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HARMONIZATION OF ARTICLE 9 OF LAW NO. 22 OF 2001 WITH ARTICLES 17 AND 51 OF LAW NO. 5 OF 1999 REGARDING PERTAMINA'S CONTROL OVER THE IMPORT AND DISTRIBUTION OF PETROLEUM PRODUCTS

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Abstrak

PT Pertamina (Persero)'s control over the import and distribution of non-subsidized petroleum products raises issues regarding the compatibility of the provisions of Article 9 of Law No. 22 of 2001 on Oil and Natural Gas with Articles 17 and 51 ofLaw No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. This study aims to analyze the compatibility of policies restricting the import of non-subsidized petroleum products with the principles of fair business competition and to examine the legal measures that the Business Competition Supervisory Commission (KPPU) can take against potential monopolistic practices in the distribution of non-subsidized petroleum products in Indonesia. The study employs a normative legal method using legislative, conceptual, and case-based approaches, analyzed qualitatively through a literature review. The results of the study indicate that Pertamina's control over the import and distribution of fuel is justifiable as long as it meets the exceptions stipulated in Article 51 of Law No. 5 of 1999 and is carried out in the public interest without resulting in the abuse of a dominant position. The KPPU retains the authority to conduct oversight and enforce the law if anti-competitive practices are found that fall outside the scope of these exemptions. Therefore, harmonization of the two laws is necessary to ensure legal certainty, healthy business competition, and national energy security

INTRODUCTION

The availability of petroleum products plays a strategic role in supporting national economic activities, public mobility, and the stability of the industrial sector. Given that petroleum products are a vital necessity, their regulation is inextricably linked to the state's interest in ensuring supply, price affordability, and equitable distribution throughout Indonesia. In this context, Pertamina holds a crucial position as a state-owned enterprise responsible for the supply and distribution of petroleum products, particularly in sectors directly related to the public interest. The policy restricting imports of non-subsidized fuel has sparked legal and economic debates because, on the one hand, it is intended to maintain national energy security, but on the other hand, it has the potential to affect the structure of business competition in the downstream fuel market. Import restrictions that target specific actors may create the impression of market dominance if they are not accompanied by a regulatory framework that is proportional, transparent, and accountable. This situation calls for a normative analysis of the extent to which such policies align with the principles of fair competition as stipulated in the Law on the Competition Commission ( ) No. 5 of 1999. Law No. 5 of 1999 was fundamentally enacted to prevent monopolistic practices and unfair competition. The principles enshrined in the law require that economic activities maintain a level playing field for fair competition, do not create unreasonable barriers to market entry, and do not grant exclusive advantages that harm other business actors. In relation to the policy restricting imports of non-subsidized fuel, it is necessary to examine whether such restrictions constitute a legitimate regulation in the public interest, or whether they instead serve as an instrument that disproportionately restricts competition.

This issue becomes even more relevant when considered in light of the harmonization of Article 9 of Law No. 22 of 2001 with Articles 17 and 51 of Law No. 5 of 1999. Article 9 of the Oil and Gas Law establishes the state as the authority responsible for regulating oil and natural gas business activities, while Article 17 of Law No. 5 of 1999 prohibits market dominance that gives rise to monopolistic practices. Article 51 provides an exception for monopolies related to sectors of production that are vital to the state and essential to the livelihood of the people. It is this normative conflict that calls for a harmonious interpretation to ensure that state policies retain a strong legal foundation without disregarding the principle of fair competition. In practice, restrictions on imports of non-subsidized petroleum products imposed by Pertamina or through a centralized scheme are often interpreted as the state's effort to control the energy trade. However, such policies must be evaluated against competition law standards to determine whether the restrictions in question are genuinely based on the public interest or, conversely, lead to excessive market dominance. Such an analysis is crucial to ensure that control over fuel imports and distribution is not only administratively legitimate but also aligned with the objectives of Indonesia's competition law.

This study is significant because it addresses two equally fundamental legal interests: the state's interest in controlling strategic sectors of production and the interest in fostering a competitive market. An examination of policies restricting imports of non-subsidized petroleum products through the principles of fair competition will provide insight into the limits of Pertamina's authority within the national legal system. This approach also allows for an evaluation of whether existing regulations reflect an ideal harmonization of norms between the oil and gas legal regime and the competition law regime.

