



Legal Objection Effort To The Decision Of Commission For The Supervision Of Business Competition (KPPU)

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ABSTRACT: This research purposed to analysis and the fulfillment of the rights of business actors in filing object legal effort by KPPU's decisions in the District Court and understanding the KPPU's position in the case of objection. The research method was used a statute approach by reviewing Statute Number 5 of 1999 concerning the Prohibition Of Monopolistic Practices and Unfair Business Competition and Supreme Court Regulation Number 3 of 2005 concerning Procedures For Handling Object Legal Effort by KPPU's decision and regulations relating to legal issues. Based on the analysis of the results of the research, the authors conclude that (1) the rights of business actors in filing object legal effort by KPPU's decisions have not been fulfilled as in the civil procedural law in general (HIR and RBg) because the business actors were not given the opportunity to submit a replication and submission of evidence in the hearing at the trial (violating the principle of *audi et al partam*); (2) The position of KPPU as the litigant party of an objection is not in line with its authority in carrying out additional checks on the orders of the panel of judges, so that the KPPU is considered to try its own case (*Indonesian Nemo Judex in Propria*).

KEYWORD: Objection, KPPU, and Legal Efforts.

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I. INTRODUCTION

In Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition or often called the "Antimonopoly Law", it is determined that the institution authorized to hear monopolistic practices is KPPU. The birth of the Antimonopoly Law is the goal of reform in law enforcement in all fields, from the political, social, economic and cultural fields. The authority of the KPPU in prosecuting cases of monopolistic practices is very broad, which starts at the stage of investigation, investigation, prosecution, until the issuance of the decision of the KPPU Assembly. Because the KPPU has the authority to adjudicate monopolistic practice cases and decide whether there is a violation of the provisions of the Antimonopoly Law, it means that the KPPU's decision is the same as the court's decision in general and those who feel they have the right to file legal remedies.

In Article 36 letter (i) it is determined that KPPU imposes administrative sanctions on business actors who violate the provisions of this Law. Administrative sanctions referred to are regulated in Article 47 of the Antimonopoly Law. In addition to administrative sanctions, KPPU is also authorized to impose criminal sanctions on business actors based on Article 48 and Article 49 of the Antimonopoly Law. The principal crimes are in the form of fines, while additional crimes are in the form of revocation of business licenses; prohibition on business actors proven to have violated this Law to occupy positions of directors or commissioners; and termination of certain actions or activities that cause the loss of others.

Given the dualism of the judiciary in examining legal remedies against the KPPU's decision, the Supreme Court issued PERMA No. 3 of 2005 concerning the Procedure for Legal Remedies for Objection to the KPPU Decision which reaffirms that the legal remedy of objection is submitted to the District Court, not to the State Administrative Court. In the objection examination event, KPPU is a party, but on the other hand KPPU has the authority to conduct additional checks based on the order of the panel of judges to complete the results of the previous KPPU examination.

Based on the above description, the author discovers two legal issues related to the legal effort to object to the KPPU's verdict, namely the fulfillment of the legal rights of business actors in filing legal objections against the KPPU's decision and the KPPU's position as a party in the objection case.

II. RESEARCH QUESTION

The background above raises questions for the author, namely:

1. Are the rights of business actors in filing legal objections against the KPPU's decision fulfilled?
2. Does the position of KPPU as a party in the case of an objection match the values of justice?

III. THEORY FOUNDATION AND RESEARCH METHOD

Proof of theory in the Civil Procedure Law

Subekti, former Chairman of the Indonesian Supreme Court and professor of civil law at the University of Indonesia, believes that proof is a process of how evidence is used, proposed or maintained in the applicable procedural law. When evaluating evidence, the judge can act freely or be bound by the law, in this case there are two theories, namely:

a. Free Proof of Theory

The judge is free to assess the evidence presented by the parties to the dispute, both the evidence that has been mentioned by the Act, as well as the evidence that is not mentioned by the Act.

b. Bonded Proof of Theory

The judge is bound by the evidence presented by the parties to the court. The decision handed down must be in line with the evidence presented at the trial.

c. Combined Proof Theory

Judges are free and bound to assess the results of the verification. In assessing the evidence, a judge must also remember the principles that are important in the civil proof law.

