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Article:	**BUSINESS COMPETITION RELATED TO THE RAPID TEST SERVICE FOR DIAGNOSIS OF COVID-19 IN HOSPITALS IN SURABAYA, INDONESIA**
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ABSTRACT

The cost of rapid tests in several hospitals in Surabaya, Indonesia, turns out to be a burden to patients. These hospitals were suspected of a tying-in agreement which prohibited. This study aims to determine the impact of implementing the tying-in agreement and to deal with violations related to the COVID-19 rapid test's prices. The tying-in agreement on the rapid test facilities procurement is a violation of the law, and the perpetrators can go to prison. This research method is qualitative through a statutory and conceptual approach, equipped with virtual search techniques on several online media news. The study did not find evidence in the form of a written document regarding the hospitals' tying-in agreement but obtained patient admissions and brochures on the price of rapid tests, which had a detrimental effect on patients. The results show the existence of the rapid test's prices impacted the emergence of market access restrictions, creating monopoly markets, disguising price-fixing practices, and harming consumers of price variations. The study considered Government for providing COVID-19 rapid test health facilities at the same price in all hospitals.

Keywords: COVID-19; hospital business; tying-in agreement; public policy; health communication

Introduction

With the increasing number of COVID-19 cases in Indonesia, the government hopes that all people who feel that they have had contact, have symptoms of being infected with the virus, or are even in good health can take a series of rapid tests to make it easier for the government to record cases (Koesmawardhani, 2020). There is no standard treatment for this disease, and other supportive treatments for this disease are only strategies. Although various experiments are underway for vaccine discovery, governments can do their best to prevent this pandemic through prevention with strict protocols (Wu, Chen, & Chan, 2020). Therefore, the Indonesian government has taken a policy to provide mass and rapid inspection service facilities known as the rapid test (Achmad, 2020; Achmad & Arrochmah, 2021; Handariastuti & Achmad, 2020; Muhyidin, 2020).

The rapid test is a technology development with blood testing that can be carried out in hospitals, clinical laboratories, and other licensed places to provide services (Azure Biotech Inc., 2020; ECDC, 2020). Although experts say the rapid test is inaccurate, this sensitive virus examination must be confirmed using laboratory-based Polymerase Chain Reaction (PCR), namely the swab results or swab at the back of the throat (Putsanra, 2020; Yamayoshi et al., 2020).

In line with the government's hope, of course, more and more people are registering themselves as patients so they can get the test results immediately. Due to the high number of requests for services, several hospitals have implemented rapid test packages at high prices because other health service offerings accompany them. The community must bear a high enough cost to access the Rapid Test. In this condition, it is better if the access to the paid rapid test facility provided by business actors, in this case, is a hospital in order to offer competitive prices (Qur'ani, 2020). Regarding price control, the Government of Indonesia has a regulation Article 15 of Law No. 44 of 2009 concerning Hospitals. In this case, the government's obligation to provide health service facilities to carry out the mandate of Article 82 and Article 85 of Law No. 36 of 2009 concerning Health.

In line with the high need for health services during pandemic conditions, several hospitals in Indonesia are expected to apply the principles of fair business competition. In considering the legal substance of antitrust and fair competition, it is necessary to conduct a review with two classifications, namely: (1) Emphasis on preventing the concentration or concentration of economic resources on one or a group of economic actors, such as conglomeration, monopoly, oligopoly, and the cartel. (2) Emphasis on preventing the occurrence of fraudulent business practices (Sardjono, 1999).

Apart from engaging in fair business competition, few business actors engage in unfair business competition practices due to business actors' inability to compete against other competitors in terms of capital, management, and development. Business actors commit acts that are detrimental to consumers and other business actors. When business competition runs dishonestly, against the law, and inhibits competition among business actors, it is categorized as unfair competition (Rokan, 2012).

Indonesia economic system has an obligation towards the realization of the people's welfare, which requires justice for every citizen to participate in the process of production and marketing of goods and or services in a healthy business climate, effective, and efficient (Santoso,

Dewi, Arviani, & Achmad, 2021). So that a healthy and fair competition situation is maintained. On 5 March 1999, the Government of Indonesia, with the recommendation of the House of Representatives, finally issued a law regulating the Prohibition of Monopolistic Practices and Unfair Business Competition, namely Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Hanifah, 2018).

Based on Article 3 of Law No. 5 of 1999 aims to create efficiency in the market economy by preventing monopolies, regulating fair competition and democracy, and implementing sanctions for violations of statutory provisions, both administrative and criminal sanctions (Suhasril & Makarao, 2010). The purpose of implementing Law No. 5 of 1999 is to provide legal certainty and equal protection for every business actor by preventing the emergence of monopolistic practices and unfair competition in a conducive business climate (Setyawati & Audila, 2019).

