



Implementation of the Green Economy Concept in Regulation of Business Competition in Indonesia

Sukarmi and Indah Dwi Qurbani^(✉)

Universitas Brawijaya, Malang, Indonesia

Indah.qurbani80@ub.ac.id

Abstract. The environmental crisis that continues to this day is forcing countries in the world to find a way out of this prolonged crisis. For this, the green economy is the middle way to solve it, by balancing the business and development aspects with environmental conservation. In the Indonesian legal framework, it turns out that this concept has not been clearly regulated in the business competition law, even though the purpose of the green economy agenda is to fix business activities that are not environmentally friendly and the climate change crisis. Therefore, this study will analyze and identify related to the implementation of the green economy concept in the regulation of business competition in Indonesia. The formulation of the problem in this study is how to implement the green economy concept in regulating business competition in Indonesia? In this study, it was found that there was no regulation that stipulates explicitly in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition related to the green economy, thus indicating a paradigm that still tends to be oriented towards the economy. In addition, although it is not explicitly regulated, but through a rule of reason approach to Article 3 letter a of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, it is still possible to protect the environment, even without legal certainty.

Keywords: Environment · green economy · business competition

1 Introduction

Today's increasingly narrow green space is a consequence of continuous development. In addition, development is driven by an economic chain that cannot be separated from one another. This can be evidenced by Indonesia's deforestation rate which reached 462.46 thousand hectares in 2018 to 2019, although in the following year it could be reduced by 75.03% to 115.46 thousand hectares [1]. This deforestation rate will certainly have a broad impact on other environmental aspects, such as an increase in greenhouse gas emissions.

It is certainly not easy to stop the current rate of green space narrowing, let alone to stop the narrowing rate. An increasingly open world with free markets and immature

thinking about green space awareness makes it increasingly difficult to maintain green space sustainability at this time.

Whereas the availability of green space should not be monopolized by a group of people on the basis of business interests that cause damage to the environment. In the green space, there are always community rights that must be enforced because essentially the ownership of the green space is the ownership of many people, not just one or two people who have property rights or use rights granted by the state so that they can carry out environmental damage on land it has.

According to Rostow, business interests are one of the biggest masterminds of damage to green spaces that undermine the rights of many people. This damage is a logical consequence of the existence of a business that does not care about the environment. Rostow further stated that the existence of economic development that is also driven by business activities will sacrifice a healthy environment [2].

To build awareness in harmonizing business interests with environmental interests as well as understanding the public interest in it, in 2012 based on UN General Assembly Resolution A/RES/64/236 a conference on sustainable development was held, known as the United Nations Conference on Development. Sustainable or also known as Rio+20. The conference basically discussed two major agendas related to development economics and the environment, namely the green economy and sustainable development institutions [3].

The green economy concept is primarily aimed at fixing the business sector and handling the climate change crisis [4]. Therefore, the discussion of the green economy cannot be separated from the implementation of business, including business competition which is one of the elements of business activities. According to Pravest, Anas, and Yonathan, the application of a green economy in relation to business competition can be seen from the costs that must be incurred by economic actors [5]. This, for example is the obligation to buy goods that are environmentally friendly at high prices as an obligation and there is no option to buy goods that have lower prices so that they have the potential to violate the concept of business competition in Indonesia.

If you look at the provisions of the rules contained in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, there is no phrase that explicitly mentions the environment. However, this absence cannot absolutely be said that the regulation regarding business competition in Indonesia does not have provisions governing the green economy.

The provisions regarding the green economy in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition can be seen from the purpose of the establishment of the law which is contained in Article 3 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Healthy, which states that it aims to safeguard the public interest and improve the efficiency of the national economy as one of the efforts to improve people's welfare. The phrase of public interest can certainly be associated with the right to a clean environment.

Regulations that have not explicitly regulated the green economy concept in the scope of business competition then gave birth to a legal question related to how to implement the green economy concept in regulating business competition in Indonesia? This study

tries to identify the implementation of the green economy concept in the regulation of business competition in Indonesia.

2 Material and Method

This research is based on using the juridical-normative method by conducting an assessment of the implementation of the green economy concept in the regulation of business competition in Indonesia. This study examines various laws and regulations and literature related to the implementation and regulation of the green economy in business competition in Indonesia. The approaches used in this research include the statutory approach [6], conceptual approach, and case approach. To obtain legal materials, this research uses a literature study by browsing various literatures to be further inventoried as a study material.

