

IMPLEMENTATION OF COMPETITION LAW IN COOKING OIL PRICE TRADING FOR PUBLIC INTEREST

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Abstract: This study discusses the implementation of competition law in the trading system of cooking oil prices for the public interest in Indonesia. Business competition law aims to encourage healthy competition between business actors in the market, including in the cooking oil sector. However, the implementation of this law still faces various challenges, especially related to suboptimal law enforcement and a lack of public understanding of consumer rights in the market. Through a literature study approach, this study discusses the concept of business competition law and its role in encouraging healthy competition in cooking oil price trading. The results showed that the implementation of competition law in cooking oil price trading can provide benefits for the public, such as more affordable prices and better product quality. However, this can only be achieved if the government, business actors, and the community work together to improve understanding and enforcement of business competition law. In conclusion, the implementation of business competition law in cooking oil price trading can have a positive impact on the public interest if carried out properly and optimally. Therefore, an active role from all relevant parties is needed to ensure the successful implementation of this law.

Keywords: Implementation; Competition Law; Commerce; cooking oil prices; Public Interest.

INTRODUCTION

Cooking oil is one of the important needs for households in various countries including Indonesia. Given the high demand, the demand for cooking oil in the community also continues to increase from year to year, this is reinforced by data from the Central Statistics Agency (BPS). As an illustration, in March 2022, the average amount of cooking oil used per capita in Indonesia reached IDR 19,108 (nineteen thousand one hundred and eight rupiahs) per month. This is when compared to the same usage in the previous year, namely 2021, which was Rp. 13,008 (thirteen thousand eight rupiahs) on average per month for each in Indonesia. This data shows an increase of approximately 46.89 percent. The most widely used cooking oil is cooking oil from palm *oil*. In addition, data also shows that household demand for palm cooking oil during the period 2015 to 2020 increased by 2.32 percent (Rahayu, 2022).

The palm oil industry in Indonesia among others produces various products, namely *crude palm* oil (CPO) and palm *kernel* oil (PKO), derivatives of these two processed oils into daily necessities, ranging from cooking oil, cosmetics, processed food, etc. Given the importance of cooking oil for the basic needs of the daily community, it is necessary to build good trade governance so that there are no price fluctuations, unhealthy business competition, or cartels that harm the public. For this reason, it is necessary to make the best arrangements by the competent authority, in this case, the government. In addition to other basic

services such as health, and education, the government must also provide services for other basic needs, namely necessities, and basic needs of the community for example rice, cooking oil, etc. Cooking oil trade arrangements by the government are made in the form of regulations or policies which must then be obeyed by stakeholders in the cooking oil trade which include business actors producing or producing cooking oil, cooking oil distributors, cooking oil traders, and consumers or the public in general. (Fitrah Murgianto, 2021) (Hardiyansyah, 2018).

Given that cooking oil production is related to the palm oil industry, other parties who are also involved in cooking oil trading are industry players or owners of oil palm plantations who are not bene also as owners of cooking oil factories and oil palm farmers either as workers or as land owners. Cooking oil is one of the important food components for households in Indonesia, so the government includes cooking oil as one of the food needs of certain basic needs, whose availability and price are maintained by the government so as not to fluctuate. Based on the Central Statistics Agency (2022), during the period September 2019 – September 2021, 90.27% of households participated in cooking oil consumption. Palm cooking oil is the type of oil used with a 90% share compared to other consumption oils such as coconut oil and corn oil in 2021. Meanwhile, referring to the survey results from the National Socioeconomic (Susenas) in September 2021, the average Indonesian household expenditure for cooking oil consumption was 1.35% or Rp17,277 of the total average monthly household expenditure of

Rp1,281,327 (Febrinda, 2022).

The importance of cooking oil trade arrangements including supervision and law enforcement for violators, namely from production, and distribution to consumer's hands which includes the quality of cooking oil, price benchmarks, availability of supply, and smooth distribution can guarantee smooth trading of cooking oil to meet the needs of the community.

