

**LEGAL MONOPOLISTIC PRACTICES AS UNFAIR BUSINESS COMPETITION
IN THE SALES OF PACKAGED COOKING OILS IN INDONESIA MAQASHID
SHARIA PERSPECTIVE (STUDY DECISION NO.15/KPPU-I/2022)**



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Abstract

This research analyzes cases of business competition violations in the sale of packaged cooking oil in Indonesia, related to unfair pricing. The Decision of the Business Competition Supervisory Commission (KPPU) Number 15/KPPU-I/2022 is the focus of the research, concerning Article 19 letter c of Law Number 5 of 1999. This research aims to produce KPPU results from the Maqashid Sharia perspective, especially in safeguarding assets and treasure (*Hifz Al-Mal*). In addition, this research examines the impact of violations on the availability and price of cooking oil in the Indonesian market. The research method used is normative juridical which is used to analyze statutory regulations, especially Law Number 5 of 1999, as well as related KPPU decisions which involve data analysis from books, journals, and literature relevant to cases of violations and Maqashid Sharia principles. The research results showed that seven companies were proven to have violated Article 19 letter c of Law Number 5 of 1999, by practicing limiting supply and creating artificial shortages that were detrimental to consumers. This violates the principles of *Hifz Al-Mal*, and is detrimental to the economy and social welfare. Implementation of a program that includes business competition which is expected to prevent similar violations and promote healthy business competition following Maqashid Sharia. However, the effectiveness of this program needs to be increased through massive outreach by KPPU. This research provides policy recommendations to create a fairer and more prosperous market in Indonesia.

Keywords: Monopoly, Business Competition Supervisory Commission, Maqashid Sharia

INTRODUCTION

Healthy business competition can be measured based on the freedom of buyers to choose suppliers of goods, the freedom of suppliers of goods to choose their buyers, a market that allows business actors to move freely, and a market that can be freely entered by new entrants. Meanwhile, unhealthy business competition can be understood as conditions of competition between business actors that run unfairly. Three indicators that indicate unhealthy business competition are when business competition is carried out dishonestly, business competition is carried out against the law, and business competition is carried out by inhibiting competition between business actors (Law No. 5 1999).

In the development of the reform era, there have been fundamental changes in the field of economic and business law, which can be marked, among other things, by the issuance of Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition. Law Number 5 of 1999 is regulated to create of businesses that are healthy and free from practices of collusion, corruption, and nepotism (Enno Selya, 2023).

Monopoly practices and unhealthy business competition can create obstacles to the normal functioning of market mechanisms, thereby hampering a country's economic growth and trade. As with this research, the increase in the market price of packaged cooking oil in Indonesia has received serious attention from the Business Competition Supervisory Commission (KPPU) due to alleged violations of business competition regulations. Therefore, laws and regulations that regulate monopolistic practices and unfair business competition are needed to improve a nation's economy (Gilang Yudha, 2021).

Allegations of monopolistic practices and unfair business competition in the cooking oil market industry that occurred in Indonesia are based on KPPU decision Number 15/KPPU-I/2022. This case must be paid further attention to analyze the decision and violations of Article 19 letter c Law Number 5 of 1999 and its impact on the market as well as government policy with the hope of providing recommendations to prevent similar violations in the future and promote healthy business competition following the objectives of Maqashid Sharia.

Previous research studies related to KPPU, among others, the most relevant is "Judicial Analysis of Alleged Price Fixing Practices in the Cooking Oil Industry in Indonesia"

reviewed from Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition”, in this case, the decision research discussed by the previous researcher is the same as the decision discussed by the current researcher, but only differs in the title and discussion of the problem and conclusions. This research produces conclusions, among others, that in this case the respondents were not proven to have violated the provisions of Article 5 Law Number 5 of 1999 because there are several elements of the determination that are not fulfilled. Apart from that, the lesson that can be taken for law enforcement against cartel practices in the future from this research is regarding the legal certainty of the use of indirect evidence in proving cartel cases (*Angewandte*).