The principles in the Proof of Law are as follows:

a. Principle of *ius curia novit*

The judge is considered aware of the law, this is also true in proof, because in proving, the law does not have to be submitted or proven by the parties, but judges must be known and applied.

b. *Asas audi et altera partem*

This principle means that both parties to the dispute must be treated equally (equal justice under law). The same processual position for the parties before the judge. This means that the judge must share the burden of proof based on the equal position of the parties in a balanced manner. Thus the possibility of winning for the parties must be the same.

c. The principle *actor sequitur forum rei*

A lawsuit must be filed in the court where the defendant resides. This principle was developed from the principle of presumption of innocence known in criminal law

d. *Affirmandi principle incumbit probatio*

This principle means that whoever claims to have rights must prove it.

e. *Asas acta publica probant sese ipsa*

This principle is related to the verification of an authentic deed, which means that a deed that is born appears as an authentic deed and fulfills the conditions that have been determined, the deed is valid or is considered an authentic deed until proven otherwise. The burden of proof lies in who questions the authenticity of the deed.

f. The principle of *testimonium de auditu*

It is a principle of proof by using testimonial evidence, meaning that the information the witness obtained from another person, the witness did not hear it or experienced it himself but heard from others about the incident.

g. The principle *unus testis nullus testis*

Which means one witness is not a witness, meaning that one piece of evidence is not enough to prove the truth of an event or the right. Article 169 HIR / 306 RBg states that the testimony of a witness without other evidence cannot be considered sufficient evidence. This is in accordance with the jurisprudence of the Supreme Court of the Republic of Indonesia No. 665 K / Sip / 1973, which determines: "Only one proof without being substantiated by other evidence cannot be accepted as proof".

IV. LEGAL PURPOSE THEORY

Ahmad Ali divides the grand theory about the purpose of law, namely: western theory, eastern theory and Islamic theory as follows:¹

1. Western theory

a. Classical theory:

- 1) Ethical Theory is a solely legal goal to realize THEORY FOUNDATION AND WRITING METHODS
- 2) Proof of theory in the Civil Procedure Law

¹Ahmad Ali, 2007, *Teori Hukum dan Implementasinya*, Bandung: Rajawali Pers, p. 45-47

- 3) Subekti, former Chairman of the Indonesian Supreme Court and professor of civil law at the University of Indonesia, believes that proof is a process of how evidence is used, proposed or maintained in the applicable procedural law. When evaluating evidence, the judge can act freely or be bound by the law, in this case there are two theories, namely:
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 - b. Bonded Proof of Theory
The judge is bound by the evidence presented by the parties to the court. The decision handed down must be in line with the evidence presented at the trial.
 - c. Combined Proof Theory
Judges are free and bound to assess the results of the verification. In assessing the evidence, a judge must also remember the principles that are important in the law of civil justice (justice).
- 4) The Utilistic Theory is the purpose of the Law solely to realize utility.
- 5) Legalistic Theory is a legal objective solely to realize legal certainty
- b. Modern Theory :
 - 1) Standard Priority Theory is the purpose of the Law covering Justice, Benefit, Legal Certainty.
 - 2) Casuistic Priority Theory is a legal objective covering justice, legal benefits and certainty in a priority order, proportionally, according to the case faced and wanted to be resolved.
2. Eastern Theory
In contrast to the western theory of the purpose of law, eastern theory generally does not place certainty but only emphasizes the purpose of the law, namely justice is harmony and harmony is peace. So different from the objectives of western law, the purpose of eastern law still uses their original legal culture that is not too neglected based on justice, expediency, legal certainty.²
3. Islamic Theory
The purpose of Islamic law's purpose in principle is how to make a "benefit" to all mankind, which includes "the benefits" of life in the world and in the hereafter. The purpose of realizing this "benefit", in accordance with the general principle of Al-Qur 'an:
 - a. al-Asl fi al-manafi al-hall wa fi al-mudar al-man'u (anything useful is allowed, and everything is forbidden).
 - b. La darara wa la dirar (do not harm and do not end up harming).
 - c. ad-Darar yuzal (danger must be removed).³