That is 2022, there are cooking oil price fluctuations that have an impact on unrest in the community due to unaffordable prices. Meanwhile, there is also abuse of authority by government elements at the Ministry of Trade as the authority that has the authority to regulate cooking oil trade administration, proven to be involved in corruption and has been sentenced to prison. These things then become triggers related to cooking oil governance which raises legal problems, especially business competition. In the end, all this chaos harms the public interest or society that should be avoided or should not occur. In the period from 2020 to 2022, the price of cooking oil continued to increase, where a peak was in January 2022, when the price of bulk cooking oil reached IDR 17,942/lit in January 2022. This means that the price of cooking oil has increased by 60.84% since its lowest price in July 2020. Meanwhile, packaged cooking oil in the same month was priced at IDR 20,279/lit, up 39.92%, an increase from the lowest price in August 2020. According to BPS data, the Government has issued the Highest Retail Price (HET) policy for all types of cooking oil that caused deflation during February 2022, and again there was the highest increase in inflation at 0.19 percent in April

2022 with the policy of lifting HET for premium cooking oil types and an increase in food commodities ahead of the fasting month and Eid al-Fitr in 2022. This is also influential due to the sluggish economy due to the direct impact of Covid-19, the percentage of poor people has increased from the range of 9 percent in 2019 to 10.14 percent in 2020. Price fluctuations and (Febrinda, 2022) *panic buying* by some people occur where the price of cooking oil outside retail on average still applies according to the purchase value. In anticipation of this, the government issued a policy, namely as of February 1, 2022, the Minister of Trade Regulation Number 6 of 2022 concerning HET Palm Cooking Oil has been enacted, where for simple packaged cooking oil IDR 13,500 / liter, and premium packaged cooking oil IDR 14,000 / liter, while the price of bulk cooking oil applies HET IDR 11,500 / liter. This government intervention at least helps to control cooking oil prices and is expected to encourage people's purchasing power and good governance, including from the aspect of business competition law. (Nasution, 2021).

That the palm oil industry and cooking oil producers on a large scale are controlled by only a few people raises allegations about monopolistic practices and unfair business competition that ultimately harm consumers or society. The fewer players active in a particular market, the smaller the level of competition, and the more likely it is to make agreements between these business actors will be easier to achieve (Nadapdap, 2019).

While business actors enjoy the benefits of high cooking oil prices, on the

other hand, it is not necessarily directly proportional to the fate of oil palm farmers. Those who work in oil palm plantations with low wages even below the minimum wage also cause economic, social, and legal problems. As an illustration of the contribution of the Indonesian palm oil industry to Indonesia's Gross Domestic Product (GDP) is very large, oil palm plantations contributed Rp 239.4 trillion to the GDP of the plantation sector which reached Rp 429 trillion. This is due to a large number of oil palm farmers in Indonesia. The number of oil palm farmers throughout Indonesia in 2017 reached 2,213,037 households (Ditjenbun, 2017). The human dimension in oil palm plantations attracts attention because the use of oil palm land is dominated by smallholders. These smallholders dominate 41% of the total oil palm area and 36% of the total fresh fruit bunches in Indonesia (Lathifah, 2020).

From various existing empirical data and facts, the author feels interested in conducting research based on secondary data, namely libraries or documents related to the need for good governance in cooking oil price trading including legal provisions governing the substance or problem in question (Asikin, 2020). Given that in addition to having an impact on the public interest or public, especially small communities with low purchasing power, the cooking oil policy should also touch palm oil farmers, so that there is balance and proportionality between these various interests and no one is harmed on the one hand, on the other hand, no one benefits or takes advantage of the situation to benefit themselves or their groups. This is where

the role of business competition law is one of the determining factors to contribute from the legal aspect, along with other legal aspects or provisions such as labor rules and wage policies that do not harm related parties.