From a Maqashid Sharia perspective, this approach underlines that it can be controlled through preventive efforts by strengthening and carrying out massive increases in socialization to introduce more widely the business competition compliance program established based on KPPU regulation Number 1 of 2022. With the existence of a business competition compliance program, similar violations can be controlled. However, the implementation of the business competition compliance program is still not effective for all business actors in Indonesia. Apart from that, business actors also need to be aware of the importance of healthy business competition to jointly create monopoly-free business activities, which can be done with the existence of a business competition compliance program.

Thus, it is hoped that this research will provide recommendations to prevent similar violations in the future and create healthy business competition, to realize prosperity and justice for society following the objectives of Maqashid Sharia, especially in protecting assets (*Hifz Al-Mal*).

REVIEW OF LITERATURE

Monopoly according to Law No. 5 of 1999 in Indonesia is a practice that results in market domination by one business actor, thereby eliminating healthy competition. This law prohibits monopolistic practices and unfair business competition to protect consumer interests and encourage fair competition in the market. Dominant position, where the business actor has no competitors, is also the focus of this regulation.

Monopoly law according to Law No. 5 of 1999 in Indonesia is defined as control over the production and marketing of certain goods or services by one business actor or group of business actors. Monopoly practice is the concentration of economic power which can result in control of the market and give rise to unhealthy business competition, detrimental to the public interest. This law aims to prevent a detrimental concentration of economic power and ensure healthy competition in the market.

RESEARCH METHOD

This research uses the Normative Juridical method to analyze statutory regulations, especially Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, as well as related KPPU decisions involving data analysis from books, journals, and literature relevant to violation cases similar.

With this method, the research is expected to provide a comprehensive understanding of violations of business competition rules from a positive law perspective and a Maqashid Sharia perspective, as well as provide constructive recommendations for creating healthy business competition in the business market in Indonesia.

RESULTS AND DISCUSSION

Alleged Monopoly Practices of the Cooking Oil Cartel

A cartel is an agreement or agreement made by a business with its competitors to gain excessive profits. The existence of this agreement aims to create prices and coordinate production actions carried out between business actors to obtain maximum profits. Meanwhile, looking at the case of the skyrocketing price of cooking oil, cooking oil itself is classified as one of the types of basic industrial goods as explained in Presidential Regulation Number 59 of 2020 concerning Amendments to Presidential Regulation Number 71 of 2015 concerning Determination and Storage of Basic Necessities and Important Items (Putu Ari Santika, 2020).

Furthermore, Article 2 paragraph (6) of Presidential Decree Number 59 of 2020 explains the rules for classifying cooking oil as basic necessities or important materials which states in essence as follows, the Central Government determines the types of basic necessities

and/or important goods with the types of necessities. Basic industrial products, namely sugar, cooking oil, and wheat flour.

This spike in the price of cooking oil began in November 2021 when the KPPU discovered that there had been an increase in the price of cooking oil, which was originally around IDR 13,000 per liter, increasing to around IDR 15,000 per liter. Based on this fact, the KPPU conducted research on the structure of the cooking oil market to find the cause of the increase in cooking oil.

The results of this research state that there is more than 50% of the market with an oligopoly structure controlled by 4 integrated companies, starting from oil palm plantations, management of exports of crude palm oil (CPO), to the cooking oil business itself (Putu Ari Santika, 2020).

Furthermore, KPPU also strengthened the allegations by conducting deeper research. KPPU discovered new facts, the increase in the price of cooking oil was possible due to an increase in demand and price of raw materials for cooking oil from CPO. However, after the KPPU conducted a deeper study by comparing the price of cooking oil with the price of CPO from 2019 to 2021, it was found that there was quite a difference, where during the period of increasing cooking oil prices it was found that CPO prices tended to fluctuate. The discovery of vertical integration, the existence of an oligopoly market structure, and a level of market concentration that exceeds 50% strengthens the KPPU's suspicion that there are indications of monopoly in the case of skyrocketing cooking oil prices (Putu Ari Santika, 2020). Based on these allegations, the KPPU reported that 27 cooking oil companies were suspected of carrying out cartel actions.