V. RESEARCH METHOD

The type of research used focuses on normative juridical, by trying to describe the results of the study. To get information, the author uses the literature study method. The data in this study were taken from various literature such as books, journals and legislation relating to the problem formulation of the research title. Data sources used are secondary data sources taken from various literatures such as books, journals and legislation related to the formulation of the problem of the research title. Data obtained from books, journals and laws and regulations relating to the problem formulation of the research title, are analyzed qualitatively with normative deductive thinking methods, namely from general matters and then drawn specific conclusions.

VI. RESULT AND DISCUSSIONS

Fulfillment of Business Actors' Rights in Submitting Legal Efforts Objection to KPPU's Decisions

If the business actor has received notification of the passage of the KPPU decision, the business actor can determine his attitude, namely not accepting the contents of the decision by submitting an objection or accepting the contents of the decision, in the sense that the business actor does not file an objection to the PN. The legal basis for filing an objection is determined in Article 44 Paragraph (2) of the Antimonopoly Law: "Business actors can file objections to the District Court no later than 14 (fourteen) days after receiving the notification of the decision".

In Article 1 Paragraph (1) PERMA No. 3 of 2005 regulated the definition of objection, namely: "Objection is a legal effort for business actors who do not accept KPPU's decision". Furthermore, in Article 2 Paragraph (1) it is stipulated that objections to KPPU's decisions can only be submitted to the District Court. The Antimonopoly Law does not explicitly determine who has the right to file an objection to the KPPU's decision. Even the formulation in Article 44 Paragraph (2), Article 45 Paragraph (1), and Article 47 Paragraph (1) of the Antimonopoly Law is regulated that those entitled to file legal remedies are business actors who feel

² *Ibid.*

³ *Ibid.*

aggrieved due to KPPU's decision to impose administrative sanctions on business actors that. The Antimonopoly Law does not provide legal remedies to those reporting and harmed to file objections to the KPPU's decision stating that there is no violation of the Antimonopoly Law. In this case the party reporting and harmed is not protected. This is different from criminal cases. Based on Article 80 of the Criminal Procedure Code (KUHAP), interested third parties have the right to propose a pretrial to the District Court to examine whether the termination of the investigation is valid or not.

In Article 1 Paragraph (19) the Antimonopoly Law stipulates that "the District Court is the court referred to in the prevailing laws and regulations, in the place of legal standing of the business actor's business". This means that legal remedies are submitted to the District Court where the legal place of business is from the business actor. In Article 45 Paragraph (1) of the Antimonopoly Law, it is determined that the examination of objections must be initiated by the District Court within a period of 14 (fourteen) days after the objection is received. The commencement of the objection examination has a legal effect on the grace period for reading the final decision by the District Court, where the District Court is obliged to give its decision on the objection within 30 (thirty) days from the commencement of the objection examination. Based on Article 45 Paragraph (1) of the Antimonopoly Law, the reading of the decision is calculated from the "commencement of the examination". "Commencement of examination" referred to is the first examination conducted by the District Court.

