

THE MEANING AND THE FUNCTIONING OF EQUALITY PRINCIPLE IN BUSINESS COMPETITION SUPERVISORY COMMISSION DECISION OF AGREEMENT PRICING APPROACH BASED ON MARKET STRUCTURE

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ABSTRACT

The interpretation and the application of the equilibrium principle in competition law raises issues of the philosophy of law, legal theory and legal dogmatic. Based on these issues, then the legal problems, namely: 1) What is the advantages and disadvantages of market structure approach used in the decision of the KPPU to analyze the principle of balance in competition law particularly in price fixing agreement. 2) How is the market structure approach in the KPPU decision, should be developed and used to analyze the principle of balance in competition law particularly in price fixing agreement.

To answer the third issue, used the theory: (1) fairness, (2) equity markets, (3) the welfare state in the context of a market economy. This research is based on paradigmatic legal normative hermeneutic approach.

The study concluded: 1) The advantages of the approach in the consideration of the legal market structure. KPPU decisions, creating more justice to the parties. The disadvantages of structural analysis approach, namely: the difficulty of proof in writing, setting procedural law clash between the KPPU and the Court of the country, lack of basic legal drafting guidelines that made by the KPPU. 2) In its development, the analysis approach used the Commission's market structure can be used as direct evidence in the form of a letter and stated in Government Regulation and prioritized approach to the analysis of market structure in the KPPU decisions on the prohibition of price fixing.

Keywords: *Business Competition Supervisory Commission, Meaning of and functioning, The Equilibrium Principle, Mar*

Introduction

Article 2 of Law Number 5 Year 1999 contains provisions that: "business actors in Indonesia in carrying out their business activities based on economic democracy by considering the balance between the interests of business actors and the public interest". While in consideration

weighing the letter (b) stated that: "Economic democracy requires equal opportunity for every citizen to participate in the process of producing and marketing goods and or services, in a healthy business climate, effective and efficient, so as to promote economic

growth and the workings of a reasonable market economy."

From the provisions of Article 2, there are two principles adopted in Law Number 5 Year 1999, namely the principle of economic democracy and the principle of equilibrium. The principle of democracy requires that everything connected with business is in the hands of the people, whether it is business planning or business decisions. Business actors are fully sovereign of their business activities. However, it is related to the principle of equilibrium. The principle of balance requires that all business planning and decisions be implemented with due regard to the balance between the interests of individual business actors and common interests (public interest). That is, this principle is to remind that the planning and decisions of business actors will affect other communities or the country as a whole. Therefore, the public interest always gets consideration in each step [1].

To prevent unhealthy business competition, Law Number 5 Year 1999 clearly and structurally regulates prohibited agreements, prohibited activities and dominant positions. In relation to the 3 (three) matters, it substantially has the potential to open up great opportunities for monopolistic practices and unfair business competition, let alone most of the business transactions are based on agreements between business actors.

In terms of legal theory, there is no theory that describes the balance in business competition law, especially pricing agreements. Therefore, it needs to be explained further through the structural approach, which in this case includes market structure, market performance and market behavior as an instrument of meaning and balance of the principle of equilibrium, so that it can be the material

(input) for the development of legal theory on the principle of equilibrium in competition law Business, especially pricing agreements.

There is a relationship between the analysis of the market structure approach in the pricing agreement on equilibrium. Business actors who make pricing agreements will ignore the balance of interests of other business actors and the public as consumers. The analysis of market structure is an approach whereby the actions of market participants can be said to violate anti-monopoly laws, then in addition to analyzed the actions taken, also seen in market forces or market structure [2].

From the legal dogmatic side of the law, the existing legislation does not explain concretely on the principle of equilibrium in the law of business competition, especially the pricing agreement. Therefore, normative analysis of the law of business competition is required systematically, because the existence of equilibrium principle does not only rely on the meaning of Law Number 5 Year 1999 merely, but on KPPU decision, District Court judge, Supreme Court judge and doctrine.