Basically, the prohibition on inter-company price fixing is regulated in Article 5 of Law Number 5 of 1999 which states that business actors are prohibited from making agreements with their competitors to determine the prices of goods or services. Meanwhile, the prohibition on cartel actions itself is also regulated in Article 11 of Law Number 5 of 1999 which explains that business actors are prohibited from making agreements with competitors to influence prices by regulating the production or marketing of goods or services. Furthermore, the prohibition on controlling the market through limiting the distribution of goods or services is regulated in Article 19 letter c of Law Number 5 of 1999

which states that business actors are prohibited from carrying out business monopoly activities by limiting the circulation or sale of goods or services (Justika Maya, 2023).

KPPU Decision on Violation of Article 19 Letter C of Law Number 5 of 1999 by Seven Packaged Cooking Oil Companies.

In its decision, the Commission Council explained that the relevant market in the quo case was the sale of packaged cooking oil made from palm oil as raw material throughout Indonesia. The market structure in the cooking oil industry is concluded as a tight oligopoly with high market concentration (i.e. with a concentration ratio of four groups of business actors of 71.52%), having homogeneous products and various barriers to market entry. This affects the behavior of business actors and market performance, including the potential for cooking oil price fixing which is allegedly carried out by the Reported Parties.

During the hearing, the Commission Panel found that based on the ratio of input and output in the sector, during the violation period, it was greater than the ratio before the violation period. This shows that the price increase during the violation period occurred due to an increase in input prices, so the profit margin obtained became smaller. Thus, it can be concluded that the Reported Parties did not determine prices for simple and packaged cooking oil.

The Commission Council also found that the Reported Parties did not comply with government policy regarding the highest retail price (HET), namely by reducing production volume and/or sales volume during the violation period. This action was carried out deliberately to influence HET policy. When the HET policy was revoked, the supply of packaged cooking oil immediately became available on the market again at a relatively higher price compared to the price before the HET policy was issued.

In the process of preparing the decision, one of the members of the Commission Council, namely Ukay Karyadi, thought that the respondents violated Article 5 of Law Number 5 of 1999 because they set prices that were not balanced between the interests of business actors and the public interest. The significant increase in cooking oil prices reflects behavior that is detrimental to society and indicates the existence of cartel practices that are facilitated by the oligopoly market structure and the role of associations. In addition, the

vertical integration of several reported parties strengthens their position in controlling the market, which is contrary to the principles of healthy business competition.

Survey results in 20 regions, scarcity facts based on market surveys in 20 regions in Indonesia (such as Aceh, Bali, and East Java), found a shortage of packaged cooking oil in various provinces during January-March 2022. As many as 19 out of 20 regional governments reported oil shortages in various brands of fried foods produced by the reported company (Reported).

Information from the Indonesian Consumers Foundation (YLKI) received many complaints from the public regarding the scarcity of cooking oil, although they did not collect data directly. Complaints began to increase in December 2021, suspecting price increases above the national normal limit. YLKI urged the Business Competition Supervisory Commission (KPPU) to investigate allegations of price fixing and restrictions on the distribution of cooking oil. They initiated a petition which received support from 6,000 consumers and other institutions.

The Directorate General of Domestic Trade, Ministry of Trade, reported shortages and price discrepancies with the Highest Retail Price (HET) in many areas. Monitoring found four main conditions in various provinces: sufficient stock and in accordance with the HET, sufficient stock but not following the HET, insufficient stock with the HET applicable in modern retail, and cooking oil being scarce and prices not following the HET. Vacancies and delays in supply were found in several provinces such as Aceh, Jambi, West Kalimantan, and South Sumatra.