The extent of the role of the state or government as a regulator, supervisor, and also carry out law enforcement functions, especially related to unfair business competition and other violations of law if there is a violation by irresponsible parties. This government action according to Van Poelje quoted by Kuntjoro Purbopranoto is an action carried out by the ruler in carrying out government functions, the ruler (overhead) is the same as government agencies and/or officials in this case agencies that have authority for it. These government measures are important and need to be taken so that the (Atmadja & Budiarta, 2018) public interest is not harmed and as a manifestation of the state is present and provides protection.

MATERIALS AND METHODS

This research uses a literature study approach as a research method. Data is obtained from relevant sources, such as scientific journals, books, research reports, and related documents. The research process is carried out by selecting relevant sources and then identifying concepts and theories related to the research topic.

The first step in this study is to search the literature on competition law, cooking oil price trading, and public interest. After that, an analysis of the data obtained is carried out by comparing and identifying differences or similarities between the

theories and concepts found.

The results of the study are interpreted through qualitative analysis by considering legal, economic, and social points of view. This study also uses a descriptive approach to provide a clear picture of the implementation of competition law in the trading system of cooking oil prices for the public interest.

The limitation of this study is the limited data and available sources. Although this research is done carefully, some possible sources or data are not affordable or missed.

In conclusion, the literature study approach can be used as an effective research method to analyze the implementation of business competition law in the cooking oil price trade system for the public interest. This method can provide a deep understanding of concepts and theories related to the research topic as well as provide a clear picture of the problems that exist in the field.

RESULTS AND DISCUSSION

Departing from the background of the problem, the identification of problems, and the complexity of problems related to cooking oil price trading, analysis, and discussion are needed based on the identification of existing problems, namely:

1. Some legal provisions governing competition law in cooking oil trading

- a. Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition
 - This law has implementing rules, namely through Government Regulation No. 57/2010 concerning

Merger or Merger of Business Entities and Taking Company Shares that May Result in Monopoly Practices and Unfair Business Competition. Implement the provisions of Article 28 paragraph (3).

- Government Regulation No. 57/2010 concerning Merger or Merger of Business Entities and Takeover of Company Shares that May Result in Monopoly Practices and Unfair Business Competition. Implement the provisions of Article 29 Paragraph (2).
- Presidential Decree No. 75/1999 concerning the Business Competition Supervisory Commission as amended by Presidential Regulation No. 80 of 2008 concerning Amendments to Presidential Decree No. 75 of 1999 concerning the Business Competition Supervisory Commission. Implement the provisions of Article 34 paragraph 1.

KPPU as an independent state institution established under the mandate of Law Number 5 of 1999 has a large and strong authority. Therefore, with the existing authority, this institution can maximize its function, including deepening the problem of the cooking oil trade so that the same problem does not recur in the future. Where there are allegations of violations related to cartel practices by business actors, the rights of the community as consumers are protected and there is strict law enforcement for those proven to have committed violations.

Law Number 5 of 1999 has several times submitted *for judicial review* to the Constitutional Court and there have been several changes, but it does not reduce the

authority of this institution in supervising and enforcing unfair business competition, monopolies, cartels, and the like. In addition, in the Job Creation Law, there are regulations regarding the Business Competition Law, but currently, the Job Creation Law is in the process of revision and there is even a Government Regulation instead of a Law related to Job Creation which is in the process of waiting for parliamentary or DPR approval.

For the smooth running of the duties and authorities, KPPU also makes implementing regulations, namely KPPU regulations, including KPPU Regulation Number 3 of 2012 concerning the Second Amendment to Business Competition Supervisory Commission Regulation Number 13 of 2010 concerning Implementation Guidelines on Merger or Merger of Business Entities and Takeover of Company Shares that May Result in Monopoly Practices and Unfair Business Competition, then there is KPPU Regulation Number 4 of 2016 concerning Guidelines for the Use of Business Competition Policy Checklists, Business Competition Supervisory Commission Regulation of the Republic of Indonesia Number 3 of 2022 concerning the Revocation of Business Competition Supervisory Commission Regulation Number 5 of 2015 concerning Guidelines for the Preparation and Implementation of Standard Operating Procedures within the Business Competition Supervisory Commission.