In terms of legal practice, there are still various approaches that can be used in testing the balance principle in business competition law, especially price fixing agreements. In addition, there are still many unwritten agreements (covert agreements,[3] used in pricing agreements. This legal fact became the basic problem in this research.

Based on the background of such thoughts, then the legal issues in business competition include the advantages and disadvantages of the market structure approach in the KPPU's decision used to analyze the principle of equilibrium in the law of business competition, especially the pricing agreement, and the market structure approach in KPPU's decision

should be developed and used to analyze the principle of equilibrium in business competition law especially price fixing agreement?

Literature Review

Plato as quoted by Theo Huijbers describes the justice of the human soul by comparing it with the life of the state, arguing that the human soul is composed of three parts, namely the mind (logistikon), the feelings and lusts, both psychic and physical (epithumetikon), good and evil (Thumoeides). The soul is well ordered when a harmonious union of the three parts is produced. Therefore, justice lies within the balanced boundary between the three parts of the soul in accordance with their respective forms.[4]

The kind of justice according to Aristotle, namely: first, distributive justice, namely justice in terms of distribution of wealth or other ownership in each community member. With this distributive justice, what Aristotle meant was a balance between what a man earns and what is to be earned. Second, corrective justice, namely justice that aims to correct unfair events. Justice is meant in this case in the form of a relationship between one person with another which is the equality between what is given and what is received.[5]

In principle, this form of corrective justice is a measure of the technical principles governing the administration of the process of applying the rule of law. In making a rule, there are various consequences caused by certain behaviors and must be measured by an objective standard: first, the application of the law (sanctions) in definite ways. Second, Restitution to losses arising from default, and third, to the loss and damage of the economy arising from an act that must be recovered by taking actions that will

bring benefits. Corrective justice, according to Aristotle, is often called equalizing, rectificatory, justice in syncagmatic and bilateral justice.[6]

Aristotle states that justice is in the middle of two extremes, which is sought so that in the pursuit of profit, creating a balance between two parties, in this case the person does not put his own side and do not give priority to the other side. To determine the exact position of balance between people, the similarity measure is used. Balanced in question there is a comparison and in the form of proportional. In other words, balance is a combination of several components that form the basis of harmony, and always contain elements of justice that is placed proportionately. If one component is ignored or disrupted, it will result in injustice.

Another opinion of justice is put forward by John Rawls, who understands justice more directed at the basic desires in human life. Rawls states that the existence of a willingness to live together is if fulfilled needs and common interests (social contract). Willingness to do good to others without any tendency, but increasingly want to do it in accordance with formal rules. Justice is a major virtue in the social institution as it is in the system of thought.[7]

In Rawls's second principle of justice demands that everyone benefit from inequality in the basic structure. This means that every representative person defined by this structure is seen as a point of concern with or without inequality. In this case, one should not justify the difference in income or organizational strength, which is because the weaker are more benefited by the more advantages of others.

Departing from the principle of John Rawls's justice theory, it is required that there is no distinction of treatment for business actors in terms of achieving

equilibrium. A weak or small business actor should be in a position to benefit from a strong or large business actor, so as not to undermine the structure of the structure, and ultimately to balance and justice.

Meanwhile, the theory of market justice in the perspective of the free market as suggested by Adam Smith, then Rawls argues that in essence the free market is in line with equal freedom and equality of equal opportunity. Furthermore, Rawls in the theory of distributive justice states that, the market provides equal freedom and opportunity for all economic actors. Freedom is a value and one of the most important human rights possessed by human beings, and it is guaranteed by the market economy system. The market provides an opportunity for human self-determination as a free being, The market economy guarantees equal freedom and fair opportunity.

According to Rawls, the free market will only cause injustice from the system of human liberty which allows the distribution of wealth to be improperly influenced by natural and accidental conditions. Moreover, despite the improvement of existing social conditions, the free market will give rise to lameness because of differences in natural talents and abilities between people with each other. Therefore, the free market creates an unjust economic order. Because the free market system creates injustice in terms of economic distribution, Rawls (Fuady, 2013) argues that the social system must be governed not by nature (as suggested by Adam Smith), but must be through "invisible hands" by humans, so that the resulting distribution can be tangible justice. To realize this goal, social and economic processes need to be regulated in the appropriate political and legal environment. Without such institutions,

the distribution process would be unfair [8].