Literature Review

The unfair business competition consists of three prohibited acts: prohibited agreements, prohibited activities, and dominant position abuse. Furthermore, business activities that can create unfair business competition are supervised by an independent institution, namely the Commission for Supervisory Business Competition (KPPU), which has the authority to resolve cases of violations of monopoly and or unfair business competition practices as well as regulate procedures for handling cases and impose sanctions for violations in business competition law (Banjarnahor, 2017).

In general, the agreements that have been regulated in Civil Code (Burgerlijk Wetboek or BW) adhere to general principles and provisions that apply. Article 1313 BW defines an agreement as an act whereby one or more people bind themselves to one or more other people. In this case, a particular statutory regulation can specifically regulate agreements, as Law no. 5 of 1999 defines the agreement in Article 1 paragraph (7), which states: "An act of one or more business actors to bind themselves to one or more other business actors with any name, either written or unwritten." According to the definition formulated by Law no. 5 of 1999 that the agreement can be in written or unwritten form; both are recognized or used as evidence in business competition cases (Lubis, 2017). The government prohibits several agreements for business actors, namely: Oligopoly, Price Fixing, Price Discrimination, Selling and Loss, Resale Price Arrangement, Territorial Division, Boycott, Cartel, Trust, Oligopsony, Vertical Integration, Exclusive Distribution Agreement, Tying agreements, vertical agreements on discount and agreements with foreign parties (Lubis, 2017).

KPPU is obliged to prove the existence of an agreement if it intends to create monopolistic practices and unfair business competition (Marilang, 2019). KPPU has the authority to (1) Receive reports from the public and or business actors regarding the alleged occurrence of monopolistic practices and or unfair business competition; (2) Research allegations of business activities and or actions of business actors that may result in monopolistic practices and or unfair business competition; (3) Conduct investigations and or examinations of cases of suspected monopolistic practice and or unfair business competition reported by the public or by business actors or determined by the Commission as a result of its research.

The Government of Indonesia officially states that not all state-owned hospitals serve as referrals for handling COVID-19 patients, so that all health services for handling COVID-19 patients are only in a certain number of hospitals. Since 13 April 2020, KPPU decided to conduct a study on the alleged violation of Article 15 paragraph (2) of Law No. 5 1999 for the rapid test service for the diagnosis of COVID-19 in hospitals all over Indonesia. This study initiative was based on the public's complaints regarding the package offering of rapid test services. KPPU Regional IV Office in Surabaya did collaborative work with researchers to do collecting data and shreds of evidence from hospitals in Surabaya. Both parties provided a report finding and analysis and gave recommendations to the Government of Indonesia.

The mass media (offline and online) have an essential role in overseeing the implementation of public policies (Khan, Swar, & Lee, 2014; Noureen, Hussain, & Azeem, 2021). Especially during the COVID-19 pandemic, the mass media must guarantee the certainty of health information about the prevention, handling, and treatment of the COVID-19 virus (academic.droneemprit.id, 2020; Teluma, 2020). The community needs certainty of information to avoid confusion and panic. Social media and online media are needed because of how they convey information (Suratnoaji, Nurhadi, & Arianto, 2020; Tabong & Segtub, 2021). While conventional media such as television, newspapers, and radio are needed because they have the power of persuasion to the public with a cultural approach (Achmad, Ida, Mustain, & Lukens-Bull, 2021; Saeed, Ali, & Nawaz, 2021)

Research Method

This qualitative study is the legal research to find the truth of coherence, namely legal rules according to legal norms in the form of orders or prohibitions by legal principles, and whether one's actions are under legal norms or legal principles (Marzuki, 2019). Legal research is know how activity in legal science, not just know-about. Not just to know something, but to solve existing legal issues. In carrying out legal research, it is not just a process of discovering laws that apply in social life activities. More than that, legal research is also a process of creating laws to solve problems (Cohen & Olson, 2003).

This study uses a statutory approach and a conceptual approach. The statute approach aims to examine all laws and regulations and their contents relating to the relevant legal issues (McConville & Chui, 2007). This study's reference is Law No. 5 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. Furthermore, several regulations relating to the study of implementing closed agreements (tying agreements) by business actors. The conceptual approach analyzes the views of legal experts and doctrines related to the examination of statutory regulations. The conceptual approach helps the author build legal concepts related to alleged violations of the tying agreement (Marzuki, 2019).