The procedure for submitting legal remedies against KPPU's decisions is regulated more specifically in Chapter III Article 4 Paragraphs (1) to Paragraph (8) PERMA No. 3 of 2005 concerning Procedures for Submitting Legal Remedies for Objection to KPPU's Decisions. The procedures referred to are as follows:

- (1) Objection is submitted within a period of 14 (fourteen) days from the date the Business Actor receives notification of the KPPU's decision and or is announced through the KPPU's website;
- (2) Objection is filed through the court of the District Court concerned in accordance with the procedure for registering civil cases by providing a copy of the objection to KPPU;
- (3) In the event that the objection is filed by more than 1 (one) Business Actor for the same KPPU decision, and has the same legal position, the case must be registered with the same number;
- (4) In the event that an objection is filed by more than 1 (one) Business Actor for the same KPPU decision but differs from its legal domicile, the KPPU may submit a written application to the Supreme Court to appoint one District Court accompanied by a court proposal which will examine the objection;
- (5) The application as referred to in Paragraph (4), by the Commission shall be forwarded to all Heads of District Courts who accept the petition for objection;
- (6) The District Court that receives the copy of the application must stop the examination and wait for the appointment of the Supreme Court;
- (7) After the application is received as referred to in paragraph (4), the Supreme Court within 14 (fourteen) days appoints the District Court to examine the objection;
- (8) Within 7 (seven) days after receiving a notification from the Supreme Court, the District Court that is not appointed must send the case file accompanied by (remaining) court fees to the designated District Court.

After the objection has been registered and received by the Registrar of the District Court, the Chairperson of the District Court immediately appoints a Panel of Judges who will examine and hear objections. The Panel of Judges ordered the bailiff to summon the parties (business actors and KPPU) to be present on the determined trial day as referred to in Article 121 HIR. In Article 8 PERMA No. 3 of 2005 regulated that in the examination of objections, the Panel of Judges used the civil procedure law that applies to the District Court. In civil procedural law, there are five evidences that are used as a reference for Judges in deciding a case (Article 164 HIR / 284 Rbg), namely:

1. Letter;
2. Evidence of witnesses;
3. Predictions;
4. Recognition;
5. Oath.

Mechanism for Handling Legal Remedies for Objection to KPPU's Decisions in the District Courts in practice is as follows:

1. KPPU issues a commission decision
2. Business actors file legal objections to the District Court where businesses do business
3. The PN Registrar registers requests for business actors' objections in the list of special civil cases
4. The Chairperson of the District Court appoints a panel of judges who are competent in the field of business competition and determine the first trial schedule
5. The first hearing reads the petition of objection by the business actor and at the same time the Commission submits the decision and file of the case to the District Court which examines the case of the objection.
6. The second session, the KPPU Litigator provides answers to the request for objections from business actors

7. In the event that the panel of judges is of the opinion that an additional examination is necessary, then through an interlocutory verdict, the KPPU must conduct an additional examination
8. In general, the panel of judges orders KPPU to add witness testimony before giving the KPPU a period of time to immediately submit the results of additional examinations
9. KPPU immediately forms a commission assembly to conduct witness hearings
10. Litigators submit the results of additional examinations to the panel of judges
11. The panel of judges gives a decision on the objection case, whether to accept or reject the objection application in whole or in part.⁴

The procedural law used in resolving the objection case against the KPPU's decision is a civil claim procedure. This matter is determined in Article 4 Paragraph (2) Perma No. 3 of 2005 which determines as follows "Objection is filed through the relevant PN clerk in accordance with the procedure of civil case registration by providing a copy of the objection to KPPU." Thus the procedural law source used in filing an objection is HIR unless otherwise stipulated.

The possibility of other provisions governing the law of business competition procedures creates some differences with ordinary civil procedural law. This difference includes setting a grace period. Article 5 Paragraph (5) Perma No. 3 of 2005 stipulates that the panel of judges must give a decision within 30 (thirty) days of the commencement of the case hearing. Based on this provision, the panel of judges must be careful in making a careful schedule and planning and must be obeyed by all parties. This planning includes determining the day and date of the trial and the agenda that will be conducted in each trial. In order for the period of 30 (thirty) days of objection examination to take place efficiently, it is recommended that the first hearing day of the examination be determined after the file is truly declared complete from the parties including KPPU and the reported business actor.