The welfare state theory developed in the context of a market economy is generally based on a mixed economic system. In a mixed economic context, W. Friedmann states that there are four functions of the state in this case, namely: first, the state as the provider where in that capacity, efforts are made to meet the minimum standards required by society in order to reduce the impact of free market that can harm Community. Secondly, the function of the state as regulator to ensure order not to appear chaos, as well as the arrangement in the field of investment for the industry to grow and develop, the arrangements and restrictions on exports and imports conducted, in order to provide sufficient foreign exchange to support trade activities. Third, direct intervention in the economy through SOEs, because there are certain areas of business that are vital for the community, but not profitable for private businesses. Fourth, the function of the state as a supervisor, which deals with various products of the rule of law to maintain order and justice as well as act as law enforcement [9].

The role of the state in the welfare state concept by Briggs is to modify the various market forces. The need for control and restrictions on the workings of market forces is to overcome unexpected negative elements as a result of the working of the market forces in question. According to Goodin in the welfare state, state intervention in regulating markets described him as a form of state intervention in regulating markets. The aim is none other than to improve the general welfare and maximize social welfare, thereby minimizing the impact of a market failure [10].

Sri Redjeki Hartono argues that the principle of state intervention in question is one of the three important principles required in the context of the development of the ideals of the principles of national law in terms of trade and economic law. While the other two principles, namely the principle of balance and the principle of public scrutiny. According to him, economic activities that occur in the community require state intervention, given the basic purpose of economic activity itself is to achieve profit. In achieving the intended purpose, very susceptible irregularities and fraud that can harm all parties. Government interference in this regard to maintain the balance of interests for all parties in society, protecting the interests of the state and the public interest on the interests of the company or personal [11]. From various legal theories above, it can be taken meaning that state intervention is still needed in managing the economic field, in order to achieve the balance of interest and avoid the cheating by the business actor. In order for economic arrangements including effective monopolies, the offender of interests must still be concerned with the principle adopted in this field of economy, so that the concept of the welfare state will be achieved.

C. Methods

The research entitled The Balance Principles in Business Competition Law: The Meaning and Displacement of the Balance Principle in the Decision of the Business Competition Commission on Pricing Agreement Based on the Market Structure Approach, is a legal research based on a "hermeneutic paradigmatic" based on an understanding of "hermeneutic philosophy and paradigm" As described by Bernard Arief Sidharta, as follows:

".... The science of law is the normative science which belongs to the group of practical sciences which into its convergence converge all other science products (especially legal philosophy, legal sociology, legal history) relevant to (hermeneutically) set propositions The law that will be offered to be the content of the legal decision as a solution to the concrete legal problems faced. The determination of the legal proposition is based on the rules of positive law understood (interpreted) in the context of the overall rules of law arranged in a systematic (historical) system in the context of the purpose of its formation and the objectives of law in general (ideological) Determine the positive rule of law and contextually refer to sociological factors with reference to fundamental cultural and humanitarian values in projections into the future ".

Research is also conducted on legal philosophy, legal principles with legal theories contained in positive law, especially those contained in Law No. 5 of 1999 on Prohibition of Anti Monopoly and Unfair Business Competition and other related regulations.

In addition, the principles are something that can be used as the basis and foundation to explain something of legal problems. In this study the authors will use the principles that are the measure to determine whether or not fair balanced or unbalanced KPPU's ruling on business competition case, especially price fixing agreement.

Based on paradigmatic, legal research can be categorized into several kinds, namely normative legal research, empirical law research, hermeneutic law research, and epistemological anarchism law research [13] Seeing its consistency with the issues studied, then this legal research is classified in research hermeneutika law.

