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THE IMPLEMENTATION OF FOOD CARTEL RESULTED IN CRIMINAL ACTS

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ABSTRACT

The Indonesian Government guarantees human rights. Human beings have the right to live and defend their life. To achieve prosperity, the government needs the community's participation in food industries. However, their desire to exploit the benefits from the food industry would turn into big consequences. Other business will suffer losses if there is unhealthy competition in the market. To explain the implementation of the food cartel resulted in criminal acts and punishments. This study uses a normative law statue approach and conceptual approach. The material used for this paper is divided into primary material, which is taken form laws and regulations, and secondary material from various legal publications. The crime of food cartel's criminal stated in the law of the Republic of Indonesia No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. The implementation of food cartel resulted in criminal acts could inflict harm, monopoly and unfair competition in business' world. The liability of the implementation of food cartel resulted in criminal acts only affect big corporations. Corporations which act as cartels could be considered as a criminal when they are proved to do illegal things in business. The penalty given to the criminals could be to pay fine money and other additional penalties.

INTRODUCTION

The welfare of the people is the main goal of the Republic of Indonesia. The government's first step is fulfilling citizen's basic needs one of them is food. However, the participation of all citizens is required, especially through entrepreneurship specifically in food industries. Every entrepreneur's main objective is to have many profits from his business by using many kinds of

methods, whether in a good or bad way. Other entrepreneurs can suffer losses if there is unhealthy competition in the market. Competition in the business' world will always exist and is a part of the business activity itself, so the competition cannot be banned as long as it does not cause harm to the other party. In order to keep the competition healthy, it is necessary to put up some commitment to reach prosperity.

A business group that has the same strengths does the implementation of a food cartel. This will make the consumer Choice limited to a product, covering aspects of quality, quantity and price aspect because the product is available is the result of the portion based on the agreement between the business so that the consumer, in this case, the public is certainly harmed (Silalahi, 2007). Growing and developing cartels practice generally occurs in the structure of the oligopoly market. Because in the market the lesser the competitor the better. The cooperation is usually in the form of horizontal cooperation, where business actors produce products or produce activities that are homogeneous (Severová et al., 2011; Pekarskiene and Bruneckiene, 2015).

The execution of cartel caused by two things, regulations issued and enforced by the Government or because of the implementation of policies that are not carried out so well that it becomes the cause of cartel implementation. The cartels are regulated by the macroeconomy. The concentration of business forces only in certain groups can certainly damage the national economy that has been built. Resource inefficiencies of both natural resources, human resources, and economic resources inevitably occur when cartel practices are conducted. Resources that are supposed to be utilized to encourage co-prosperity are ultimately utilized by certain groups of businesses to maximize profits and enrich themselves. Even for an entrepreneur who have close proximity to the government's elite is given priority and facility facilities are more so that the economic results are only enjoyed by certain business groups, where it can create social gaps. This social gap is the implication of economic development failures. The cartels' execution is due to sanctions against the perpetrators can not fully cause a deterrent effect. Whereas in other countries, the high penalty has been applied to provide a deterrent effect to each culprit (Octaviani, 2015).

The loss caused by the adverse effects of cartels causes the government to establish the law of the Republic of Indonesia No. 5 of 1999 on the prohibition of monopoly and unhealthy business competition, which mentions that "economic development should be directed toward the realization of the welfare of the people based on Pancasila and the Constitution 1945." With the issuance of law number 5 of 1999 the government hopes to create a healthy business competition and set up a reasonable market mechanism that has been achieved. Law No. 5 of 1999 provides a clear ban on any activities that could impede the realization of social justice for the people of Indonesia, one of them is the cartel's execution

RESEARCH METHODS

This study uses a normative law statue approach and a conceptual approach. Normative legal research discusses the problem by referring to law legislation in

Indonesia. Written law can be examined from various aspects such as theory, philosophy, comparison, composition, consistency, general explanation and explanation of each chapter, formalities and the binding force of law and the term used many terms in laws. The material used for this paper is divided into primary material, which is taken from laws and regulations, and secondary material from various legal publications. The primary legal source used is the Constitution of the Republic of Indonesia of 1945, Act No. 1 of 1946 about the implementation of criminal law, Law number 8 of 1981 concerning criminal events law, Republic law Indonesia Number 5 of 1999 on Prohibition of monopoly practices and unfair business competition, Law number 8 of 1999 on consumer Protection, law number 17 of 2006 concerning customs and law number 40 of 2007 about Limited liability company. Sources of secondary legal material are obtained from various publications on the law. The legal materials that have been collected are the applicable law or regulation has been carried out completely or not, so that the formulation of a pre-determined problem can be resolved by offering a solution to be given (Marzuki, 2014).

RESULTS AND DISCUSSION

The cartel execution not only speaks about the material loss in the realm of civil law but also in contact with the administration and criminal realm as set out in Law No. 5 of 1999 on the prohibition of monopoly and unhealthy business competition. Law No. 5 of 1999 does not regulate any civil objections from the parties who are harmed from any monopoly activity that contradicts or violates the law. In the United States, through the *Clayton Act*, it is possible that civil compensation counter-measures are imposed on the parties who commit monopolies. However, in reality, it is ineffective because the more criticisms that come up cause people to resolve each case in court. This resulted in an antitrust case. Conversely, in Indonesia, it is not known to replace pleaded losses and tends to compensate for losses in accordance with the losses suffered. Although through the media courts, it is possible to resolve the lawsuit through a civil lawsuit process especially against violations by one of the parties who commit a prohibited agreement (tort lawsuit).