LITERATURE REVIEW

The Theory of State Control

The state's right of control is one of the fundamental theories in Indonesian constitutional law, serving as the constitutional basis for the state to regulate and manage branches of production vital to the nation and to control matters essential to the public's livelihood. The theoretical basis for this stems from Article 33, paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, which stipulate that sectors of production vital to the state are controlled by the state, while the earth, water, and natural resources contained therein are to be utilized to the greatest extent possible for the prosperity of the people. These provisions indicate that the state possesses constitutional legitimacy to regulate the utilization of natural resources and strategic sectors to ensure the achievement of public welfare. The state's right of control is not interpreted as the state's ownership of natural resources in the sense of civil law, but rather as a public authority granted by the Constitution to the state to regulate, administer, manage, supervise, and control the utilization of natural resources and strategic sectors of production. The state acts as the holder of the people's mandate and is responsible for ensuring that the management of natural resources is carried out fairly, efficiently, and in the public interest, rather than solely for the purpose of economic gain.

According to Bagir Manan, the state's right of control is a form of public authority that grants the state the legitimacy to establish policies, regulate, administer, manage, and supervise sectors of production that are of strategic importance to the lives of the people. The exercise of this authority does not have to be carried out directly by the government but can be carried out through state-owned enterprises or other entities that have been assigned such duties in accordance with laws and regulations. Thus, the state remains responsible for the management of strategic sectors even though the implementation is carried out by specific business entities.

This view aligns with the opinion of Aminuddin Ilmar, who states that the state's right to control is a form of state intervention in economic life aimed at safeguarding the public interest, ensuring public services, and realizing the welfare of society. State control over strategic sectors is not intended to create profit-oriented monopolies, but rather to ensure that the public's needs for goods and services essential to the livelihood of many people are consistently met.

Theories of Monopoly and Business Competition

Monopoly and business competition are theories that explain the relationship between the freedom of business actors to conduct economic activities and the state's obligation to create a fair, efficient, and non-discriminatory market mechanism. These theories are based on the idea that competition is a tool for improving economic efficiency, fostering innovation, expanding consumer choice, and preventing the concentration of economic power in the hands of a single business entity or a group of them. Therefore, competition law is designed to maintain a balance between the freedom to conduct business and the protection of the public interest.

From the perspective of competition law, a monopoly is not always viewed as a prohibited act. A monopoly only becomes a legal issue if it is used to hinder the entry of other businesses into the market, abuse a dominant position, eliminate healthy competition, or cause harm to consumers. Thus, the primary focus of competition law is not on the existence of a monopoly itself, but rather on the behavior of businesses in exercising their market power.

According to Susanti Adi Nugroho, competition law is a set of provisions aimed at maintaining a healthy competitive environment by preventing monopolistic practices and unfair competition. Healthy competition provides equal opportunities for all businesses to enter the market, compete based on quality, price, and efficiency, and receive equal treatment without discriminatory barriers. Conversely, if a business entity uses its economic power to block market access, restrict production, control prices, or prevent competitors from entering the market, such actions run counter to the objectives of competition law.

This view is reinforced by Knud Hansen, who states that the primary objective of competition law is to create a competitive market structure so that market mechanisms can function efficiently. According to Hansen, the prohibition against monopolistic practices is not intended to eliminate large companies or business entities with high market shares, but rather to prevent the abuse of market power that could harm consumers or other business entities. Therefore, the primary criterion for assessing a monopolistic practice is its impact on competition and consumer welfare.

A similar view was expressed by A. M. Tri Anggraini, who explained that competition law aims to create a level playing field—that is, conditions in which all businesses have equal opportunities to compete fairly. Healthy business competition does not mean that all business entities must have the same market share, but rather that there are open opportunities to enter the market without unfounded barriers and that there is no discriminatory treatment that favors certain business entities.

In the Indonesian legal system, the theories of monopoly and competition are embodied in Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Competition. This law does not prohibit all forms of market dominance, but rather prohibits market dominance that results in monopoly practices and unfair competition, as stipulated in Article 17. These provisions indicate that the primary measure of a violation does not lie in the size of the market share held by a business entity, but rather in the abuse of market power that results in the exclusion of other business entities from competing fairly.