D. Results and Discussion

1. The Market Structure Approach Used In Analyzing Balance Principles On Business Competition Law Especially Price Pricing Agreements.

The Structural approach or structural analysis or market power analysis is a market structure approach that has strategic features and is closely related to market behavior and market performance, which has the following elements:

- a. Centralizing buyer sellers and concentrations as measured by the number of sellers and buyers.
- b. Market entry requirements.
- c. The nature of the product being offered is homogeneous or there is a product differentiation.
- d. The degree to which a company produced and sells itself directly or creates its own distribution channel for its products.
- e. The level at which a company operates in a number of markets or in just one market [14].

Market performance describes the efficiency of a market in using scarce resources to meet consumer demand for goods and services. Efficiency in question is how well a market can contribute to the optimization of economic prosperity. Market performance elements can include: first, production efficiency that reflects the company's ability to produce quality products at competitive prices. Second, the efficiency of the allocation, ie the rate at which the market price charged to buyers, aligned with marketing costs involves returning a normal profit on the product. Third, technological advancements concerning the ability of market participants / suppliers to always introduce new cost-effective distribution and production techniques and introduce superior products. Fourth, product performance concerning reliability,

quality and product diversity offered by market participants / suppliers.

This paper focuses on research on the decision of KPPU Number 08 / KPPU-I / 2005 concerning Provision of Survey Services of Imported Sugar by PT. Sucofindo and PT. Surveyor Indonesia, KPPU Decision Number 10 / KPPU-I / 2005 concerning Garment Trading Cartel to North Sumatera and KPPU Decision Number 25 / KPPU / I / 2009 on Fuel surcharge pricing.

2. The Advantages of Market Structure Approaches Used to Analyze the Balance Principle.

a. More Market Structure Analysis Creating Justice for Disputing Parties.

As described earlier, the structural approach or structural analysis or market power analysis is a market structure approach that has strategic features and is closely related to market behavior and market performance, which has the first elements: the centralized buyer's seller and concentration of buyers Through the number of sellers and buyers, secondly: market entry requirements, third: the nature of the offered product is homogeneous or there is a product differentiation; fourth: the rate at which the firm produces and sells itself directly or creates its own distribution channel for its products; Companies operate in a number of markets or in just one market.

To analyze the meaning and function of the equilibrium principle by applying through market structure approach which can be used in pricing agreement, it can be analyzed from first side: analysis of price standardization; second: analysis of product similarity level; third: analysis of market entry barrier,

Fourth: analysis of the mastery of market share, fifth: analysis of the monopoly of production, sales and distribution.

Assessment in this case against, first: KPPU decision No. 08 / KPPU-L / 2005 concerning Provision of sugar import survey services by PT. Superintending Company of Indonesia / Sucofindo (Persero) and PT. Surveyor Indonesia (Persero), second: KPPU Decision Number 10 / KPPU-L / 2005 concerning Cartel Trade of salt to North Sumatra, third: KPPU decision No. 25 / KPPU-I / 2009 concerning Fuel surcharge pricing.

If connected with Rawls's opinion which has a rational argument on humanity at its initial position will have two principles of justice. The first principle, states that each person has the right to a system of the most extensive of basic freedoms comparable to similar systems for others. The second principle, states that socially and economically equitable is just, if it benefits the most disadvantaged in society, and attaches to positions and positions open to all.

The second principle implies that inequality in the distribution of sources can be justified by reference to the interests of the most disadvantaged, which is called Rawls with a "difference principle" different from the concept of liberal justice called Rawls with the system of natural liberty (The system of natural freedom).

Based on Rawls's opinion above, there should be no difference in treatment between business actors, because every business actor has the same right to try and get legal protection.

b. The More Comprehensive Market Structure Analysis than Analysis of Another Approach in Supporting Indirect Evidence tools.

The analysis of the agreement (especially the unwritten agreement) is used by the KPPU in examining the alleged violation of the pricing agreement. Material elements that can be analyzed from Article 5 Paragraph (1) of Law Number 5 Year 1999, covering: (1) elements of business actors; (2) elements of the agreement; (3) elements of competing business actors; (4) Elements of market prices; (5) elements of goods; (6) elements of services; (7) consumer elements; (8) elements of the relevant market; (9) elements of the joint venture.