The various KPPU regulations are expected to expedite the duties, functions, and authorities of the KPPU in supervising unfair business competition, monopolistic

practices and the like that harm the state/society, procedurally also KPPU has been equipped with provisions regarding procedures for handling cases (Hermansyah, 2008).

2. The implementation of cooking oil price trading by market mechanisms and their impact on the community, namely from the side of business actors, consumers, or society in general.

A. Implementation of Cooking Oil Price Trading System by Market Mechanism

That considering cooking oil is a basic household need, the turmoil of price increases will affect the economy in Indonesia. Especially for small groups or grassroots groups. Regarding the rising price of cooking oil, KPPU as an institution that has the authority to conduct supervision and legal processes has taken steps. That the price increase in 2022 had previously occurred because there was a KPPU ruling with the same case, namely the increase in cooking oil prices as the following KPPU ruling:

One example of unhealthy business competition is the cooking oil cartel practice carried out by 20 cooking oil business actors in Indonesia. They were proven to have committed a price cartel because they violated the provisions of Article 4, Article 5, and Article 11 of Law No. 5 of 1999 contained in KPPU decision No. 24/KPPU-I/2009. The cartel's practice resulted in losses suffered by the community of at least Rp.1,270,000,000,000.00 for branded packaged cooking oil products and Rp.374,300,000,000.00 for bulk cooking oil products. The case is related to fluctuations in world CPO prices which factually affect

the occurrence of cooking oil prices in the domestic market. The increase in CPO prices from the price range of US \$ 1,300 / ton became a logical reason for the increase in the price of palm cooking oil in the domestic market which at that time from the price range of Rp. 7,000 / kg to Rp. 12,900 / kg. However, when there is a price decline in the world market, the price of cooking oil in the domestic market does not respond proportionally so this is the background of the alleged unfair business competition practices carried out by cooking oil business actors in Indonesia. This KPPU decision was then submitted to the court by business actors and then the district court decision granted the business actor's application unfortunately rejected by the District Court Supreme Court as well rejected the KPPU's decision on objections made by 20 reported cooking oil producers. The District Court and Supreme Court rejected the KPPU's decision because it was related to material conditions that were not met by the plaintiff (KPPU). But the same thing happened again in 2022. That is by the provisions of Article 11 of Law Number 5 of 1999 where business actors are prohibited from making agreements with other business actors in the context of price increases to benefit business actors. The article stipulates that business actors are prohibited from entering into agreements with their competitors to influence prices 'only if' the agreement may result in monopolistic practices and/or unfair business competition. So, this provision uses a rule of reason approach. However, in 2022, when cooking oil prices increased, KPPU did not take legal action and advised the government to make some

policy improvements. Read more as quoted from the KPPU website, "(Wintansari, 2020) (Anggraini, 2003) KPPU concluded that the downward trend in crude palm oil (CPO) prices during and after the CPO export ban was not accompanied by a decrease in the price of packaged cooking oil, and even in the opposite direction. KPPU also concluded that there is an inequality in land tenure for oil palm plantations nationally. This inequality has the potential to bring business competition problems related to land tenure and control on the downstream side of the product. KPPU explained that the issue of cooking oil had been studied since September 2021, when KPPU saw that there was a cartel signal because the price increase was carried out together, even though it had different sources of raw materials. The existence of vertical integration, oligopoly market structure, and market concentration level which is already at 50%, are signals for KPPU to transfer the study to the investigation process as of January 27, 2022. KPPU also conveyed suggestions and considerations to the Government at the beginning of the year, one of which points was in line with what the Government was doing, namely for the Government to ensure the existence of cooking oil stocks from the producer-distributor-agent-retail trader (retail) level. For this reason, a tracing process is needed for each stage of the distribution channel. However, KPPU recommends that not only the cooking oil industry be controlled, but also its palm oil production" KPPU also provided information that from the results of its deepening, it is necessary to conduct an audit upstream, namely in the plantation sector. Currently, there are the 70s

(seventies) cooking oil business actors. However, if narrowed down, it will focus on 8 (eight) large business groups. These business actors on average have their oil palm plantations so that they control from upstream to downstream in the cooking oil industry. For this reason, KPPU welcomes the Government's efforts in structuring the upstream cooking oil industry.