The increase in the price of Crude Palm Oil (CPO) rose significantly from IDR 9,739.65 in January 2021, reaching a peak of IDR 16,472.10 in March 2022. The price of packaged cooking oil increased along with the increase in CPO but did not decrease when the price of CPO decreased. This shows parallel pricing behavior among the Reported Parties. Although the difference between the price of cooking oil and CPO had decreased in September-October 2021, the difference widened again in November-December 2021. Data shows a very strong correlation in the selling price of cooking oil among the Reported Parties, with a correlation value between 0.8 to 1.00.

The Reported Parties allegedly limited the distribution of cooking oil when the HET policy was implemented, which was seen in the decrease in supply to retailers. Even though supply increased after the HET policy was lifted on March 16th, 2022, the increase was not significant. The graph shows a decline in average sales and production for the Reported Parties from September 2021 to March 2022, while competitors (non-reported Persons) experienced a significant increase.

Fulfillment of the elements of Article 19 Letter C of Law Number 5 of 1999:

1. The Reported Parties meet the definition of business actors following Article 1 point 5 of Law Number 5 of 1999
2. The Reported Party is suspected of restricting the distribution and sale of packaged cooking oil, violating Article 19 letter c.
3. Actions carried out either alone or together with other business actors violate the provisions.
4. Packaged cooking oil is included in the definition of goods according to the Law
5. The packaged cooking oil market in Indonesia is the focus
6. Distribution restrictions lead to monopolistic practices and unhealthy business competition.

The alleged violation of Article 5 of Law Number 5 of 1999 by the Reported Parties is proven to be quite strong. The scarcity of packaged cooking oil in Indonesia between 2021-2022 indicates monopolistic behavior and distribution restrictions by the Reported Parties, where their actions violate the applicable business competition law. HET policy, fluctuating CPO prices, and producers' responses are important factors in this analysis. The Reported Party's actions fulfill all the elements of Article 19 letter c of Law Number 5 of 1999, indicating a violation of restrictions on the distribution and sale of packaged cooking oil.

In this decision, the Panel of Judges has examined and decided on a case related to alleged violations of Law Number 5 of 1999. Based on existing considerations, the judge stated the following:

1. Not Proven to Violate Article 5:

Most of the defendants, namely Reported Party I to Reported Party XXVII, were declared not proven to have committed criminal acts as regulated in Article 5 of Law Number 5 of 1999.

2. Not Proven to Violate Article 19 Letter c:

Most of the defendants were also declared not proven to have committed criminal acts as regulated in Article 19 letter c of Law Number 5 of 1999.

3. Proven to have violated Article 19 Letter c:

However, some of the other defendants are 7 reported parties, namely Reported Parties I (PT Asianagro Agungjaya), II (PT Batara Elok Semesta Terpadu), V (PT Incasi Raya), XVIII (PT Salim Ivomas Pratama, Tbk), XX (PT Budi Nabati Perkasa), XXIII (PT Multimas Nabati Asahan), and XXIV (PT Sinar Alam Permai), were declared legally and convincingly proven to have committed criminal acts as regulated in Article 19 letter c Law Number 5 of 1999.

In general, the judge's decision states that not all defendants have been proven to have committed the crime charged. Only some of the defendants, namely 7 Reported Parties, were proven to have violated Article 19 letter c of Law Number 5 of 1999 and were sentenced to fines.

Impact of Violation of Article 19 Letter C of Law No. 5 of 1999 on the Availability of Goods and Prices in Indonesia

Non-compliance with this decision causes a shortage of cooking oil which results in a decline in people's welfare (deadweight loss). This behavior of decreasing production volume and sales volume during the violation period even though the raw materials are available is dishonest business actor behavior and hinders business competition in carrying out production and marketing activities of packaged cooking oil. So, the Commission Council concluded that there had been a violation of Article 19 letter c of Law Number 5 of 1999.

Some of the main impacts of this breach are:

1. Shortage of Cooking Oil Supply: Because business actors are reducing production and distribution volumes, there is a shortage of packaged cooking oil in various regions of

Indonesia. This worsened the availability of cooking oil on the market, which was reported by many local governments as well as consumers through institutions such as YLKI.

