



The Realization of Fair Business Competition as a Strengthening of Human Rights

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Abstract. Economic development is closely related to the term business competition. The intended business competition does not only occur in business actors but also in consumer protection. In accordance with the mandate of Article 38 paragraph (4) of the Human Rights Law, it is explained that working and getting wages in accordance with dignity is the fulfilment of human rights. With the fact that economic development cannot be separated from the term business competition. This implies that good economic growth cannot be separated from the practice of fair business competition. This research examines how the realization of fair business competition in strengthening human rights. It is found that the practice of fair business competition can be related to human rights even though it is not directly related because the existence of fair business competition indicates a balance between business interests and public interests where the principle is related to human rights, one of which is the right to justice and the right to welfare as stipulated in the Human Rights Law. Thus, the realization of fair business competition will be considered as an effort to strengthen human rights in the future.

Keywords: Economic development, Fair Business Competition, Strengthening Human Rights.

1 Introduction

When talking about economic development, it is closely related to the term business competition. Business competition itself refers to the discourse in the field of economics and business. Referring to Article 1 point 6 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Anti-Monopoly Law), it is explained that unfair business competition is a form of competition that occurs between business actors in carrying out production and/or marketing activities of goods or services that are carried out dishonestly or unlawfully or that result in obstruction of business competition.

Economic development will not be separated from the dynamics of social life given that one part of the aspects of community life is in the economic sector. [1, p. 436]. The existing community life also contains a basic human rights rule or better known as Human Rights (HAM). According to Article 1 number 1 of Law Number 39 of 1999 concerning Human Rights (Human Rights Law), human rights itself has the meaning of a set of rights inherent in the nature and existence of humans as creatures of God Almighty and is His gift that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity. Based

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D. B. Kharisma et al. (eds.), *Proceedings of the International Conference for Democracy and National Resilience (ICDNR 2024)*, Atlantis Highlights in Social Sciences, Education and Humanities 30,

https://doi.org/10.2991/978-94-6463-634-5_5

on Article 38 paragraph (4) of the Human Rights Law, it explains that both men and women, in doing work that is commensurate with their human dignity, are entitled to wages, in this case the article is included in the Right to Welfare section which is included in the Human Rights and Basic Human Freedoms section of the Human Rights Law.

The reality of practice in the community suggests that violations of business competition are not only related to the competition of business actors, but also occur in consumer protection. Taking into account that the elements of competition and protection are aspects that have an influence in realizing the welfare of society which has been regulated in the Human Rights Law. [2, p. 36]

Strengthening the economic sector is a form of benchmark for successful development with the aim of increasing community prosperity. [3, p. 147] Thus, strengthening the economic sector is one aspect in achieving what is contained in Article 38 paragraph (4) of the Human Rights Law. In strengthening the economy, it is certainly necessary to have fair business competition practices. As for the achievement of the principles and objectives described in Article 2 and Article 3 of the Anti Monopoly Law, namely business activities based on economic democracy and realizing a conducive business climate. [4, p. 150]

Thus, realizing fair business competition in strengthening human rights is a concept that is quite interesting to study so that it can then be found whether or not there is continuity between the realization of fair business competition and strengthening human rights.

2 Research Methods

This article uses a normative juridical research approach, with the use of descriptive-analytical research specifications. In addition, this article research uses secondary data, which is collected through document/library studies, which are processed and analyzed, and presented in descriptive form, [5, p. 57] which aims to answer the formulation of the problem of the realization of fair business competition as a strengthening of human rights.

3 Findings And Discussion

The difference between human rights and economics brings us to a scientific discourse that may look different but actually coincides. Economics is a science that discusses or studies the means of satisfying human needs for the existence of limited resources, challenged by the difficulty of predicting the (unlimited) needs of humans themselves. [3, p. 148]

Human rights and the economy have a close relationship, if it is related to the fulfillment of basic human needs, one of which is the economy, where the macroeconomy includes government economic management if it is detailed to contain exports and imports and business interactions of business people. Then the interaction in this case is a form of developing social interaction in a simple society, where in regulating interactions which also involve business interactions of business actors, a

guidance is needed for stakeholders. So then the birth of a legislation that discusses fair business competition, namely Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (Anti-Monopoly Law). In addition, to ensure the fulfillment of basic human rights, especially in economic matters, the Government of Indonesia has ratified the *International* regulations of the *Universal Declaration on Human Rights 1949* and the *International Covenant on Economic, Social and Cultural Rights 1966*, [6, p. 84] which eventually resulted in Law Number 39 of 1999 concerning Human Rights (Human Rights Law).

3.1. Fair Competition

Healthy business competition has been regulated by the issuance of the Anti Monopoly Law. Where the purpose of the establishment is contained in Article 3 of the Anti Monopoly Law, in addition to being contained in the body of the law, it is also contained in the general explanation which states:

"... so that the business world can grow and develop in a healthy and correct manner, so as to create a climate of healthy business competition, and avoid the concentration of economic power in certain individuals or groups, among others in the form of monopolistic practices and unfair business competition that is detrimental to society, which is contrary to the ideals of social justice."

