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The Impacts of the 1890 U.S. Antitrust Policy and the Current Indonesia Competition Law

Slamet Riyadi[1,*] Darmadi Durianto[2]

[1,2] *Faculty of Law Universitas Borobudur Jakarta*
[*] *Corresponding author. Email: slameetriyadi24@gmail.com*

ABSTRACT
This paper analyzes the impacts of the 1890 U.S. ***antitrust*** policy and the current Indonesian competition law. In conducting the study, this paper uses normative law. In the course of business law in the U.S., precisely after the civil war ended, the U.S. upholds the principle of free competition that provides open space for individual creativity to be recognized. However, free competition brings negative impacts on competition. At the peak of the competition, there will be only a few winners, which economists say will undermine the principle of free competition when the winners agree to set prices. The rise of ***trust*** policies in the U.S. indicates a damaging business culture. Some labor organizations have protested against the trust policy and state that it issue the antitrust policy in its regulations. Senator John Sherman is a figure who championed antitrust rules into federal law. Meanwhile, in Indonesia, the establishment of the antitrust policy started in 1970, which was later passed into law in 1999. The policy aims to protect business competition in Indonesia and create healthy business competition.

Keywords: *Antitrust, American Legal Culture, Business Law, Free Competition, Indonesian Legal Culture.*

1. INTRODUCTION

Humans play a significant role in the continuity of the government of a country. Supported by the science developed by scientists, humans are the driving force for a country to create an advanced and developing government. One of the countries that continue to develop its potential is the United States of America (USA). In its development, U.S. scientists have pioneered many discoveries in many fields, including science and tools that facilitate human life. In addition to these findings, the development of the U.S. is supported by various kinds of driving factors, one of which is abundant natural resources that can be utilized and managed by the U.S. The 19th-century success of the U.S. industry led the country to be dubbed as an industrial country [1].

Various inventions support the development of the U.S. industry, including the discovery of the telegraph and telephone in 1866 by Alexander Graham Bell, which is still being used [1]. In 1844, the U.S. scientist Samuel F.B. Morse invented a telegram. His discovery progressed across the Atlantic Ocean, connecting the U.S. with England in 1861 [2]. Furthermore, discoveries in the fields of industry, technology.

Furthermore, telecommunications facilitate the relationship of one human to another. The advancement of industrial technology and its inventions requires every country to adapt. Capital savings owned by the U.S. before the Civil War era could help the U.S. support its industry at that time. Technological developments also triggered a change in the system of labor in which human power and animal power were slowly being replaced by machines purchased by reserving the capital.

In the industrial sector, capital plays an essential role for a country to be able to develop. In addition, to the financial capital, the U.S. also had the labor-capital to take advantage of the workforce in 1870, precisely after World War. Various industries emerged in the United States and ran according to free competition, known as laissez-faire.

Laissez-faire or free competition provides a free space for business actors and recognizes the creativity of each individual. Admittedly, individual creativity raises concerns that this will lead to several winners creating a cartel when the winners agree to determine the market price. Besides these concerns, the negative impacts emerge when several pioneer figures behind industrial development in the U.S. control many essential fields in developing their country's industry. These figures control

the oil industry, the food packaging industry, and the railroad [1]. This control by a few humans has led to the emergence of dirty business practices and injured the business culture of the U.S. society, which teaches fair competition and does not bring down its business opponents [3].

The practice of trust sparked protests and resistance from various organizations in the U.S. One of the organizations that opposed this trust policy was Labor Organizations, such as the Knights of Labor and The American Federation of Labor (AFL), which expressed their disappointment with the U.S. government because of this trust policy in the U.S. society [4].

In addition to labor organizations, the emergence of trust policies in the U.S. has generated many responses from the states which immediately issued antitrust policies to eliminate unfair business competition. The state that issued the first antitrust policy was Texas in 1889. However, the policy was stalled outside Texas because other states had not yet established the antitrust policies.

The coercion and demands of the public to abolish trust in the U.S. prompted an important U.S. figure, namely Senator John Sherman, who proposed the legalization of the antitrust bill (RUU) at the federal level [5]. In contrast to John Sherman, as the injured party whom the antitrust bill would harm the federal level, Standard Oil sent a defense document to congress in the U.S. asking for the antitrust bill to be suspended [6].

From the preliminary description above, problems that will be the subject of discussion in this study are how did John Sherman struggle in enforcing and passing the Antitrust Act in the U.S.? and what are the impacts of the emergence of antitrust policies on business competition and business law, especially in Indonesia?

2. METHOD

The research method researchers use in this study is normative law. Normative legal research is also called doctrinal legal research, which finds the rule of law, legal doctrines, and law principles to answer issues [7]. Therefore, researchers use normative law to examine John Sherman's struggle in fighting for implementing the Antitrust Law in the U.S. and its effects on Indonesian business competition. Researchers use legal materials and legal literature related to fair competition as references in obtaining the object of research.

3. RESULT AND DISCUSSION

After a long debate, the U.S. Congress finally approved the Sherman Bill in 1890, signed on July 2, 1890, by President Benjamin Harrison. After the U.S. enacted the Antitrust Act, the Department of Justice (DOJ), as the agency authorized to take action under this law, began to summon any company deemed to be conducting unfair business competition. The DOJ's authority in summoning those companies was based on public reports. One of them was the investigative report by the journalist Ida Tarbell which revealed unfair business competition in Standard Oil, as told by informants who felt that business actors in the oil sector had harmed them.