In order to further analyze the "relevant market elements", KPPU uses KPPU Regulation Number 3 of 2009 concerning Guidelines for Implementation of Article 1 Number (10) on Related Market Based on Law Number 5 Year 1999. The "relevant market" element can be analyzed from: (1) Elements of the market; (2) the reach or marketing area; (3) elements of business actors; (4) elements of the same or similar or substitution.

Article 1 Number (11) of Law Number 5 Year 1999, stipulates that:

"Market structure is a market condition that provides guidance on aspects that have an important influence on the behavior of business actors and market performance, including the number of sellers and buyers, barriers to entry and exit markets, product diversity, distribution systems and market share control".

KPPU Regulation Number 4 Year 2011 regulates the various additional analytical alternatives for indirect proving purposes. The indirect evidence referred to relates to the fulfillment of elements of the unwritten agreement and is a prohibited pricing agreement form in Article 5 paragraph (1) of Law Number 5 Year 1999. The additional supplementary analysis includes: price pricing rationality, market structure analysis, Analysis of performance data and analysis of the use of collusion facilities.

In the rationality analysis of pricing, there are at least two types of rationality that must be proven. First: there is a strong motive that price-fixing agreements are mutually beneficial, eg in a concentrated market and on the decline in demand, while fixed costs and overcapacity are considerable. Secondly: there is a strong reason that the action of the pricing agreement is not inconsistent with the interests of the company if it acts on its own. For example: a company without participating in a price agreement, can earn the same or even higher profits from the deal.

Performance data analysis is needed to verify whether market performance information describes a coordination or agreement result. For example: market performance that shows the very high profit levels that firms in the market, or excessive price levels that can not be explained by input costs.

Analysis of the use of collusion facilities, used to ensure collusion agreements that can be run and monitored. Business actors involved in a collusion will use several instruments to facilitate the success of a collusion. The commonly used instruments are:

a. Resale Price Maintenance (RPM).

This practice can be used to minimize price variations at the consumer level.

b. Most Favored Nation (NFN)

This practice can be used to minimize the incentive of giving a lower price than the deal price.

c. Meeting Competition Clause.

This practice is used to obtain information on the price level of other business actors, thus minimizing the incentive to commit fraud.

From the description of three alternatives besides market structure analysis which can be used by KPPU in examining the alleged violation on Article 5 paragraph (1) of Law Number 5 Year 1999, it is seen that the analysis of price rationality has been covered in the analysis of price standardization which is sub Analysis of market structure. Therefore, the regulation of price pricing rationality analysis should not be regulated separately in an alternative of indirect evidence in KPPU Regulation Number 4 Year 2011.

Performance data analysis, which is an analysis of market performance, has actually been covered in the discussion of "speed of information on price adjustment" and "overcapacity" which is a sub-analysis of market structure. Demikian also about "analysis of the use of collusion facilities, which is a chart of the behavior of business actors, which has been covered in the discussion of market structure.

c. Market Structure Analysis Supports the Rule of Reason Approach.

In the settlement of cases violating Law Number 5 Year 1999, KPPU uses the "Per se Illegal and Rule of Reason" approach. The Rule of Reason Approach is an approach to evaluate the effect of a particular agreement or business activity,

to determine whether an agreement or activity is inhibiting or supporting the competition.

Per se illegal is an approach whereby an agreement or business activity is prohibited because the impact of the agreement has been deemed clear and certainly reduces or eliminates competition. Therefore, in this approach, a reporting entity should not prove the impact of an agreement made by its competitor. The necessary evidence is that the agreement in question has been correct or that the business activity has been actually performed by the competing business actor.

The Rule of Reason Approach is an approach used to evaluate the effect of a specific agreement or business activity, to determine whether an agreement or activity is inhibiting or supporting the competition. In other words, to know an act of business actor has implication to fair business competition or monopoly, hence needed economic analysis [15].

