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Monopoly Legal Aspects of Violations in Determining Flight Transportation

Markus sihombing^{1*}, Helvis¹,

¹Faculty of Law, Universitas Esa Unggul, Jakarta 11510, Indonesia

This study aims to find out how the Regulation of competition law in determining of air fares in Indonesia using normative judicial research methods. From the result it can be concluded: 1. Law of the Republic Indonesia Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition. It enough to keep the business climate become conducive and away from of unfair business competition which can harm other parties. Thus, the state has carried out its function and responsibilities in accommodating the interests of its citizens. Furthermore, specifically regarding the flight itself. The government has also made regulations through the Law of the Republic of Indonesia Number 1 of 2009 concerning aviation. 2. One of the government's steps so that the implementation of law and regulation is carried out properly, the business competition supervisory commission. This content is the cancellation of the lower and upper limit of airfare and cargo by the national air carrier's association (INACA in 2001). The cancelation of this tariff fixing makes aircraft fares more competitive, which in the end leads to a balance between the interests of entrepreneurs and businesses public.

Keywords: Business Competition Law, Air Freight rates, Air Transportation

1. INTRODUCTION

Aviation business competition in Indonesia is very competitive, Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition aims more broadly than just protecting business competition for the sake of competition itself [1]. Article 3 of Law no. 5 of 1999 is not only limited to the main objective of the antitrust law, namely a free and fair business competition system, but also includes ensuring equal business opportunities for all business actors [2]. Explicitly, this goal has not accommodated competition barriers and abuses of economic power. However, this is regulated in articles about concerning agreements or business combinations that are prohibited, so that for all business actors in carrying out economic activities there is a wide range of motion. The large number of airlines operating in Indonesia directly creates competition is fierce. Despite increasing fuel price, the national aviation sector continues to Exped, with a 2.0 million rise in domestic passenger traffic in August 2020, a gain of 36,235 [3]. Indonesia's economic have growth has an upward -

*Email Address: markus.sihombing96@yahoo.com

trend and has a positive impact. The larges number of players in the aviation service industry is partly due to the high potential for profits that can be achieved. The profit earned by the airline service company will be above the normal profit. It condition make investors or business actors interesting to enter the aviation service business.

After the crash of the Lion Air plane JT-610, it took off at 06.20 WIB, October 28, 2018 from Soekarno Hatta airport on the Depati Amir airport route in Pangkalan Pinang, Bangka Belitung [4]. As the regulator of the aviation sector in Indonesia, the Ministry of Transportation has tightened operating regulations that appear to be often violated by aircraft operators in Indonesia, such that it is said that safety considerations are ruled out in the end. The price factor is one of the main issues which is allegedly the cause of the safety factor being neglected. Aviation safety is closely related to the physical plane of the aircraft as well as aspects of maintenance so that flight engineering requirements are met, besides that flight safety aspects are also closely related to human resource factors involved in flight activities. Companies that serve commercial flight services include Garuda Indonesia, Citilink Indonesia,

Batik Air, Wings Air, Lion Air, Sriwijaya Air, Nam Air. The development of the number of airlines on the one hand is beneficial for air transportation service users (passengers and cargo owners) because there will be many choices. But on the other hand, the low fares often reduce the quality of service, what is even more worrying is that it will reduce the quality of aircraft maintenance so that it is vulnerable to flight safety and will have an unfavorable impact on security, comfort and consumer protection.

In the law of transportation, the carrier's obligations include, among others, transporting passengers and/or goods safely, intact and safely to their destination, providing the best service, compensating passengers for losses in the event of a loss to passengers, dispatching passengers according to a predetermined schedule and etc. Meanwhile, the passenger's obligation is to pay the transportation fare whose amount has been determined, to keep the goods under his control, to report the types of Dangerous (dangerous) goods, to comply with the provisions stipulated by the carrier relating to transportation. The rights and obligations of the parties are usually stated in a carriage agreement document. Theoretically, a carriage agreement is an agreement in which one party undertakes to safely carry people or goods from one place to another while the other party undertakes to pay the fare. The Business Competition Supervisory Commission (KPPU) stated that seven national airlines were proven to have violated air ticket fares. The seven airlines were declared to have violated Article 5 and Article 11 of Law Number 5 of 1999 concerning Scheduled Commercial Air Transport Services for Domestic Economy Class Passengers. KPPU stated that airlines violated the prohibition on monopolistic practices and unfair business competition, especially regarding the determination of air ticket prices in 2018-2019 [5]. The seven airlines are Garuda Indonesia, Citilink Indonesia, Sriwijaya Air, Nam Air, Batik Air, Lion Air and Wings Air. In a row, the airline is reported. The trial of the KPPU Panel of Judges assessed that there had been an agreement between airlines [6]. In the form of an agreement. They have agreed to eliminate discounts or make uniform discounts, and an agreement to eliminate products offered at low prices in the market. As result, limited the schedule and high price for economy class passengers. Spokesman for the Minister of Transportation Adita Irawati said the Ministry of Transportation respects the KPPU's decision. Since the beginning of the process, the Ministry of Transportation has positively welcomed the KPPU's step in implementing fair competition practices in the aviation world. According to him, this is -