Theories of monopoly and fair competition are closely relevant to research on PT Pertamina (Persero)'s control over the import and distribution of non-subsidized petroleum products. Pertamina's dominance in the downstream oil and gas sector cannot automatically be categorized as a prohibited monopolistic practice because the energy sector is a vital branch of production for the state and affects the livelihoods of many people. However, this dominance must still be evaluated based on the principles of fair competition to determine whether the exercise of such authority remains within the bounds of the public interest or has evolved into an abuse of a dominant position that hinders the entry of other businesses into the market.

RESEARCH METHOD

This study is a normative legal research aimed at analyzing the harmonization of Article 9 of Law No. 22 of 2001 with Articles 17 and 51 of Law No. 5 of 1999 regarding PT Pertamina (Persero)'s control over the import and distribution of non-subsidized fuel. The approaches used include the statutory approach, the conceptual approach ( ), and the case approach. The statutory approach involves a review of laws and regulations governing the oil and gas sector as well as competition law. The conceptual approach was used to examine the concepts of monopoly, exceptions to monopoly, legal harmonization, and fair competition. Meanwhile, the case approach involved analyzing relevant court decisions and rulings by the Business Competition Supervisory Commission (KPPU). The legal materials consist of primary, secondary, and tertiary sources obtained through a literature review. All legal materials were analyzed qualitatively using systematic interpretation and legal harmonization methods to draw conclusions regarding the compatibility of oil and gas regulations with competition law in the control of imports and distribution of non-subsidized petroleum products in Indonesia.

RESULT AND DISCUSSION

Policies Restricting Imports of Non-Subsidized Petroleum Products in Light of the Principles of Fair Competition Under Law No. 5 of 1999

The government's policy restricting imports of non-subsidized petroleum products aims to maintain the stability of domestic supply and prices and to promote national energy sovereignty. From the perspective of competition law, this policy must be carefully analyzed to ensure it does not conflict with the principles of fair competition as stipulated in Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition. This law emphasizes the importance of fostering fair and open competition, as well as preventing monopolistic practices and the abuse of dominant market positions that harm consumers and other businesses. In the context of restrictions on non-subsidized fuel imports, if such a policy is implemented transparently and proportionately with the aim of maintaining market stability without unilaterally stifling private businesses, then this policy can still be considered consistent with the principles of fair competition.

However, if import restrictions have the potential to lead to excessive market dominance by a single party—particularly the state-owned enterprise Pertamina—then this must be closely monitored by the KPPU to prevent the abuse of a dominant position in violation of the provisions of the Competition Law. The normative basis for the conduct of downstream oil and natural gas activities is regulated in Article 9 of Law No. 22 of 2001 on Oil and Natural Gas, paragraph (1) of which states: "Downstream Business Activities as referred to in Article 5, point 2, may be carried out by a Business Entity after obtaining a Business License from the Government." And paragraph (2) states: "The Business Licenses required for Downstream Business Activities as referred to in paragraph (1) are categorized into Business Licenses for Processing, Transportation, Storage, and Trading." These provisions indicate that, in principle, downstream activities—including the trade and distribution of petroleum products—are not monopolized by a single business entity but are open to any business entity that obtains a license from the government. Thus, conceptually, the Oil and Gas Law has accommodated mechanisms for business competition through the licensing system. However, in practice, restrictions on the import of non-subsidized petroleum products are primarily imposed on Pertamina due to considerations of national energy supply security, infrastructure capacity, and public service functions. On the other hand, Article 17(1) of Law No. 5 of 1999 stipulates that "Business entities are prohibited from exercising control over the production and/or marketing of goods and/or services that could result in monopolistic practices and/or unfair competition." Furthermore, Article 17(2) states that such control is deemed to exist if the goods or services have no substitutes; if it prevents other business entities from entering the same market; or if a single business entity or a group of business entities controls more than 50% of the market share for specific goods or services.