Seeing this reality, the KPPU did not optimally follow up on its findings and was only limited to providing input to the government, so it is questionable the continuation of the KPPU's findings, even though it has fulfilled the elements for later legal proceedings.

B. The Impact of Rising Cooking Oil Prices on the Community

That the impact of the increase in cooking oil directly affects the national economy. Where people's purchase prices became according to when they were still hit by Covid-19 in 2022. People who depend on cooking oil for their survival, such as small vendors selling fried foods, will be directly affected by the increase in cooking oil prices. At least from information through several *mainstream* mass media, there are five causes of the increase in cooking oil prices, namely international prices that rose quite sharply, the decline in palm oil harvests in the second half of 2021, the increase in CPO demand and the decline in world palm oil supply, low stocks of other vegetable oils and logistical disruptions due to the pandemic. However, seeing Indonesia's position as one of the largest palm oil producers in the world, including cooking oil producers, it is necessary to question the price increase that cannot be anticipated to

harm the community in general.

The impact of the increase in palm cooking oil prices can be summarized in the following narrative. It is reported that several workers and farmers protested in front of the Ministry of Trade (Kemendag) Office, on Tuesday, March 23, 2022. The mass action came from various organizations, namely trade unions, farmers' unions, and other elements of society. Participants in the rally demanded the government reduce the prices of several basic commodities, especially cooking oil, and demanded that President Jokowi remove the Minister of Trade who was considered to have failed to control the price of cooking oil and other staples. It was proven that then the President removed the Minister of Trade, there was a change of minister and the government took corrective measures.

3. The role of the government in this case related agencies as regulators and supervisors as well as law enforcement

It is customary for business actors to make associations and laws can't forbid this. It found, however, that in some cases they abused the association as a cartel platform. This is certainly contrary to the ban on cartels as stipulated in Article 11 of Law Number 5 of 1999. In this context, the role of the government is then demanded so that the public is not harmed. The findings of the state institution of public service supervision, the Ombudsman of the Republic of Indonesia, that there are three findings related to the scarcity and surge in the price of palm cooking oil in the market. The findings were obtained from data on community situation reports from 34 provinces in Indonesia. The first cause is

hoarding. Second, there are efforts to divert the sale of palm cooking oil from modern markets to traditional markets. Third is panic (Lubis et al., 2017) *buying in the community*. The government is advised to prepare a mechanism to anticipate the scarcity and surge in cooking oil prices. The reason is, this situation has often been experienced by the government related to other staples of society. Looking at the scarcity and high price of palm cooking oil in Indonesia, the following are government actions taken according to the news. The first policy issued by the government, in this case, the Ministry of Trade is to issue Minister of Trade Regulation Number 11 of 2022 concerning the Determination of the Highest Retail Price (HET) of cooking oil. In the regulation, it is stated that HET for bulk palm cooking oil is set at Rp. 14,000,-, per liter or equivalent to Rp. 15,500 per kg, which revises the previous price which set the price of cooking oil at one price, namely Rp. 11,500 for bulk palm cooking oil per liter, Rp. 13,500 for simple packaged cooking oil, and Rp. 14,000 for medium cooking oil. However, according to the Central Leadership Council of the Indonesian Market Traders Association, the government failed to stabilize the price of bulk cooking oil according to the highest retail price of Rp.14,000,-, because in the market the price is still around Rp.20,000 per liter.