This study collected data through the primary sources of law, the secondary sources of law, and any non-law sources. The primary sources of law in the form of statutory regulations, among others: the 1945 Constitution of the Republic of Indonesia; Civil Code (Burgerlijk Wetboek); Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition (State Gazette of the Republic of Indonesia of 1999 Number 33); Law Number 40 of 2007 concerning Limited Liability Companies (State Gazette of the Republic of Indonesia of 2007 Number 106); Law Number 36 of 2009 concerning Health (State Gazette of the Republic of

Indonesia of 2009 Number 144); Law Number 44 of 2009 concerning Hospitals (State Gazette of the Republic of Indonesia of 2009 Number 153); KPPU Regulation Number 4 of 2009 concerning Guidelines for Administrative Actions in Accordance with the provisions of Article 47 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition; KPPU Regulation Number 5 of 2011 concerning Guidelines for Article 15 (Closed Agreement) Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition; KPPU Regulation Number 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition; KPPU Regulation Number 3 of 2020 concerning Relaxation of Law Enforcement of Monopolistic Practices and Unfair Business Competition and Supervision of the Implementation of Partnerships in Support of the National Economic Recovery Program. While secondary sources of law come from legal, scientific texts relevant to research, law books, journal articles, and theses to complement and relate to regulatory analysis.

The data collection included documenting all related legal papers and interviewing eight informants (two staff of the KPPU Regional IV Office Surabaya, four hospitals' staff, and two patients during June-July 2020. Moreover, to collect non-legal material sources, this study used virtual searches to obtain information from various websites and news in online media to support research analysis (Achmad & Ida, 2018). This study conducts a textual analysis of legal documents, virtual searches, and interview transcripts to obtain evidence of alleged business competition in determining rapid test prices at several hospitals in Surabaya. Furthermore, this study explained and discussed findings and provided an alleged solving violation of the tying-in agreement regarding the rapid test based on all available legal materials.

Limitation of the Study

As stipulated in Article 1320 of the Civil Code, in a business agreement, the two parties must have a business actor's status so that there is compatibility between the object and the legal subject. However, this study provides flexible interpretations on concerning the use of evidence, one of which is indications. Indications have the meaning of signs, assessments, market conditions, business actors' behavior, market structures, and news in the mass media (Interview with Mr. AJ from KPPU Regional IV Office, 10 June 2020).

After collecting pieces of evidence from the news in the mass media, this study investigates the market structure to find: other business actors with vertical or horizontal relationships in the production and distribution chain, including the recipient of the rapid-test equipment supply. From tracing the market structure, this study has yet to find out the role of suppliers of other rapid test kits, which could affect the diversity of selling prices (see figure 1).

Figure 1: Video data from Kompas TV "Polemic on Commercialization of Rapid Test: Epidemiologist suggests to Stop Rapid Test."

(source: https://www.youtube.com/watch?v=zqlc5NZLEFE)

Both in terms of equipment procurement to determine the high price of equipment, including not finding evidence of a closed purchase agreement for the rapid test kits between the hospitals and the suppliers. Nevertheless, the reports and complaints of patients about the high cost of rapid-

tests in various mass media (CNN Indonesia, 2020; Dzulfaroh, 2020; Fajar, 2020; Indraini, 2020; Kompas TV, 2020; VIVA.co.id, 2020) can serve as preliminary evidence (see Figure 2)

Figure 2. News from Detikfinance (https://finance.detik.com/berita-ekonomi-bisnis/d-5090204/biaya-rapid-test-hingga-rp-425000-ada-bisnis-di-atas-bencana); Kompas.com (https://www.kompas.com/tren/read/2020/07/02/104400765/mengapa-biaya-rapid-test-berbeda-beda-?page=all);

For this reason, this study proposes a flexible understanding of the legal relationship between the hospitals and the community. On the one hand, patients are consumers or users of goods and or services for their own or other interests (KPPU, 1999). On the other hand, a patient is any person who conducts consultation on their health problems to obtain the necessary health services, either directly or indirectly at the hospitals (Sekretariat Negara RI, 2009). As a patient, people who pay for doing rapid tests are consumers who have the right to receive services from the hospital effectively and efficiently not to suffer physical and material losses (Interview with AF, a patient as a consumer of rapid test, 22 June 2020).

However, this study suspects the possibility of tying-in practices in purchasing rapid test kits from other suppliers or distributors, which requires the sale of other test kits. The rapid test's high price is a burden on the patient because the patient is obliged to pay for a series of other tests included in the rapid test package. Hospitals' main mistake is that they do not provide sufficient information on why these services must be purchased. As a result, patients must simultaneously pay for several health services, including the rapid test cost, without being able to refuse. Patients, in this case, are the losers because the hospital forcibly removes their rights as consumers (Interview Mr. UT, a patient of DS Hospital, 3 July 2020).