in line with the mandate of Law No. 1 of 2009 concerning aviation. The Ministry of Transportation is mandated to apply an upper limit tariff (TBA) and a lower limit tariff (TBB) as a consideration for fulfilling aspects of safety, consumer protection, and avoiding unfair competition between domestic scheduled commercial air transportation business entities for economy class. Consideration to the Ministry of Transportation. They are very open to all inputs and suggestions from various parties, including KPPU as an effort to provide protection to consumers and business actors in the insurance industry as well as national efficiency. The Ministry of Transportation throughout 2019 has evaluated the TBA policy which was previously a Ministerial Regulation (PM) 14/2016 to PM 20/2019 [6]. The implementation of the TBA is carried out by taking into account the protection of consumers and also the sustainability of the aviation industry. In the midst of the current COVID-19 pandemic, aviation stakeholders, including airlines, show their support to serve the needs of air transportation, which of course has an impact on occupancy, but flight services are still carried out at the same rates as before in accordance with KM 106/2019 [7].

2. METHODOLOGY

The type of legal research used the normative legal research. The normative legal research focuses on positive legal norms in the form of Legislation. Invitations about the role of the business competition supervisory commission (KPPU) in promoting a healthy business competitive atmosphere in setting airline rates. This research was carried out by presenting, explaining, and fully defining what was researched in this study [8]. This writing uses normative legal research so that it requires secondary data (legal material) as the main data consisting of :

A. Primary legal materials

Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in making laws and judges' decisions.

B. Secondary legal material

Secondary legal material is a legal opinion that provides an explanation of primary legal material relating to the Role of the Business Competition Supervisory Commission in Encouraging a Fair Business Competition Climate in determining flight fares

C. Tertiary legal materials

Tertiary or supporting legal materials are legal materials to clarify primary legal materials and secondary legal materials such as the Big Indonesian Dictionary and the Foreign Language Dictionary.

3. RESULT AND DISCUSSION

A. Government Policy Regulation

In terms of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition and the regulation of lower tariff rates in PM No. 14 of 2016 was ratified on January 21, 2016 and came into force on January 28, 2016. If we look at the implementation of this lower limit, it shows that the government's efforts to keep business competition between actors remain conducive. Due to the no limitation on the application of the lower fare, then the application of this fare will be like a non-economy class flight, meaning that the fare is determined by the market mechanism. So the company may sell tickets below operating costs, and competing companies that are not able to survive the impact will go out of business. In economic theory, pricing is a government policy in controlling prices in the market. The aim is to protect and control the prices of certain products, caused problems that are detrimental to both consumers and producers. There are two forms of pricing policy, namely the lowest price policy (floor price) and the highest price policy (ceiling price). The lowest price policy is the minimum price set by the government for certain products, this is done by the government because it considers the price that occurs in the market is too low so the lowest price is set (the price will be set above the market price). The regulation of air transportation tariffs in Indonesia is getting better, more detailed, clear and has been in accordance with the philosophy of regulating air transportation tariffs, namely balancing the interests of consumers and the interests of business actors. Although there have been many regulatory changes, especially in 2014, this was done in order to create reasonable fares, prevent unfair business competition and realize protection for air transport consumers, especially in terms of safety, security, and comfort. The government in setting regulations regarding tariffs is getting better, more detailed and clear, as can be seen in:

- a) There are provisions regarding the components of calculating tariffs based on distance rates, taxes, mandatory insurance contributions, and surcharges
- b) Determination of the upper limit fare, reference fare, determination of the percentage of the lower limit fare and in the last 2016 regulation, detailed and clear calculations are made regarding the upper limit fare and lower limit fare for each flight route. All tariff determinations also always take into account economic, social, and political conditions such as fluctuations in the value of the rupiah and aircraft operating costs related to the price of avtur, aircraft spare parts and others.
- c) Application of tariffs based on service groups, namely full services (a maximum of 100% of the maximum tariff), medium services (a maximum of 90% of the maximum tariff), no frills.