If based on the general explanation above, the business world space must be regulated in order to create order in competition. Where order is a form of milestone for the birth of justice and welfare in business competition. The implementation of the values of justice and welfare is a reflection of the ideals of social justice contained in business competition. [7, p. 64]

The philosophical meaning of business competition is shaped by economic liberalization and free trade which has an impact on the complexity of market competition. Where this market competition then has an influence on the strategic sectors of a country. The idea of business competition ultimately creates a paradox, where if the market framework is regulated, it will then provide obstacles to the entry of business actors so that it has implications for the smooth economy and business of a country, while in the end a market that is not regulated in such a way will have the potential to create market power which results in domination of certain sectors in the market. [8, p. 160]

Competition law that aims to create fair business competition is a form of adoption of the objectives contained in the Anti Monopoly Law, which if seen more deeply, the meaning of fair business competition also adopts the values or norms of the state foundation, namely Pancasila and the basis of the constitution, namely the 1945 Constitution of the Unitary State of the Republic of Indonesia (UUD NKRI 1945). [7, p. 67]

Heinemann interpreted the economic system formed in a competitive market as the best system to achieve social welfare, this is based on the character of competition that can maximize adaptation and innovation quickly to changing circumstances. Heinemann argues, if social welfare is the main reference, then the aspect of freedom to compete will be prioritized first to create social justice for economic actors. [9, p. 124]

A fair competition law can be pursued through competition law rules that are treated generally in accordance with the principles that will bind each market player. The implementation of competition law must be guaranteed by the authority to be enforced effectively and efficiently and neutrally. [7, p. 68]

Healthy business competition itself refers to competition that is not only *fair*, but also has a positive effect on all parties involved in business practices, which consists of business actors, consumers, and society in general. [10, p. 24] Thus, the existence of fair business competition will encourage business actors to improve product quality, increase operational efficiency, and create innovation. The existence of fair business competition will have implications for consumer freedom to choose the best product that suits the ability of the consumer. [7] So then it can be understood that fair business competition is to have a positive impact on all parties. [11, p. 186]

As explained above, the concept of business competition, especially in Indonesia, has been stated philosophically in the principles contained in the state foundation, namely Pancasila. Where Pancasila in *das sollen* is the basis for the formation of regulations in Indonesia which in this context is the law of business competition. [12, p. 81] Where in the fifth principle of Pancasila which reads "Social justice for all Indonesian people", is the basis for the fulfillment of social justice in the state, in other words, it implies a society that is ready to pursue the ultimate goal in the form of justice and prosperity. Article 33 of the 1945 Constitution of the Republic of Indonesia explicitly aims to provide protection for the public interest and welfare to the people. [13, p. 175]

Competition law, based on the Anti-Monopoly Law, has the ultimate goal of public welfare. This gives an understanding that fair business competition is not only about law enforcement and policy. But more broadly, it is a universal value as in human rights, welfare is a basic human right, giving rise to the perception that fair business competition by itself is a form of economic constitution that must be realized by the state in strengthening the fulfillment of human rights by the state itself. [7, p. 74]

3.2. The Role of Human Rights

As mentioned above, the economy is a basic right that is included in human rights. Therefore, economic development is a human right that is owned by everyone, both individually and collectively. In 1986, the United Nations (UN) declared *on the right to development (RTD)* where everyone "has the *right to* participate in, contribute to, and enjoy economic, social, cultural, and political development, where all human rights and fundamental freedoms can be fully realized". It is this declaration that, nationally and internationally, everyone has the right to be treated by the state equally without distinction in enjoying and participating in economic development. [3, p. 153]

RTD has key elements, namely: Human-centered development, human rights-based, participation, equitable benefits, non-discrimination, self-determination/sovereignty over natural resources, which includes economic development. [3, p. 155]

Economic development that is strengthened by legal instruments must provide an overview of human rights, given that the state foundation Pancasila also reflects

humanity and social justice. The normative concept in Indonesia has placed a solid foundation between law and human rights, so that it means that the law in Indonesia uses a human rights perspective, so that indirectly the concept of economic development that is supported is automatically based on human rights. This is why Indonesia is one of the countries that is quite active in the discussion of RTD at the UN. [1]

This then creates a paradigm where fair competition is a manifestation of the value of Pancasila itself, so there is great hope that it can be directly applied by the competent authority when forming or conducting *periodic reviews of laws* in the future. [14, p. 139] This paradigm is then made into a politics of competition law. Policy direction on the national economic system, especially aspects of business competition must be implemented in accordance with the provisions of Article 33 of the 1945 Constitution of the Republic of Indonesia. [7, p. 75]

Healthy business competition and human rights are two different aspects, but it is possible that the two entities are mutually sustainable where the achievement of healthy business competition, which in a sense has a positive impact on all parties, can strengthen the nature of human rights itself. [15, p. 346]

4. CONCLUSION

The realization of fair business competition indirectly strengthens Human Rights (HAM) itself, this is based on the principles and objectives of the foundation of the Indonesian state, namely Pancasila and the basis of the Indonesian constitution, namely the 1945 Constitution of the Unitary Republic of Indonesia (UUD NKRI 1945). Where in the general explanation of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (Anti Monopoly Law), which states:

"...so that the business world can grow and develop in a healthy and correct manner, so as to create a climate of healthy business competition, and avoid the concentration of economic power in certain individuals or groups, among others in the form of monopolistic practices and unfair business competition that is detrimental to society, which is contrary to the ideals of social justice".

In the explanation, it is clear that the purpose of business competition is the ideals of social justice, so it can then be understood if it is in accordance with the fifth principle of Pancasila itself which emphasizes the fulfillment of social justice and is further strengthened in Article 33 of the 1945 Constitution of the Republic of Indonesia.

Indonesia has ratified the *Universal Declaration on Human Rights 1949* and the *International Covenant on Economic, Social, and Cultural Rights 1966*. With this ratification, Indonesia must uphold the implementation of human rights itself. With the emphasis that economic development is also included as a basic right of both individuals and groups in the context of human rights, one way to strengthen human rights is through the fulfillment of one of the basic human rights, namely the economy, in this case through fair business competition.

Therefore, realizing fair business competition is one way to strengthen human rights itself.

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