Furthermore, the government carried out a policy overhaul related to bulk palm cooking oil, which was originally trade-based and changed to industry-based. The policy is outlined in the Minister of Industry Regulation No. 8 of 2022 concerning the Provision of Bulk Cooking Oil for the Needs

of the Community, Micro Enterprises, and Small Businesses within the Financing Framework by the Palm Oil Plantation Fund Management Agency (BPDPKS). The government's next action was to commission Bulog to sell cheap cooking oil. The government also prepares a budget allocated for bulk cooking oil subsidies that have been determined at Rp.14,000 per liter. The subsidy is not directly taken from the APBN fund but is channeled through BPDPKS, which has been managing funds from palm oil exports. BPDPKS is an institution that is a non-echelon organizational unit in the field of managing Oil Palm Plantation Funds under and responsible to the Minister of Finance through the Directorate General of State Treasury. The government also opened a hotline for complaints about cooking oil prices complaints. This is to provide facilities for the public to complain if it is found that retailers selling palm cooking oil are not by the price set by the government, which is Rp.14,000 per liter for all of Indonesia. Trade Minister Muhammad Lutfi explained, as quoted from national media reports, that business actors to help the government, opened as many as 47,000 modern outlets from 200 companies throughout Indonesia that are members of the Indonesian Retail Entrepreneurs Association distributing cooking oil to the community.

CONCLUSIONS

Based on the background of the problem, problem identification, discussion, and analysis, the author concludes that:

- 1) Cooking oil is one of the basic needs of the community, therefore it requires good trade management so that if there is a price increase, it will be well controlled
- 2) The increase in cooking oil prices occurred due to various factors, but as a country that became one of the largest palm oil producers in the world. Indonesia has mitigations to tackle expensive cooking oil and measures
- 3) The role of KPPU as a supervisory and law enforcement agency is still not optimal in anticipating the increase in cooking oil prices that harm the community
- 4) The government is late in anticipating the increase in cooking oil prices in 2022 because it has happened in the previous year so it should have been able to anticipate the high price of cooking oil

The lack of awareness of business actors due to the desire to seek large profits is not followed by an attitude of compliance with existing regulations, especially related to the provisions of Article 11 of Law Number 5 Tashun 1999.

REFERENCES

- Anggraini, A. M. T. (2003). *Prohibition of monopolistic practices and unfair competition: perse illegal or rule of reason*. The University of Indonesia, Faculty of Law, Postgraduate.
- Asikin, A. Z. (2020). Introduction to legal research methods. *Jakarta: King Grafindo Persada*.
- Atmadja, I., & Budiarta, I. (2018). *Legal theories*. Equivalent Press.
- Febrinda, R. R. (2022). Government policy in overcoming the increase in cooking oil prices. *Trade Policy Journal*, 1(1), 25–32.
- Fitrah Murgianto. (2021). Potential Cooking Oil Content and Various Levels of Loose Popcorn in Discs. *Argo Journal of Plantation Industry*, 09(2), 91.
- Hardiyansyah, H. (2018). *Quality of Public Services: Concept, Dimensions, Indicators, and Their Implementation*. Gava Media.
- Hermansyah. (2008). *Principles of competition law in Indonesia*. Kencana Prenada Media Group.
- Lathifah, A. N. Y. (2020). Analysis of farmers' preferences towards the palm oil partnership model using the ANP (Analytic Network Process) method. *Journal of Agricultural Industrial Technology*, 30(3), 271–280.
- Lubis, A. F., Anggraini, A. M. T., Kurnia, K., Toha, B., Hawin, M., Sirait, N. N., Prananingtyas, P., Maarif, S., & Silalahi, U. (2017). *Competition law: textbooks*.
- Nadapdap, B. (2019). *Competition law: indirect evidence versus cartel walls*. Nets of Literacy Gems.
- Nasution, A. (2021). Public panic buying of rising prices and scarcity of cooking oil in Medan Denai City. *Journal of Corporate Business*, 6(2), 113–120.
- Rahayu, R. N. (2022). Palm Oil Price Increase in Indonesia: An Analysis of Kompas News Online. *Journal of Economics, Social & Humanities*, 3(08), 26–37.

Wintansari, Y. H. (2020). Analysis of Legal Considerations of Cooking Oil Cartel Cases in Indonesia. *Lex Renaissance*, 5(4), 895–911.



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