This provision embodies the principle that any form of market dominance must be assessed based on its impact on fair competition. Market dominance is not automatically prohibited; rather, it becomes prohibited if it gives rise to monopolistic practices or precludes other business entities from competing fairly. In the context of non-subsidized fuel imports, Pertamina's dominance may meet the characteristics of market dominance if it prevents private enterprises from obtaining equal access to import and distribution activities. From a competition policy perspective, these import restriction policies are analyzed using the Competition Policy Checklist (DPKPU). The DPKPU is a tool for assessing whether policies that have been designed or enacted are consistent with the principles of competition. Such conditions have the potential to pose challenges in maintaining a healthy business competition environment, including risks of market foreclosure, price and supply disparities or discrimination, and the dominance of certain market players.

Based on the DPKPU's analysis, it was found that policies limiting increases in import volumes conflict with indicators of restrictions on the volume of sales or supply of goods and/or services. Directives requiring private businesses to purchase supplies from PT Pertamina Patra Niaga—a competitor—when they run out of stock, or policies mandating the import of non-subsidized fuel through a single channel, also conflict with indicators of the designation of specific suppliers. Policies restricting the import of non-subsidized fuel have the potential to violate the principle of fair competition as set forth in Law No. 5 of 1999, Article 51, which states that "Monopolies and/or the concentration of activities related to the production and/or marketing of goods and/or services that are essential to the public's livelihood, as well assectors of production that are vital to the state shall be regulated by law and managed by State-Owned Enterprises and/or agencies or institutions established or appointed by the Government." This article serves as the primary legal basis frequently invoked to justify Pertamina's dominance in the management of both fuel imports and distribution. This provision embodies Article 33 of the 1945 Constitution of the Republic of Indonesia, which places sectors of production vital to the state under state control.

Thus, Pertamina's role as the implementer of the state's strategic functions cannot automatically be viewed as a violation of competition law. Nevertheless, the exception in Article 51 must not be interpreted as legitimizing all forms of monopolistic practices. According to Ningrum Natasya Sirait, exceptions to competition law must be interpreted restrictively so that they apply only to the extent strictly necessary to serve the public interest—not to create excessive protection for state-owned enterprises that hinders market efficiency. This view indicates that Article 51 must still be interpreted in light of the objectives of Law No. 5 of 1999—namely, to foster national economic efficiency through healthy competition—as it can reduce consumer choice and disrupt the operations of private enterprises. This restriction strategically increases Pertamina's import volume relative to private enterprises, strengthens the dominant position of SOEs, and makes it difficult for private businesses to compete in the market. One shortcoming of the "single window" argument is that the Oil and Gas Law permits the private sector to engage in commercial downstream oil and gas activities, such as fuel distribution and trading. A "single window" import policy risks undermining the law's objective of fostering business opportunities in the downstream sector if it effectively eliminates or drastically limits the private sector's role in imports. The principle of freedom of enterprise is enshrined in law within the Indonesian legal system. The state has the authority to impose restrictions on business, but such restrictions must be reasonable, have a clear legal basis, and not discriminate against specific business actors without good cause.

There may be unjustifiable discrimination or market restrictions if the "one-stop" import policy forces the private sector to purchase from Pertamina or limits private imports beyond acceptable administrative limits. Restrictions on the private sector's imports of nonsubsidized petroleum products (such as a 10 percent import cap) reinforce Pertamina's dominance, reduce consumer choice, and hinder healthy business competition. Any business restriction must have a well-defined legal basis (the principle of legality). A "one-stop" policy or import restrictions may be deemed invalid under administrative review if not specifically regulated by laws or regulations deemed valid. Furthermore, such restrictions must be proportional; they must not be more burdensome than necessary to achieve the objectives, such as supply availability and energy stability. The government must demonstrate that less stringent regulations are not sufficiently effective and that the benefits to the public welfare outweigh the disadvantages to business operators. Based on the mandate of Article 33 of the 1945 Constitution, the government often claims that because petroleum is a strategic commodity, the state must control its supply. As long as such policies are not implemented arbitrarily, this rationale can support certain constitutionally grounded restrictions. However, if the restrictions go too far, this constitutional justification cannot serve as a complete defense for violating the freedom of enterprise or the principle of fair competition.

With relatively limited private quotas and Pertamina's overwhelming dominance in the nonsubsidized fuel segment, import restrictions can reduce competitive incentives and reinforce a concentrated market structure. If private quotas are exhausted and Pertamina is unable to supply in a timely manner, this approach could result in supply shortages for private gas stations that rely on direct imports, particularly in rural areas. Private investors are considered to lack confidence in this type of strategy, especially foreign businesses that import as part of their business plans. The notion that policies restricting fuel imports through a single channel or private quotas may violate the principles of freedom of enterprise and fair competition is well-founded, particularly if implemented in a manner that excessively restricts private business opportunities without valid justification.