3 Results and Discussion

3.1 Green Economy Concept

In a green economy conceptually and contextually, the thing that needs to be seen is that the green economy is very closely related to the concept of sustainable development. Both have very identical similarities when viewed from the aspect of the historical paradigm that underlies the emergence of these two concepts. The emergence of the idea of development comes with the concept of a green economy. This happened during the 1960s to 1970s when both Rostow and Meadows [7] issued a discourse on the conflict between economic growth and efforts to protect natural resources and the environment. The second assumption is that development will inevitably be followed by exploitation of natural resources and an increase in environmental damage.

Based on the discourse of thought that occurred at that time, the concept of sustainable development was born which has been seen since the Stockholm declaration in 1972, then in the Bruntland Commission report in 1987 [8]. The same historical paradigm also occurred when the green economy concept was used as an approach. to promote sustainable development at the Rio+20 Conference. One of the two reasons for holding the conference is the concern for development issues that damage the environment and at the same time increasing it related to sustainable development.

Therefore, to understand the green economy conceptually and factually, it is also important to understand the concept of sustainable development which was actually one of the discussions in Rio+20, the forum where the green economy concept was coined. In other words, it can be said that the green economy is one way to achieve sustainable development.

The harmony between the two can also be seen from the mission of the green economy in optimizing the use of clean energy and reducing pollution as one form of real implementation. Both have an environmental side as a concept that can be used to balance the economy and nature.

The discourse on the green economy is very oriented towards the use of environmental economics in it through several approaches, namely the clean production approach,

bio-economy, circular economy, and nature-based solutions [9]. All of them become an illustration in supporting environmental conservation programs.

Green economy according to the United Nations Program for the Environment Refers to methods of reconfiguring businesses and their infrastructure to provide benefits to the environment, people and investment [10]. These benefits can be felt when there is a reduction in carbon emissions, less use of dirty energy, and a significant reduction in social disparities.

As a concept that is related to sustainable development, the green economy is also in line with the provisions of the 1945 Constitution. This is because the 1945 Constitution is explicitly explained as a principle of the national economy which is embodied through the economy. Therefore, optimizing the use of the green economy in achieving sustainable development is one thing that is required by the 1945 Constitution.

Green economy with sustainable development can be the answer to development that is counterproductive to the balance of nature, although this assumption is counterproductive to neo-classical economics [11]. The mission is to refute the counterproductive narrative of gross domestic product in the green sector, decrease the use of dirty energy in production equipment, reduce police levels, and reduce waste.

The National Development Planning Agency (Bappenas) stated that there are three main things in a green economy, among others, is to increase the pace of the economy, as well as the environment and social life [12]. The three of them when examined are also part of the goals of sustainable development.

The Ministry of Investment / Investment Coordinating Board (BKPM) stated that in the process a green economy will involve consumption and sustainable production with efficient use of resources. Thus the goal is to reduce the need for resource use as well as large emission reductions [13].

3.2 Green Economy in Regulation of Business Competition in Indonesia

When viewed from an economic perspective, business competition refers to two things, namely competition which shows that in quantity, there are many business actors who carry out sales activities of certain products to the target market. This situation shows the existence of a structure in the market related to the need for the product offered by the seller. Furthermore, business competition refers to the process in which each company tries optimally to get buyers to buy the products it sells through price competition, non-price competition in the form of product differentiation, as well as promoting low-cost production [14].

In regulating business competition, business competition law has the position as a legal rule that regulates aspects of business competition which includes things that are allowed or prohibited by business actors [15]. The position of business competition law to regulate all business competition activities is not an easy thing.

The challenge that the law in the civil law legal system is static is one of the obstacles, given the very dynamic business practices. Therefore, in this case there needs to be evaluations and changes that are carried out periodically to ensure that existing laws follow the legal needs of the community.

The business competition law that is owned by Indonesia can be said to be very old as a rule that regulates various dynamic issues regarding business. Of course there are

various weaknesses in the current existing laws, for example, limited supervision can only be carried out on companies competing in Indonesia, even though there are various cases of competition that occur outside the country but are detrimental to Indonesia, as well as various other weaknesses.