Administrative counter-measure was taken by the Commission of Business Competition Supervisory (KPPU) on any entrepreneur who violates the law No. 5 of 1999 is by administrative action as intended in paragraph (1) as follows:

1. Determination of cancellation of the agreement as intended in article 4 to Article 13, article 15, and article 16, and/or
2. The order to the business actors to stop the vertical integration as intended in article 14, and/or
3. Orders to business actors to stop activities that are proven to cause monopoly practices and/or cause unfair business competition and/or harm to the community, and/or
4. Orders to businesses to stop the abuse of dominant positions, and/or

5. Determination of cancellation of the merger or consolidation of the business entity and the acquisition of shares as intended in article 28, and/or
6. Determination of payment of damages, and/or
7. Imposition of fines possible Rp 1,000,000,000.00 (one billion rupiahs) and highest Rp 25,000,000,000.00 (twenty five billion rupiahs).

In chapter VIII, the penalty contains administrative action, criminal and additional penalties. Article 47 governs administrative action. The Commission authorities impose a penalty on administrative action. Article 47 paragraph (2) mentions one by one the form of administrative action contained in this law. For example, an entrepreneur can be instructed to stop activities that are proven to cause monopoly practices. The Commission may also instruct the respective businesses to stop misuse of the dominant position, which has been proved to be so. In addition, the Commission may stipulate that the business actors must pay compensation. Administrative measures can also include the imposition of fines possible one billion rupiahs and a height of twenty-five billion rupiahs.

Cartel practices included in criminal law due to law No. 5 of 1999 about the prohibition of monopoly practices and unfair business competition have set about criminal sanctions in them. Provisions of criminal penalty under the Anti-Monopoly Act, as follows:

1. Violation of the provisions of article 4, article 9 through article 14, article 16 to article 19, article 25, article 27 and article 28 is threatened with penalty possible Rp. 25.000.000,- (twenty-five billion rupiahs) and highest Rp. 100.000.000,-(one hundred billion rupiahs), or a surrogate criminal substitute for a duration of 6 (six) months.
2. Violation of the provisions of article 5 to article 8, article 15 to article 24, and article 26 of this law is threatened with fines of possible (Rp. 5.000.000,-(five billion rupiahs) and highest Rp. 25.000.000,-(two Fifty billion rupiahs) or a surrogate criminal substitute for a penalty at the longest of 5 (five) months in jail.
3. Violation of the provisions of article 41 this law is threatened fines possible Rp. 1.000.000,-(one billion rupiahs) and highest Rp. 5.000.000,-(five billion rupiahs), or criminal surrogate penalties In 3 (three) months in jail.

The principal court covers fine money of minimum amount twenty-five billion rupiahs and the maximum amount of one hundred billion rupiahs. The penalty may be subject to violation of this law as a territorial agreement, boycott, or cartel, which is prohibited by law (article 9 to section 11). The high penalty was imposed against the most severe violations of this law. As a criminal substitute fines can be sentenced to criminal confinement of six months. It does not alter the underlying criminal nature, i.e. administrative action.

In addition to the underlying criminal as contained in article 48, it may also incur certain additional criminal as stipulated in article 49. This is pointing to article 10 of the Criminal Code. Pursuant to article 49 letter A, the additional criminal being dropped may be revocation of business license. Act No. 5 of 1999 about the prohibition of monopoly practices and unfair business competition has determined the length of revocation of permission. The Commission determines the length of revocation under its best judgment, but in dropping the verdict, it should be noted that this is an additional criminal. Additional penalties may be prohibitions to entrepreneurs to occupy the position of directors or Commissioners for at least two years and at the longest for five years. In the longest period of five years, it can be concluded that the business license must also not be revoked for an unspecified period of time, as it removes the underlying criminal balance with additional penalties. The purpose of this sanction can be explained by the retaliation theory of Andi Hamzah. As for the theory of retaliation, Andi Hamzah suggests as follows: "The theory of retaliation suggests that the criminal is not aimed at practical, such as fixing criminals. The crime is that which contains elements to be sentenced to criminal, the criminal is absolutely there, for it is done a crime. It is not necessary to consider the benefits of criminal allotment. "In general, criminal law aims to deterrent the perpetrator not to repeat the conversation and to make other societies so as not to intend to commit acts of transgression (Azizah, 2015; Hasibuan et al., 2015).

The cartel execution can be said to be a criminal act. The elements in the cartel criminal are a treaty that is carried out with competitors and aims to influence the price by regulating the production or marketing of certain goods or services. Such actions may result in monopoly practices and/or unfair business competition, so there must be a high penalty for cartel practitioners (Sari, 2015).

CONCLUSION

The cartels' execution implicates criminal acts if it raises losses, monopolies and unfair competition in business. This cartel practice has been governed by Law No. 5 of 1999, which governs some illicit activity in business competition law, such as conducting affiliates, production and marketing that can impact on the price. The liability of the implementation of food cartel resulted in criminal acts only affect big corporations. Corporations which act as cartels could be considered as a criminal when they are proved to do illegal things in business. The penalty given to the criminals could be to pay fine money and other additional penalties.

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