2. Increase in Cooking Oil Prices: Even though the price of raw materials (Crude Palm Oil) fluctuates, the price of cooking oil remains high even though CPO prices have decreased in several periods. There are indications of price fixing and parallel pricing behavior among business actors. The perpetrators are suspected of playing with prices by not reducing the selling price of cooking oil when the price of CPO decreases.
3. Decrease in Community Welfare (Deadweight Loss): Business actors' non-compliance with the HET policy causes a decline in community welfare because consumers have to pay higher prices than they should. In addition, the scarcity of cooking oil makes it difficult for people to obtain this item, which directly affects their basic needs.
4. Obstacles to Business Competition: The actions of business actors who control the supply of cooking oil cause unhealthy business competition. Non-reported business actors even experienced an increase in sales due to the scarcity of cooking oil from the Reported Parties.

Application of Maqashid Sharia to the Decision on the Case of Increased Prices of Packaged Cooking Oil

Maqashid Sharia is the goals and secrets that exist and are desired by Allah in determining all or some of his laws. The aim of Maqashid Syariah, in essence, is to maintain human benefit and avoid *mafsadah*, both in this world and in the afterlife. In this regard, the formulation of the Maqashid Sharia theory is seen as an effort to strengthen benefit as an important element of the goals of Islamic law (Muhammad Khalid, 1997). Maqashid theory cannot be separated from discussions about *maslahah*. This is because, in terms of substance, the form of Maqashid Sharia is beneficial (Asafri Jaya Bakri, 1996).

Maqashid Sharia (rule of law) aims to create human benefit both in this world and in the afterlife. The main objective of Maqashid Sharia is reflected in maintaining the pillars of human welfare which include five benefits by protecting:

1. Religion (*Hifz Ad-Din*), for example reading two sentences of the shahada, performing prayers, giving zakat, fasting, hajj.

2. Soul (*Hifz An-Nafs*)
3. Thoughts (*Hifz Al-'Aql*), for example, food, drink, clothing, shelter
4. Descendants (*Hifz An-Nasl*)
5. Property (*Hifz Al-Mal*), for example muamalah.

Hifz Al-Mal is a concept in Maqashid Sharia that emphasizes the protection and maintenance of property as an important aspect of human welfare. In Islam, wealth is seen as a trust that must be managed wisely, avoiding waste and misuse. This ensures individuals and communities can access resources for livelihoods, promoting economic stability and social well-being.

In Maqashid Sharia, the matter of maintaining assets or managing assets is very prioritized, whereas in Maqashid Sharia maintaining and managing assets is prioritized as a primary thing, and maintaining all the integrity of the primary must be based on other supports.

Maintaining and managing assets in the provisions of Maqashid Sharia must be based on legal provisions that have been legalized and ratified by Allah. This means that it is forbidden to steal and if you do so there will be punishment and sanctions for your actions, it is forbidden to cheat and commit treason in carrying out the business you run. It is forbidden to behave in usury because basically usury is one of the things that is not liked by Allah SWT, it is not permissible to consume other people's property in a bad way, and in Islam, it is also obligatory to replace it. Goods that are damaged due to ourselves, if all these things can be fulfilled then all the assets will be protected from bad deeds (Auffah Yumni, 2016).

Maqashid Sharia also stipulates two models of sanctions in protecting assets to prevent injustice, where the first sanction is a sanction for robbers, thieves where this sanction is determined by sharia, while *ta'zir* is for a corrupt person and someone who has damaged and lost capital and consumed capital. It is a sanction that is not directly stipulated by sharia (Arif Muktiono, 2022).

In the Islamic Religion, waste and fraud are prohibited, while resource management is encouraged. Wealth preservation encourages engagement in productive economic activities, such as legitimate investments, for growth and development. *Hifz Al-Mal* also

directs surpluses to charities, such as zakat and alms, supporting disadvantaged communities, and contributing to welfare and social cohesion (Ridwan Jamal, 2020).