From the perspective of legal harmonization, Article 9 of Law No. 22 of 2001 actually provides room for competition through business licensing mechanisms, while Article 17 of Law No. 5 of 1999 prohibits market dominance that hinders competition. Meanwhile, Article 51 of Law No. 5 of 1999 provides an exception to this prohibition as long as it relates to sectors of production that are vital to the public's livelihood and is implemented in accordance with the law. Thus, the harmonization of these two laws must be interpreted to mean that Pertamina's dominance is not the primary objective, but rather an instrument to safeguard the public interest. If this objective can be achieved through a controlled competitive mechanism, then restrictions on non-subsidized fuel imports should be implemented in a proportional and transparent manner, without hindering the ability of other business entities that meet legal requirements to participate in the market. Such an approach will strike a balance between the state's role in controlling strategic sectors and the objectives of competition law to achieve economic efficiency and fairness.

Legal Actions That Can Be Taken by the KPPU Against Potential Monopolistic Practices in the Distribution of Non-Subsidized Fuel in Indonesia

In recent years, Indonesia's Competition Supervisory Commission (KPPU) has actively strengthened its position and functions as a regulatory body tasked with combating monopolies and cartel tactics in the business sector. The KPPU faces various challenges and is working to enhance its effectiveness in addressing cases of unfair competition. The KPPU is responsible for ensuring that businesses comply with relevant regulations and refrain from actions that harm competition. The agency has the authority to investigate, issue orders, and impose penalties on businesses found to be engaged in illegal activities such as monopolies, collusion, or irrational price-setting. However, challenges remain regarding law enforcement and corporate actors' understanding of the relevant laws, despite the KPPU's crucial role. Consequently, the legislation aims to foster a favorable business climate where all businesses, regardless of size, can operate fairly. Strong oversight and enforcement tools are necessary to combat anti-competitive behavior that harms the economy and consumers, which is why the KPPU was established.

The Business Competition Supervisory Commission has the authority to investigate potential monopolistic practices in the distribution of non-subsidized petroleum products in Indonesia in accordance with LawNo. 5 of 1999, which regulates the prohibition of monopolies. Article 17(1) states: "Business entities are prohibited from exercising control over the production and/or marketing of goods and/or services that may result in monopolistic practices and/or unfair business competition." Furthermore, Article 17(2) stipulates that a business entity is deemed to be exercising control if the goods or services in question have no substitutes; if this prevents other business entities from entering into competition for the same goods and/or services; or if a single business entity or a group of business entities controls more than 50% of the market share for a specific type of good or service. These provisions serve as the basis for the KPPU to assess whether Pertamina's dominance in the distribution of non-subsidized fuel has created a barrier to entry for other businesses. If it is found that market dominance is achieved not solely through government mandates but through discriminatory practices, denial of access to distribution infrastructure, or excessive market control, then such actions may be classified as prohibited monopolistic practices.

In addition to Article 17, the KPPU's oversight also pertains to Article 19 of Law No. 5 of 1999, which states that "Business entities are prohibited from engaging in one or more activities, either alone or in conjunction with other business entities, that may result in monopolistic practices and/or unfair business competition, such as refusing and/or preventing certain business entities from engaging in the same business activities in the relevant market; preventing consumers from obtaining competing goods and/or services; restricting the circulation of goods and/or services; or engaging in discriminatory practices against certain business entities." This provision allows the KPPU to examine whether discriminatory treatment exists in the distribution of non-subsidized fuel. For example, if a private business entity that has met all licensing requirements still does not gain access to fuel terminals, storage facilities, distribution networks, or opportunities to import due to disproportionate policies, then such circumstances may become the subject of a KPPU investigation.

