-24.

Simbolon, A. (2012). Kedudukan Hukum Komisi Pengawas Persaingan Usaha Melaksanakan Wewenang Penegakan Hukum Persaingan Usaha. *Mimbar Hukum.* 24(3). 377 – 569.

Usman, R. (2013). Hukum Persaingan Usaha di Indonesia. Jakarta: Penerbit Sinar Grafika.

Wijaya, M. (2004). Pengembangan Potensi Ekonomi Rakyat Melalui Gerakan Koperasi dalam Menghadapi Otonomi Daerah. *Jurnal Sosiologi Dialektika Masyarakat*. 17(1). 27–31.

Wirana, A. P. (2009). Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat Pengecualian Terhadap Badan Usaha Koperasi. *Jurnal Hukum dan Pembangunan*. 39(1). 74-101.