One of the other weaknesses in the business competition law is the absence of aspects related to business competition in the environment. According to Pravest, Anas, and Yonathan [5], this is one of the causes of the inefficient implementation of business competition to accelerate the green economy process in Indonesia.

However, if you look more deeply that explicitly *verbis* the provisions regarding the environment are not regulated in the business competition law, but it can be seen that implicitly *verbis* things that can be related to environmental aspects, namely as contained in Article 3 of Law Number 5 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition which reads:

The purpose of the establishment of this law is to:

- a. safeguards the public interest and improve the efficiency of the national economy as one of the efforts to improve people's welfare;
- b. creates a conducive business climate through the regulation of fair business competition so as to ensure the certainty of equal business opportunities for large business actors, medium business actors, and small business actors;
- c. prevents monopolistic practices and or unfair business competition caused by business actors; and
- d. the creation of effectiveness and efficiency in business activities.

In the article there is a phrase of public interest as contained in Article 3 letter a. The meaning of public interest is certainly very broad, which in essence is related to many people. According to Article 1 point 6 of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, it is stated that the public interest is the interest of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people.

The definition is in line with what was conveyed by John Salindeho, but later added several aspects, namely in terms of social, political, psychological, and national defence. Furthermore, according to Julius Stone that the public interest as a balance between the interests of individuals, society, government, and also the state [16].

Green economy as an approach method to realize sustainable development based on environmental economy, a clean and healthy environment is absolutely the goal of holding a green economy, in line with the criteria applied by the United Nations Program for the Environment.

A clean and healthy living environment certainly greatly affects the lives of many people who are closely related to health and other social aspects. The right to a clean and healthy environment is a mandate contained in Article 28H of the 1945 Constitution which states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to health services. That way, in the management or use of the environment in public and private, there is accountability for the rights of others that must be fulfilled. This then

encourages the obligation to everyone to protect the environment to fulfill the rights of others.

In other words, the environment has a position as a public interest based on the rights of everyone in it. The environment as part of the public interest must also be recognized as an integrated part of the common ownership rights to the environment which has become an international doctrine and is known as the doctrine of public trust. Even the doctrine of public trust according to Gerald Torres and Nathan Bellinger is called Law's DNA because it is the oldest environmental law doctrine in the world that affirms collective environmental ownership [17]. This concept emphasizes that the environment is not only related to the public interest, but also the right of common ownership.

Therefore, the phrase protecting the public interest in Article 3 letter a of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition can be related to keeping the environment clean and healthy. However, this is only implicitly *verbis* and does not rule out the possibility of differences or debates in the interpretation of the provisions.

3.3 Implementation of Green Economy in Regulation of Business Competition in Indonesia

One of the manifestations of the implementation of the current green economy in Indonesia is low-carbon development efforts. This is done through carbon development projects which are activities to reduce carbon emissions that have a direct impact on the economy and social standards of the community by utilizing sustainable natural resources [18].

This low-carbon development is predicted by Bappenas to add more than six percent per year until 2045 for Indonesia's gross domestic product [19]. With this, of course economically, the country will be more benefited, plus the benefits of improving a healthy and clean environment.

In addition, the green economy policy that has just been implemented, namely the implementation of a carbon tax through Article 13 of Law Number 7 of 2021 concerning the Harmonization of Tax Regulations will certainly have a positive impact on the environment in the future because the carbon tax imposed is one that has a negative impact on the environment. However, this will certainly have a serious impact on the business world, considering that the imposition of a carbon tax on companies will encourage companies to switch to production tools that minimize carbon and of course are more expensive.

The imposition of this carbon tax can potentially be a violation of business competition because it will encourage producers to pay tax costs and also to buy new production equipment to produce environmentally friendly energy.

Until now, there is no article that explicitly discusses environmental issues in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, but that does not mean that there is no protection at all for the right to the environment. Through the provisions of Article 3 letter a of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, the reasons for this can be taken into consideration as a rule.

According to Anggraini [19], the rule of reason is an approach used to evaluate the consequences of an agreement or certain activities related to the consequences created

and in accordance with the provisions of the business competition law. On that basis, the environment can be one of the things to be considered in deciding a case.