In connection with the examination of objections to the KPPU's decision, the provisions of Article 4 Paragraph (2) Perma No. 1 of 2016 excludes efforts to object to KPPU's decision from the obligation to implement mediation. This was previously also reinforced by Article 5 Paragraph (3) Perma No. 3 of 2005 which stipulates that the examination of objections to KPPU's decisions is carried out without going through a mediation process. In addition to these differences, there is still more between civil procedural law and business competition law, which is seen in terms of submission of replication and duplication. In the civil proceedings, after the copy of the claim is submitted to the plaintiff, the defendant is expected to respond to the arguments submitted by the plaintiff in his claim. The next stage is replication and duplication submitted by each party. In the examination of objection to KPPU's decision made by reference to the provisions in Perma No. 3 Year 2005, after the business actor filed a complaint, the KPPU must submit its decision and file to the PN that examines the objection, then the objection is done only on the basis of the decision and the file of the matter submitted by KPPU. When the panel of judges is in the opinion of the need for additional scrutiny, then by way of verdict the matter is returned to the KPPU for further inspection.⁵

Thus, KPPU is not possible to submit its arguments to strengthen its decision, and subsequently it is not possible for business actors to strengthen their arguments. This means that the submission of a replication from a business actor and duplicate from the KPPU is not possible as is the case in the proceedings in civil cases in general, and further proof of it directly to the court and submission of conclusions.

KPPU's position as a Party in Objection

The issue of whether KPPU as a party or not in objection matters becomes important to be solved in connection with the issue of proof. This is related to the question to whom (besides the applicant) the judge will obtain the evidence and who will be given the burden of proof? In a matter of contention of a claim there must be two parties who are litigants, meaning that the proof will be done by both parties. Judgment assessment given by the judge will also come from two parties. So the verdict of the judge is objective and fair because it is based on both parties' opinions proportionally (*audi et alteram partem*).

The problem that arises in this case is because the KPPU cannot prove it, but why is it given the authority to evaluate the evidence of the opposing party (the applicant) so that it will be difficult to ensure that the judge's decision is a fair decision. The ratio is as follows, if the evidence presented by the applicant is assessed by KPPU, the KPPU's assessment will be biased, because the KPPU has an interest in the ongoing case. Someone who has an interest tends to put his own interests first. Thus, it can happen that KPPU will provide an assessment of evidence that benefits its position.

The task of the PN in examining the issue of objections is to reassess the KPPU's decision, taking into account the facts and the application of the law. The position of the PN in this case resembles the position of the High Court (PT) in dealing with the issue of appeals which checks the case from the beginning both regarding

⁴ Interview results on Monday, February 11, 2018, at 13.10 WIB at the Central Jakarta KPPU Office

⁵ Interview results on Monday, February 11, 2018, at 13.10 WIB at the Central Jakarta KPPU Office.

the facts and the application of the law. Therefore, the examination of objections to the KPPU's decision can be said as if it is an appeal examination because based on Perma No. 3 of 2005:

1. Article 5 Section (4) "The objection inspection shall be conducted only on the basis of the decision of the KPPU and the case file as referred to in Paragraph (2)";
2. Article 6 Paragraph (1) "In the event that the Assembly of Judges is of the view that additional scrutiny is necessary, the interim verdict is ordered to the KPPU for further inspection.

Additional checks are set out in Chapter IV Perma No. 3 of 2005. The Panel of Judges who examine objections has the authority to determine whether or not additional inspections may be required. When deemed necessary, the KPPU is instructed to conduct the additional examination. The order should include the reason why additional scrutiny is needed, what matters to examine and the time required due to the tight time frame in resolving objections.

An additional check is performed only for the evidence contained in the case file in the decision that has been decided by the KPPU. However, if the panel of judges feel less clear, so it is necessary to conduct additional checks so KPPU will conduct additional checks by mentioning the matters to be checked by KPPU. In this case the examination, the examination by the judge is suspended. After the KPPU submits additional inspection files, the objection hearing is continued no later than seven days after KPPU submits additional inspection files.