Result and Discussion

Implementation of the Tying-in Agreement for Rapid Test Service

A tying-in agreement in the rapid test case shows vulnerability to findings of indications of unfair business competition as contained in Article 15 paragraph (2) of Law no. 5 of 1999. Concerning this case, the study collects data from public and private hospitals in Surabaya that provide rapid test services. Public hospitals are under the management of the central government, local governments, and legal entities that are not for profit. Meanwhile, private hospitals are managed by legal entities in the form of a limited liability company (Sekretariat Negara RI, 2009).

Even though private hospitals have a profit-oriented principle, they are required to comply with the rules in Article 29 paragraph 1 letter f of Law no. 44 of 2009 in conjunction with Article 74 of Law no. 40 of 2007, namely to carry out social functions by providing service facilities for poor or low patients, emergency services without a down payment, free ambulances, services for victims of disasters and extraordinary events, or social services for humanitarian missions. Requirements for establishing a private hospital stated in the Minister of Health Regulation No. 147/MENKES/PER/I/2010 in conjunction with the Decree of the Minister of Health No. 2264/MENKES/SK/XI/2011 concerning Implementation of Hospital Licensing**.**

In connection with the alleged practice of tying Article 15 paragraph (2) of Law no. 5 of 1999 in the rapid test case, this study tried to find evidence of a written agreement. However, this study still has not found any evidence of a written agreement between the hospital and other business actors to enter into a tying agreement that binds the rapid test with other health services. Even though the KPPU Regional IV Office has found many statements and complaints from consumers in the mass media about the high cost of rapid tests (Interview with Mr. AJ from KPPU Regional IV Office, 10 June 2020).

The logic of allegations of violations by the hospitals is based on the investigation of Indonesia's rapid test kit procurement scheme. The procurement of rapid test kits originated from the Ministry of Health of the Republic of Indonesia, distributed to the Provincial Government through Government Procurement of Goods and Services. Furthermore, the provincial government will gradually distribute to all hospitals in districts and cities through the National Disaster Management Agency (BNBP). The procurement of this rapid test kit uses the State Revenue and Expenditure Budget (APBN) and the Regional Revenue and Expenditure Budget (APBD) so that hospitals do not make purchases independently. The hospital that is the priority for receiving the need for a rapid test kit is a referral hospital based on the approvement of the Central Government (Interview with Mr. DM from RS BS, 15 June 2020).

These hospitals get stocks of rapid test kits from the Central Government to ensure compliance with health standards and are safe for domestic needs. Logically, if the source of the stock of goods comes from the government, of course, the price of the rapid test kits for all hospitals is the same and is not expensive. There is nothing wrong with the procurement scheme and the process of distributing the rapid test kits (Interview Ms. IA from ME Hospital, 16 June 2020).

Negative Aspects of Implementing Tying-in Agreement Rapid Test Facilities

This study completed data collection on 22 July 2020. The preliminary findings regarding the price of packages offered by the hospital varied from the range of IDR 500,000 (five hundred thousand rupiahs) to IDR 5,700,000 (five million seven hundred thousand rupiahs) for one test. This variety of prices can harm patients as the rapid test consumers (Interview Ms. LA, a patient of RO Hospitals, 6 July 2020).

In the conditions of the COVID-19 pandemic, hospitals must oblige to carry out Law Number 36 of 2009 concerning Health. Hospitals are resources and facilities for implementing health services as a form of government responsibility in overcoming disasters. Moreover, in emergencies and disasters, all hospitals in Indonesia must provide health services to save human lives (Sekretariat Negara RI, 2009).

An indication of the existence of a tying-in agreement in the rapid test is the provision of additional health products that are not part of the rapid test kit. The rapid test policy provides opportunities for hospitals to sell other health products that are not selling well. The hospitals did not sell the unsold products separately because the selling price had already fallen. Instead of selling at a loss, the hospitals sell the unsold products in rapid test service packages. Such a sales strategy is detrimental to consumers (Interview with Mr. DA from KPPU Regional IV Office,12 June 2020).

If this study succeeds in proving a closed agreement that violates the provisions of Law no. 5 of 1999, then it can become material for reports to KPPU Regional IV Office and continue to be material for decision-making by KPPU at the national level. Furthermore, KPPU can impose administrative sanctions in the form of cancellation of the tying-in agreement. KPPU may decide a fine of at least IDR 1,000,000,000 (one billion rupiah) and a maximum of IDR 25,000,000,000.00 (twenty-five billion rupiah). If the business actors (the Reported Party) ignore the KPPU's decision, the case will proceed to court. The threat of sanctions from the court is in the form of criminal sanctions, accompanied by an additional fine of at least IDR 5,000,000,000 (five billion rupiahs) and a maximum of IDR 25,000,000,000 (twenty-five billion rupiahs). If the convicts cannot pay the fine according to the court's decision, the fine might be replaced with a maximum imprisonment of 5 (five) months (Interview with Mr. DA from KPPU Regional IV Office, 12 June 2020).