The first Rule of Reason approach in the United States was applied in Standard Oil co. Vs. United States in 1911 as a form of interpretation of "The Sherman Act". This case is a joint form that is closely related to 37 oil industry companies that are managed by joint management and controlled through a holding company (Holding Company). The combination is formed through partnerships, mergers and other combinations, including through internal and organizational development. The US Supreme Court found that the combination had commercial elements, and was the worst form of a cartel. The defendants undermine the market's destructive price, which ultimately leads to a uniform price reduction.

Based on the case of Standard Oil vs. United States above, the application of the Rule of Reason approach is

inseparable from the market and the market structure. Approach to the analysis of market structures in order to see the behavior of business actors and market performance in an attempt to undermine market prices by means of uniform price reductions, business actors in this case violate Article 1 and Article 2 The Sherman Act, which result in monopolistic acts.

Article 5 paragraph (1) of Law Number 5 Year 1999 is actually classified as Per se Illegal, it can be seen from its regulation using the word "Business actor is prohibited", and there is no need for further proof of impact Arising out of the agreement or acts of the business actor. However, to see if there has been a pricing agreement by business actors, as well as the impact of business actors that lead to monopoly and unhealthy competition, the KPPU assembly in this case must prove through the Rule of Reason approach. The Rule of Reason approach is concerned with the analysis of the market structure.

From the description of the Rule of Reason approach associated with the analysis of market structure, it can be analyzed that the analysis of the market structure is very helpful for the KPPU assemblies to resolve the alleged violation of Article 5 paragraph (1) of Law Number 5 Year 1999. This reflects that the Rule of Reason is an approach that should be combined with the approach approach of Per se Illegal in reviewing Article 5 paragraph (1).

3.The disadvantages of Market Structure Approaches Used to Analyze the Balance Principle.

a. The Difficulties in Proof of Unwritten Agreement.

Reviewing the violation of the pricing agreement in this respect to, first: KPPU decision No. 08 / KPPU-L / 2005 concerning Provision of imported sugar

survey services by PT. Superintending Company of Indonesia / Sucofindo (Persero) and PT. Surveyor Indonesia (Persero), second: KPPU Decision Number 10 / KPPU-L / 2005 concerning Cartel Trade of salt to North Sumatra, third: KPPU decision number 25 / KPPU-I / 2009 concerning Fuel Surcharge Price Determination.

From the review of 3 (three) KPPU decisions regarding violation of provisions relating to pricing agreements as regulated by Law Number 5 Year 1999, it can be analyzed about the weaknesses in the use of structural approaches that can be related to the application of the principle of equilibrium.

The lack of a structured approach, namely the difficulty of expressly expressing that there has been an unwritten agreement in the form of a covert or covert deal or "deemed to have entered into an agreement".

In Article 1 number (7) of Law Number 5 Year 1999 stipulated on the scope of the agreement, which includes written agreements and unwritten agreements. KPPU Regulation Number 4 Year 2011 stipulates that to support an unwritten agreement, indirect evidence is needed that can be analyzed from various approaches.

After analyzing the three decisions of KPPU (Decision of KPPU Number 08 Year 2005, KPPU Decision Number 10 Year 2005 and KPPU Decision Number 25 Year 2009), then business actors rarely put the agreement into written form. Therefore, to prove that the agreement has been made, the KPPU assembly analyzes from the economic side, among others through the analysis of market structure.

In the regulation of KPPU Number 4 Year 2011, regulation concerning proof of violation of Article 5 of Law Number 5 Year 1999. KPPU in this case use several stages, namely:

1) Immediate Proof Stage.

The first stage of the KPPU assembly is the proof that two or more business actors allegedly entered into a pricing agreement within the same relevant market.

2) Indirect Proof Stage.

At this stage, the KPPU Assembly shall prove the existence of an agreement among business actors alleged to enter into a pricing agreement. In this stage, the use of circumstantial evidence becomes important when no hard evidence is found which states the existence of the agreement.