Although already set in Perma No. 3 of 2005, in this extra checking practice it is often difficult to find out because the Perma does not govern how if there is new evidence and new witnesses filed by the application. In addition, Perma No. 3 Year 2005 also does not specify in detail how long it takes to carry out additional checks. This can result in uncertainty about the length of time needed to resolve the matter. In addition, if the panel of judges determines the timeframe for the KPPU to conduct additional examinations, and it appears that KPPU has not yet completed any additional checks as determined by the panel of judges, is the decision of the KPPU to be nullified by law? Or is there any other sanctions that can be imposed on KPPU? With uncertain length of extra checks and to provide legal certainty, there is a discourse to restore the full examination of objection to PN. In other words, additional scrutiny is abolished and the PN becomes an institution with full authority to examine objections.⁶

The PN's verdict in the examination of objections may include:

a. Strengthen KPPU's decision

PN argued that the KPPU council had the right to examine the matter, both with respect to the facts and the application of the law so that the panel of judges of the PN agreed with the verdict of the KPPU. The PN's decision to uphold the decision of KPPU's assembly did not change the KPPU's decision.

b. Canceled KPPU's decision

If the PN believes that the KPPU council has been wrong in examining the case, or the business actor is not proven to violate the Antimonopoly Act then the PN may cancel the decision of the Commission. In this case, the verdict of the KPPU council is considered to be non-existent.

c. Make your own decision

The PN has the authority to make its own judgment in dealing with objections. The PN's decision can be in the form of strengthening some of the decisions of the KPPU assembly, while the rest of the verdict is canceled.

The following writers present the data of the number of objections in the Court of Appeal and in the Supreme Court.

Number of Objection The decision of the KPPU in the District Court throughout Indonesia

Table 1

No.	Year	Win	Lose	Amount
1	2011	6	1	7
2	2012	1	3	4
3	2013	3	2	5
4	2014	6	4	10
5	2015	11	4	15
6	2016	2	3	5
	Amount	23	13	36

Data from KPPU Public Relations Bureau, Central Jakarta 2018

Based on the data above, it can be concluded that during the period of six years (2011-2016), the District Court has canceled 13 KPPU Decisions from 36 KPPU Decisions. This indicates that the strength of the KPPU's decision on the case of business competition has not been strong.

⁶ Interview results on Monday, February 11, 2018, at 13.10 WIB at the Central Jakarta KPPU Office.

Number of Cassation Case Subject to Decision of KPPU in the Supreme Court

Table 2

No.	Year	Win	Lose	Amount
1	2011	5	-	5
2	2012	1	3	4
3	2013	7	2	9
4	2014	8	4	12
5	2015	2	1	3
6	2016	-	-	-
	Amount	23	10	33

Data from KPPU Public Relations Bureau, Central Jakarta 2018

Based on the above data, within the six-year period (2011-2016) the Supreme Court has granted 23 KPPU's cassation requests from the 33 appeal filed by KPPU. This indicates that MA Statutes are not directly proportional to the PN Decision.

VII. CONCLUSION

The rights of business actors in filing legal remedies against KPPU's decisions stipulated in Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, and PERMA No. 3 of 2005 concerning the Procedures for Submitting Legal Remedies Objection to the KPPU's Decision has not been fulfilled as is the civil procedural law in general (HIR and RBG) because the business actors are not given the opportunity to submit a replication and submission of evidence at the hearing in court (violating the principle of audiences); The position of KPPU as a party in the case of an objection (Article 2 Paragraph (3) Perma No. 3 of 2005) is not in line with its authority in carrying out additional checks on the orders of the panel of judges, so that KPPU should be considered to try its own case (Indonesian Nemo Judex in Propria) and not the creation of justice in the proceedings in the District Court for both parties.

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