This study assesses the negative impact of closed agreements for the procurement of rapid-test equipment because (1) increasing market entry barriers for potential business actors and closes access for competing business actors, (2) increasing the abuse of market forces by imposing price discrimination to maximize profits, (3) requiring consumers to pay more expensive due to higher prices by business actors.

The Efforts to Handle Alleged Violations of Business Competition

As an institution that supervises the implementation of Law no. 5 of 1999, KPPU has stipulated the Regulation of the Business Competition Supervisory Commission Number 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition, as a practical guide in handling cases, with the hope of increasing transparency, fairness and legal certainty in the process of handling cases that are following the principles of good procedural Law (KPPU, 2019). One of the KPPU's powers is to carry out investigations and or examinations of business actors, witnesses, or other parties related to suspected cases of monopolistic practice and or unfair business competition, based on reports and initiatives (Biro Hubungan Masyarakat dan Kerja Sama, 2020).

This study provided a report-based review of shared experiences with community losses due to hospitals' actions sent to the KPPU Regional IV Office in Surabaya. The report was based on qualified data collection on suspected hospitals that have committed violations. KPPU Regional IV Office first received clarification in terms of complete administrative reports, the truth of the reporter's identity and competency, and the suitability of alleged violation of the Law. Furthermore, KPPU Regional IV Office conducted validation and analysis of the data, including identifying hospitals and related parties. The clarification results were not necessary to continue the report to the investigation stage. After handling the report from this study, the handling work unit reports briefly in the Coordination Meeting with KPPU National Office.

Recommendations

The result of the KPPU Regional IV Office and KPPU National Office's coordination meeting was to provide recommendations and considerations to The Indonesian Government based on the findings of potential violations against the provisions in Law no. 5 of 1999. It is necessary to immediately carry out activities to evaluate government policies to harmonize business

competition policies. Evaluation of Government Policy consists of two activities, namely (1) Preliminary Analysis which aims to analyze the potential barriers to business competition from a policy, (2) Advance analysis to see the impact of the policy on business competition.

The result of recommendations from KPPU is the issuance of a Decree of the Ministry of Health of the Republic of Indonesia by the Director-General of Health Services, with Number HK.02.02/I/2875/2020 concerning the Limit on the Highest Tariff for Antibody Rapid Test Service. The purpose of price restrictions is for hospitals and other health facilities to comply with the highest tariff limit, namely IDR 150,000 (one hundred and fifty thousand rupiahs), and to provide certainty for the public to get COVID-19 diagnosis Rapid Test services quickly and cheaply (Nugraheny & Meiliana, 2020).

The price-fixing for the Rapid Test diagnosis for COVID-19 is a form of the Government's responsibility, as contained in Article 6 paragraph (1) letters b and e of Law No. 44 of 2009. The Government obliges protecting the community using hospital services (getting services quickly and at a reasonable price) and guaranteeing the financing of health services in hospitals for the poor or people who cannot afford the opportunity to get an equivalent Rapid Test service.

Conclusion

This study produces a report to KPPU Regional IV Office on the experience of public losses due to hospitals' actions in Surabaya, which impose a variety of rapid test fees. KPPU Regional IV Office first obtained clarification from this study in terms of the completeness of reports, the correctness of researchers' identity and competence, the suitability of alleged violations of the law, and evidence collected (including identifying hospitals and patients as rapid test consumers). From the results of data clarification and validation, KPPU Regional IV Office continued this study's results in a coordination meeting with the National KPPU. The coordination meeting was to provide recommendations and considerations to the Government of Indonesia regarding potential violations of the provisions in Law no. 5 of 1999.

For this reason, the Government needs to immediately conduct a policy evaluation on rapid tests to harmonize policies in terms of business competition. The result of the national KPPU's recommendation is the issuance of a Decree of the Ministry of Health of the Republic of Indonesia by the Director-General of Health Development Number HK.02.02/I/2875/2020 concerning Limitation of the Highest Tariff for rapid test services. The decree binds all hospitals and other health facilities to meet the highest tariff limit, namely IDR 150,000 (one hundred and fifty thousand rupiahs). This decision can assure the public that they can obtain cheap and high-quality rapid-test diagnosis services.

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