B. Tariff Control Policy

The Ministry of Transportation issued Minister of Transportation Regulation No. 20 of 2019 concerning Procedures and Formulation for Calculation of Upper Limit Tariffs for Economy Class Domestic Scheduled Commercial Air Transport on March 28, 2019 and Minister of Transportation Decree no. 72 of 2019 concerning the Upper Limit Tariff for Economy Class Domestic Scheduled Commercial Air Transport Passengers on March 29, 2019. The two regulations are a replacement for Minister of Transportation Regulation No. 14 of 2016. The mechanism for the formulation and determination of the lower limit tariff which was originally regulated in the Minister of Transportation Regulation No. 14 of 2016, now separated into Permenhub No. 20 of 2019 and the Decree of the Minister of Transportation No. 72 of 2019. The Head of the Communication and Information Bureau of the Ministry of Transportation, Hengki Angkasawan, explained that the separation of rules between the Minister of Transportation and the Ministry of Transportation would make it easier for the government to evaluate the amount of aircraft fares. The policy of increasing the lower limit tariff for economy class passenger aircraft issued by the government has the potential to control price competition between airlines. However, this policy is not necessarily able to increase people's purchasing of air transportation modes, because there is no change or decrease in the upper limit tariff. Airlines can sell airline tickets at the lowest price more expensive than before the lower limit fare increase policy. Seeing this, it can be seen that the policy objective of increasing the lower limit fare is more profitable for airlines than for the public.

C. Implementation of Tariff Control Policy

Currently, only two groups of airline companies have lowered their ticket prices, namely the Garuda Group (Garuda Indonesia, Citilink, Sriwijaya, and NAM) and the Lion Group (Wings Air, Batik Air, and Lion Air). Garuda Indonesia lowers ticket prices with a discount scheme that is valid from March 31 to May 13, 2019. Offers discounts of up to 50% as a series of SOEs Anniversary. Sriwijaya and NAM airlines reduced ticket fares for domestic routes by 40% in early March 2019. However, the price reduction only applies for flying periods from March to April. Meanwhile, Lion Group has officially announced that its company has lowered the price of airline tickets by up to 30%. Budi Karya Sumadi, Minister of Transportation, appreciates the airline's efforts to lower air ticket prices and is still waiting for other airline companies to implement a similar policy. The Minister of Transportation hopes that the ticket price reduction mechanism will take place naturally and follow market mechanisms so that the government does not need to intervene.

Through the two new regulations, it is hoped that the government will be more intensive in monitoring the ticket prices offered by airlines so that they are affordable by the public. Evaluation of the effectiveness of the regulation can also be carried out by the government to see the extent of the impact on the increase in the number of passengers after it is implemented. On the other hand, the government can help by lowering the price of avtur sold by PT. Pertamina (Persero) to domestic airlines because the price of avtur tends to rise at this time. In addition to controlling tariffs through these regulations, the government's role is expected to regulate the aviation industry market. Meanwhile, from the aviation industry business players, they can improve efficiency by minimizing costs that do not directly affect the airline's business performance, such as non-operational costs that are not directly related to aircraft, but still prioritize in-flight safety.

4. CONCLUSIONS

The role of KPPU is to conduct a series of investigations, both on public complaints and on the KPPU's initiative on allegations of violations of the application of air transportation fares. The KPPU's decision does not have a deterrent effect on business actors violating the application of air transportation tariffs. Due to the KPPU's decision, there is still legal action to the District Court, whereas if the order for execution must go through the district court, there is no attempt to confiscate, and there is no coercion against the KPPU's decision. The return of normalized cargo rates so that the community, especially in the regions, can feel the effects of the lowering of cargo transportation rates. The government and other related institutions need to make changes to Law No. 5 of 1999, especially regarding the addition of the authority to execute the KPPU's decision. So that it provides a deterrent effect for business actors who violate it. The wider community, especially flight service users, if they find indications of oligopoly practices in the application of air transportation fares, they are expected to immediately make a complaint to the KPPU, so that a series of investigations and examinations are carried out on the alleged violation.

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