Prioritizing environmental aspects rather than economics will be very important in the concept of business competition law, so that in the future the paradigm that is developed is not only related to economic profit and loss but also from an environmental perspective. For comparison, in Europe there are cases related to agreements that bind producers and importers not to import washing machines that are not environmentally friendly. This was later confirmed by the European Commission because the benefits received by the community from stopping imports of washing machines that are not environmentally friendly are greater than the economic value. It is evident that in 1999 the energy consumption figure was reduced by 15–20%.

Currently, due to the absence of regulations that specifically regulate environmental aspects in business competition law, of course, it is highly expected that in the aspect of law enforcement, priority consideration is given to environmental aspects. In this way, the phrase safeguarding the public interest as contained in Article 3 letter a of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition can be enforced.

4 Conclusion

This study found that the green economy in the regulation of business competition has not been regulated clearly and firmly. This indirectly shows that the business competition paradigm still tends to be dominated by the economic paradigm, whereas in the 1945 Constitution the principle of sustainability is one of the principles in the national economy. However, through a rule of reason approach based on Article 3 letter a of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, interests in the environment can be enforced. So that the implementation of the green economy in business competition cannot be optimized properly, even though there is a potential loss of rights to business actors, one example is through the imposition of a carbon tax.

References

1. Anonym, "Indonesia's Deforestation Rate Drops by 75.03%", Ministry of Environment and Forestry, menlhk.go.id, accessed on 21 September 2022
2. Rostow, *The Stages of Economic Growth*, (London: Cambridge University Press, 1991)
3. Lisbet, Green Economy and Rio+20 Summit, *Brief Information on International Relations*, Vol IV, No 12, 2012.
4. Eleonore Loiseau, *Et. al.*, *Green Economy and Related Concepts: An Overview*, *Journal Of Clear Production*, Vol. 139, 2016.
5. M Pravest Hamidi, Anas Fadli, Yonathan W., Overview of the green economy in Business Competition Law in Indonesia, *Jurnal Persaingan Usaha*, Vol. 3, 2022.
6. Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Bayumedia: Malang, 2007).
7. Meadows, *Et. al.*, *The Limits To Growth*, (New Yorks: Universe Books, 1972)

8. Dalila Doman & Nadia Doman, Application of the Principles of Sustainable Development and Insightful Economics in Legislation for the Use of Forest Areas in the Framework of PSN Post Ratification of Presidential Decree 66/2020, *Jurnal Hukum Lingkungan Indonesia*, Vol. 7, No. 1, 2020.
9. Maknum, Green Economy: Concept, Implementation, and Role of the Ministry of Finance, *Jurnal Ekonomi dan Pembangunan*, Vol. 19, Issue 2, 2016.
10. Sharpley, *Tourism and Sustainable Development: Exploring The Theoretical Divide*, *Journal of Sustainable Tourism*, Vol. 8, Issue 1, 2000.
11. Deputy of Natural Resources and Environment, Strategic Initiative for the Development of the Green Economy Concept, (Jakarta: Bappenas, 2014).
12. Anonym, Green Economy: The Main Focus of Investment In Indonesia, Ministry of Investment/Investment Coordinating Board (BKPM), bkpm.go.id, accessed on 21 September 2022
13. Gunawan Widjaja, Monopoly Perspective Merger, (Jakarta: Raja Grafindo Persada, 2002).
14. Hermansyah, Principles of Business Competition in Indonesia, (Jakarta: Kencana, 2008).
15. Bernhard Limbong, Land Procurement for Development, (Jakarta: Margaretha Pustaka, 2011).
16. Gerald Torres & Nathan Bellinger, The Public Trust: The Law's DNA, *4 Wake Forest Journal of Law & Policy* 281, 2014.
17. Bappenas, 7 Protections for the Implementation of Indonesia's Low Carbon Development, (Jakarta: Bappenas, 2020).
18. Dewi Andriani, The Green Economy Approach Stimulates Growth During the Covid-19 Pandemic, *Economics & Business*, ekonomi.bisnis.com, accessed 22 September 2022
19. Angraini, Prohibition of Monopolistic Practices and Unfair Competition (Perse Illegal or Rule of Reason), (Jakarta: University of Indonesia 2003).

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