The connection with the decision in the case to increase the price of packaged cooking oil can be seen from the main perspective in Maqashid Sharia. The goals of Maqashid Shariawhich are more directed towards decisions regarding cases of rising cooking oil prices, namely Hifz Al-Mal or property protection, which emphasizes the importance of safeguarding and protecting individual and community property from various forms of misuse which is useful for economic prosperity and sustainability by preventing financial losses. And irrelevant expenses.

The significant increase in cooking oil prices due to violations by business actors shows economic injustice, burdening consumers, especially those from the lower middle class. This action is contrary to Maqashid Sharia which emphasizes the protection of consumer rights and general welfare (*maslahah ammah*). Unfair prices reduce people's purchasing power and economic welfare. Maqashid Sharia aims to achieve benefits and avoid losses in economic transactions. Price manipulation and supply restrictions violate public welfare goals. The existence of oligopoly behavior facilitates collusion between companies, harming consumers. The Islamic religion encourages the prevention of *mafsadah* (loss) while promoting *maslahah* (benefits) (Akbar Sarif, 2018).

The alleged violation of Article 19 Letter c of Law Number 5 of 1999 by the Reported Parties has been proven to be quite strong. The shortage of packaged cooking oil in Indonesia between 2021-2022 is due to monopolistic behavior and distribution restrictions by the Reported Parties, where their actions violate the applicable Business Competition Law. HET policy, fluctuating CPO prices, and producers' responses are important factors in this analysis. The Reported Party's actions fulfill all the elements of Article 19 letter c of Law Number 5 of 1999, indicating a violation of restrictions on the distribution and/or sale of packaged cooking oil.

The increase in the price of cooking oil which is suspected to be due to actions violating Article 5 and Article 19 letter c of Law Number 5 of 1999 can be controlled through preventive efforts with a business competition compliance program established based on KPPU Regulation Number 1 of 2022. A compliance program in preventing business

competition is expected to increase compliance by business actors with business competition law through participation by business actors in compliance programs. So that compliance guidelines are issued to become a reference for business actors (KPPU, 2016).

The benefits of a company compliance program include maintaining the good name and reputation of the company, the company being seen as capable of maintaining high moral ethics, and standard internal company procedures related to compliance with Law Number 5 of 1999 to be created and maintained. By minimizing the cost consequences of non-compliance with Law Number 5 of 1999, the Corporate Competition Compliance Program encourages companies to uphold the values of healthy competition to be competitive and innovative (KPPU, 2016).

Based on the aim of establishing a business competition compliance program as described, namely to prevent unfair business competition practices. However, if you look at the compliance program, it is not mandatory for every business actor. Can the program be implemented effectively? And how the legal consequences of the evaluation results of the business competition compliance program can provide a deterrent effect for companies that do not implement the business competition compliance program. This is an issue that the KPPU must pay attention to so that the implementation of the competition compliance program can be achieved according to its objectives. Based on the objectives of the compliance program as stated in the compliance program guidelines issued by the KPPU (Kompas.com, 2023), it is stated that participation is expected to prevent business competition violations by business actors. If participation is important, business actors should be obliged to register for a business competition compliance program, so that the program can be implemented effectively.

CONCLUSION

A total of 7 reported cooking oil companies out of 27 reported parties have been proven to have violated Article 19 letter c of Law Number 5 of 1999 by limiting the circulation and sales of cooking oil, thereby creating shortages and increasing prices. This violation causes losses for consumers, such as price increases, shortages of goods, and decreased welfare.

This cartel's actions are contrary to the principle of *Hifz al-Mal* (preservation of property) in *Maqashid* because it harms consumers and disrupt economic stability.

Strict law enforcement and an effective business competition compliance program are needed to prevent the recurrence of similar violations and create healthy business competition. The Business Competition Supervisory Commission (KPPU) needs to be more active in monitoring and cracking down on monopolistic practices and unfair business competition. There needs to be more intensive outreach to business actors regarding the importance of complying with business competition rules. The public needs to be encouraged to actively report practices that are detrimental to consumers. The importance of maintaining healthy business competition to protect consumer interests and realize community welfare following *Maqashid* Sharia principles.

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