When there are indications of undue market dominance by one or a group of business entities in the distribution of non-subsidized fuel, the KPPU may initiate legal proceedings, including investigations, examinations, and internal hearings. If sufficient evidence of a violation is found, the KPPU may impose administrative sanctions such as an order to cease monopolistic practices, an order to dissolve a business merger, or an administrative fine. In addition, the KPPU may also recommend policies to the government to open market access or enhance business competition in that sector. If business entities object to the KPPU's decision, they may pursue further legal action through the District Court and even the Supreme Court. Through this mechanism, the KPPU plays a crucial role in maintaining healthy business competition and preventing market dominance that harms consumers and other business entities in the non-subsidized fuel distribution sector.

One of the KPPU's primary responsibilities is to evaluate contracts, business operations, and the conduct of business entities that may lead to unfair competition or monopolistic practices. The KPPU's authority is essentially divided into three main categories: first, investigative authority, which includes receiving reports from the public and business entities, investigating alleged monopolistic practices , conducting case investigations and examinations, and drawing conclusions from the findings. Second, the authority to prosecute business entities, which includes summoning suspected parties, summoning witnesses and expert witnesses, requesting assistance from investigators, requesting information from government agencies, and evaluating evidence. Third, judicial authority, namely the authority to issue rulings and impose administrative sanctions on business entities that violate the provisions of the competition law.

The KPPU's authority to render decisions and impose such sanctions constitutes a special authority specifically granted to the KPPU and not held by any other independent institution. However, the enforcement of KPPU decisions must still be approved by a District Court, and parties with objections may file an appeal with the District Court and a cassation appeal with the Supreme Court. An important authority that the KPPU currently lacks in carrying out its duties—particularly in handling alleged cartel cases related to monopolistic practices—is the authority to conduct searches and seizures. The absence of this authority is seen as hindering the KPPU from operating at its full potential. In the non-subsidized fuel segment, Pertamina Patra Niaga's market share currently stands at over ninety percent, while private companies account for only one to three percent. This situation reflects a market structure that remains highly concentrated, making efforts to maintain a balanced competitive environment essential so that consumers continue to benefit from the presence of various market participants. This situation has the potential to pose challenges in maintaining a healthy competitive business environment, including risks of market restrictions, disparities in prices and supply, or discrimination. On the other hand, this policy limits the utilization of infrastructure owned by private enterprises, which can lead to inefficiencies—sending negative signals for new investment in the downstream oil and gas sector.

The distribution of non-subsidized petroleum products is a critical sector that should be open to healthy competition among business entities. Under Indonesia's legal and policy framework, the distribution of non-subsidized petroleum products falls under downstream oil and gas business activities that may be conducted by state-owned enterprises, regionally-owned enterprises, cooperatives, and the private sector, provided they comply with applicable laws. However, the government's latest policy—which restricts private companies' access to non-subsidized fuel imports by imposing strict quotas and requiring them to purchase from a single dominant entity once their quota is exhausted—raises concerns about the emergence of monopolistic practices and the abuse of a dominant market position. This policy has the potential to limit competition, hinder market access for other businesses, and reduce efficiency and consumer choice. Monopolies are a major factor that can concentrate wealth in the hands of a small number of people, leading to social and economic inequality. In such situations, the Business Competition Supervisory Commission plays a strategic role and possesses the legal authority to oversee and enforce the principles of fair business competition as mandated by Law No. 5 of 1999. The KPPU not only serves as a watchdog against anti-competitive business practices by business entities but also has a mandate to assess whether public policies issued by the government have an unfair impact on market structure.

The KPPU may undertake a range of legal and non-legal measures, including conducting independent investigations and inspections—or those based on reports from the public and business entities—regarding alleged monopolistic practices and market dominance by Pertamina in the distribution of non-subsidized fuel; holding open administrative hearings if sufficient preliminary evidence is found; imposing administrative sanctions in the form of cease-and-desist orders, recommendations for changes to internal policies, and administrative fines; systematically assess government policies through the Competition Policy Checklist to determine whether a policy creates barriers to market entry or exclusively designates certain suppliers; and serve as the basis for civil lawsuits filed by affected businesses or support criminal legal proceedings if anti-competitive practices involve elements of market manipulation or collusion.