The indirect evidence sought is proof of communication (but not directly stating the deal), and economic analysis. The use of economic analysis becomes an important key in the use of indirect evidence to prove the existence of agreements.

b. The Conflicts of Legal Arrangements between KPPU and District Court.

In examining business actors or witnesses, KPPU needs evidence that the business actor or witness in question violates Law Number 5 Year 1999. The evidence instruments used by KPPU are different from the provisions of Civil Procedure Law, but almost the same as the provisions of the Code -The Criminal Procedure Code.

The evidence in question is contained in the provisions of Article 42 of Law Number 5 Year 1999, namely: Witness statements; Expert description; Letters and or documents; Hints; Description of Business Actor.

Article 72 Regulation of KPPU Number 01 Year 2010 concerning Procedures for Case Handling, regulates the evidence that can be used by KPPU assemblies in handling cases. The evidence in question is: Witness statements;

Expert opinion; Letters and / or documents; Hints; Reported information.

If the parties filed an objection to the District Court, then the law of Procedure enacted is the Civil Procedure Code, as set forth in Article 8 of the Regulation of the Supreme Court of the Republic of Indonesia Number 03 Year 2005 concerning Procedures for Submitting Legal Objection Efforts to KPPU's Decision, namely:

"Unless otherwise provided in this Supreme Court Regulation, applicable Civil Procedure Law applies to the District Court".

Based on civil procedure law in appealing against KPPU's decision in District Court, it can be analyzed that there is conflict of law enforcement, so there is different understanding on case examination (especially in District Court). Therefore, although the Decision of KPPU Number 08 / KPPU-L / 2005 concerning Service of Survey of Imported Sugar which submitted its objection by the business actors, finally decided not guilty or the business actor does not violate Article 5 Paragraph (1) of Law Number 5 Year 1999. Likewise, when the KPPU objected to the Supreme Court over the South Jakarta District Court Decision, then the Supreme Court decision is the same and based on the decision of the District Court.

4.The Development of Market Structure Approach Analysis in Price Pricing Agreement on KPPU's

Decision on the Balanced Principle of Balance.

The approach of market structure or structure analysis or market power analysis is closely related to market behavior and market performance, and can be analyzed from, first: price standardization; second: product similarity (homogeneous or differentiated product); third: market entry barriers (4): the control of market share (under the provisions of Article 13 paragraph 2 of Law Number 5 of 1999, the control of a market share of 75% for an oligopsony agreement and in the provisions of Article 17 Paragraph 2 sub-paragraph c of Law No. 5 of 1999, market share holders 50% for monopolistic agreements), fifth: production monopoly, sales and distribution.

From a variety of sides, producers vary in terms of ability and determine the high price to be charged (of the cost) and the amount of profits and depend on how much a businessperson's ability to influence the price, without losing customers who switch to a competitor's product or substitute. This capability which in the concept of business competition is known as market power [16].

Market power is a strength for the company to earn profits as much as possible. When a company launches its product, and the product has market power, the consumer will be willing to buy the product even at a high price. In other words, the company will be able to raise the selling price of its products without losing its customers. The strength of the market is closely related to the number of business actors entering the market. In other words, the greater the number of business actors in a market, the lower the concern the business actor has a significant market power. Thus, the pricing of a product, also influenced by market forces.

E. Conclusions

1. The advantages of market structure approach:
 - a. Tend to create more justice for the disputing parties (business actors as reported, competitors and consumer businesses).
 - b. More comprehensive than the analysis of other approaches in support of indirect evidence.
 - c. More supportive of the rule of reason approach.

The disadvantage of market structure approach:

- a. Difficulty in proving an unwritten agreement.
 - b. The existence of conflict of procedural law arrangements used between KPPU and the District Court.
2. The Approach of market structure in KPPU decision should be developed and used to analyze the principle of balance in Business Competition Law especially price fixing agreement by: Arrangement in Government Regulation and Priority to use market structure approach in KPPU decision

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