The informants in the journalist's investigation claimed to have been pressured by Standard Oil in 1891 not to do business and sell oil again by offering a certain amount of compensation money every month and threatening that if the informants did not comply with Standard Oil's wishes and continued to do oil business, then Standard Oil would sell oil at low prices so that the informants would lose money. In addition, under Rockfoller's leadership, Standard Oil was reported to often carry out espionage by smuggling workers into competing companies to know the trade secrets of rival companies [11].

Standard oil was tried and sentenced by the Supreme Court in 1911, which succeeded in dissolving the trust earned by Standard Oil over the years before. Standard Oil then changed its name to "Exxon" and started business again in compliance with the appropriate rules applied in the U.S.

Both the U.S. and Indonesia have a similar people's representation system. A bicameral system or two-chamber system (the U.S. has a Senate and the House of Representatives, while Indonesia has two legislative chambers, namely the House of Representatives (DPR) and The People's Consultative Assembly (MPR)). The Antitrust Law in the U.S. and the Law on Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia have many differences. Indonesia only imposes administrative sanctions on any violations included in the law, and the implementation is under an independent institution, namely the Business Competition Supervisory Commission (KPPU).

After independence, precisely in 1970, Indonesia experienced rapid progress in its economy, coinciding with the rapid development of industrialization, which the government supported; however, this support was given to several business actors to carry out a monopoly by providing facilities and support for impartial regulations [13].

Compared to other legal histories, antitrust is relatively new, both in the international realm and in Indonesia. Even in Indonesia, the discussion on antitrust issues is lagging when compared to many other countries. Historically, the practice of monopoly in Indonesia was committed firstly in 1602, when the Dutch government, with the State General's approval, gave the VOC the right to trade on its own in the territory of Indonesia [14].

The idea of the need for anti-monopoly regulations has been conveyed by experts in law and economics, at least since the enactment of Law Number 5 of 1984 concerning Industry [15].

Historically, the Antitrust Law in Indonesia has various foundations in its formation, including:

- The juridical basis contained in the preamble to the constitution that national development goals must be carried out by protecting the nation and the entire homeland of Indonesia, realizing public welfare, and participating in carrying out the world order. Another juridical basis as stipulated in the 1945 Constitution on economic affairs affirms that the state must be able to provide prosperity to its people equitably.
- The political and international foundations of the economic structure in 1970, according to Ade Maman Suherman [13], require a set of rules that could correct the current economic system, which is dominated and monopolized by certain people on power.
- The socio-economic foundation that bits monopolistic practices and business competition in a strong economy from market distortions. The Business Competition Law is a principle required for the modern economy to provide equal opportunities for business actors to compete openly and honestly.

Within 15 (fifteen) years, Indonesia's economic condition had been dominated by a series of monopolistic actions and fraudulent competition, which is also a contributing factor to the fragility of the Indonesian economy [16].

The various existing foundations and the literature are not sufficient to create rules for fair business competition in Indonesia because of the numerous opposing views. Thus, finally, the DPR used the right of initiative to propose a business competition law for the first time. Also, because of the pressure from the International Monetary Fund (IMF), the discussion on the business competition law has been officially reviewed and taken seriously [14].

The economic crisis that has impacted Indonesia's economy urges the country to issue and approve an antitrust policy, one of the conditions for Indonesia to obtain assistance from the IMF [17].

At last, the Indonesian government issued an antitrust policy, as outlined in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition on March 5, 1999, which will be effective one year since the date of its promulgation.

In practice, the law on the prohibition of monopolistic practices is carried out by an independent institution, namely the Business Competition Supervisory Commission (KPPU). KPPU has the right to examine, assess, and take any action against every provision in this law.

Regarding the application of sanctions, Law Number 5 of 1999 only applies administrative sanctions on violations by business actors. The amount of administrative sanctions is calculated based on the ability of business actors with a minimum administrative sanction of 1 (one) billion and a maximum administrative sanction of 25 (twenty-five) billion.

The law on the prohibition of monopolistic practices also regulates agreements and activities that are forbidden for business actors, namely:

a. Prohibited Agreements

- Oligopoly or production and marketing control agreements.
- Price-fixing agreements for goods and services.
- Agreements on the distribution of the marketing areas for goods and services.
- Agreements that prevent other business actors from selling and offering the same goods and services.
- Agreements that affect prices by regulating production and marketing.
- Agreements establish a larger joint venture company intending to control the production and marketing of goods and services.
- Agreements that control the purchase of supplies to control prices.
- Agreements regarding the production chain from upstream to downstream.
- Agreements that prevent the consignees from supplying from another party.

b. Prohibited Activities

- Monopoly.
- Monopsony.
- Market control.
- Conspiracy in determining the tender winner.
- Dominant position.
- The holding of concurrent positions.
- The holding of majority share ownership in similar companies.
- Mergers, consolidations, and takeovers of companies that result in unfair business competition.

4. CONCLUSION

John Sherman's struggle in antitrust enforcement in the U.S. is the first step ever taken, leaving huge impacts on business activities in the U.S. and worldwide, including Indonesia. After the legalization of the Antitrust Act, the U.S.' business activities had returned to the hands of the public community and emphasized the principle of free competition by not bringing down

business opponents. Despite Indonesia's obligation to fulfill the IMF's requirements for obtaining loans during an economic crisis, the law on the prohibition of monopolistic practices and unfair business competition in Indonesia has had a good impact on the business structure of the state. However, the authors believe it is necessary to reform several laws and regulations that prohibit monopolistic practices in Indonesia by imposing sanctions on violators of these laws. Unfair business competition is still often found in Indonesia's business landscape, as evidenced by business actors' unfair competition in the Indonesian market. The current sanction, the imposition of a minimum fine of 1 billion and a maximum fine of 25 billion, is deemed ineffective in creating a deterrent effect for unfair business people.

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