Through this approach, the KPPU acts not merely as a passive regulator but also as a guardian of the balance between public policy and the right of businesses to compete fairly. This is crucial to prevent excessive market concentration in the hands of a single entity, which could ultimately harm consumers, hinder innovation, and disrupt the efficiency of fuel distribution at the national level. Furthermore, the legal actions taken by the KPPU against potential monopolistic practices in the distribution of non-subsidized fuel are also part of upholding the principle of constitutional economics, under which the state's control over strategic resources must be exercised for the greatest possible prosperity of the people, not to benefit a single business entity exclusively. Thus, the KPPU possesses strong legal and institutional tools to intervene and take action against potential monopolistic practices in the distribution of non-subsidized fuel in Indonesia. The KPPU's active role in this issue will be crucial for maintaining a balance between national interests, market efficiency, and the rights of private businesses to participate in the energy sector fairly and transparently.

CONCLUSION

PT Pertamina (Persero)'s control over the import and distribution of non-subsidized fuel is justified under Article 51 of Law No. 5 of 1999 as a form of state control over a strategic sector. However, its implementation must remain proportional, transparent, and free from abuse of a dominant position to ensure it remains consistent with the principles of fair competition as stipulated in Article 17 of Law No. 5 of 1999. The KPPU has the authority to monitor and take action against monopolistic practices in the distribution of non-subsidized fuel if it finds an abuse of a dominant position or anti-competitive actions outside the exceptions provided for in Article 51. Such oversight aims to maintain fair competition, provide legal certainty, and create a fair business climate in the downstream oil and gas sector.

BIBLIOGRAPHY

Antonio Cassese, International Criminal Law, 3rd ed. (Oxford: Oxford University Press, 2013), p. 277.

Fadhilah. “Monopolies and Economic Inequality from the Perspective of Competition Law.” Journal of Legal Science 6, no. 2 (2019): 85–96.

Fitryantica, Agnes. “Harmonization of Indonesian Legislation Through the Concept of the Omnibus Law.” Gema Keadilan 6, no. 3 (2019): 300–316.

Hansen, Knud, Budi L. Kagramanto, Frans Limbong, and A.M. Tri Anggraini. Law Prohibiting Monopolistic Practices and Unfair Competition. Jakarta: Katalis, 2002.

Hasibuan, Benyamin. “The Role of the Business Competition Supervisory Commission in Preventing Monopolistic Practices.” Jurnal Persaingan Usaha 8, no. 2 (2024): 110–25.

Hatta, Mohammad. An Explanation of Article 33 of the 1945 Constitution. Jakarta: Mutiara, 1977.

Hayati, Tri, et al. “The Dynamics of the Concept of State Control over Natural Resources.” Journal of Law and Development 47, no. 4 (2017): 405–22.

Ilmar, Aminuddin. The State’s Right of Control in the Privatization of State-Owned Enterprises. Yogyakarta: Gadjah Mada University Press, 2012.

Business Competition Supervisory Commission, et al. “The Strategic Role of the KPPU in Strengthening National Economic Competitiveness.” Journal of Business Competition 11, no. 1 (2024): 1–20.

Kusumohamidjojo, Budiono. Legal Theory: The Dilemma Between Law and Power. 2nd ed. Bandung: Yrama Widya, 2017.

Manan, Bagir. Some Notes on the Draft Law on Oil and Natural Gas. Bandung: Faculty of Law, Padjadjaran University, 1999.

Manan, Bagir. The Growth and Development of a Country’s Constitution. Bandung: Mandar Maju, 1995.

Nisa Derin, Fenanda Ainun. “The Effectiveness of the Business Competition Supervisory Commission in Enforcing Competition Law in Indonesia.” Journal of Economic Law 12, no. 1 (2024): 45–60.

Redi, Ahmad. Mining Law. Bekasi: Gramata Publishing, 2013.

Rumagit, Benedictus. “The Authority of the Business Competition Supervisory Commission in Handling Business Competition Cases.” Journal of Business Law 10, no. 1 (2024): 70–84.

Salim HS. Mining Law in Indonesia. Depok: PT RajaGrafindo Persada, 2005.

Sumardjono, Maria S.W. Land from the Perspective of Economic, Social, and Cultural Rights. Jakarta: Kompas, 2008.

Susanti Adi Nugroho. Competition Law in Indonesia: Theory, Practice, and Legal Application. Jakarta: Kencana, 2012.

Sutedi, Adrian. Mining Law. Jakarta: Sinar Grafika, 2011.