



## Law Enforcement On Distributors Who Retail Goods To Consumers In The MSMEs Sector

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### ABSTRACT

Distributors and retailers have a relationship in running their business. Their relationship creates business competition. Business competition is legitimated as long as it does not break the existing regulations. Distributors retail goods to consumers, it has a detrimental impact on retail traders. It requires a more in-depth study related to business competition law reviews about this case, especially on analyzing the existence of unfair business competition and seeking legal certainty for law enforcement. Relates to distributors who direct retail their goods to consumers. This research method use in this research was juridical normative, which uses a statutory approach with secondary data sources. There are indications of abuse of dominant position related to monopolize the market. It is regulated in Law Number 5 of 1999 concerning Monopolistic Practices and Unfair Business Competition against the distributor's actions. That action is regulated on Number 22 of 2016 concerning General Provisions of trade minister for the Distribution of Goods which prohibits the distributor who retails their product to consumers clearly and the sanctions. Therefore, law enforcement is carried out based on the provisions of these regulations.

**Keywords: MSMEs; Competition Law; Distributor; Retailer.**



## INTRODUCTION

Micro, Small, and Medium Enterprises (MSMEs) is the largest business group. During the economic crisis, they can defend themselves from various market shocks. The existence of MSMEs cannot be eliminated from current social life.<sup>1</sup>

According to the Cooperatives and MSMEs Ministry's latest data, in 2018, the number of MSMEs in Indonesia was 64.2 million. It could absorb 117 million workers from the total Indonesian workforce in 2018 of 133.9 million people.<sup>2</sup> The data above shows that MSMEs' existence has a very strategic impact, especially in accommodating the number of workers and slowly reducing the unemployment rate.

The number of business actors in a market that will create business competition is an absolute condition.<sup>3</sup> Business actors realize that it is normal to seek maximum profit in the Business. However, it would be better if profits were obtained through fair business competition as stipulated in the constitution.<sup>4</sup> Small entrepreneurs' most difficult obstacles are capital, company financial management, access to marketing, and multi-business focus.<sup>5</sup> Therefore, to maintain MSMEs' existence, the government formed Law Number 5 of 1999 concerning the Prohibition of Antitrust Act and Unfair Business Competition. It was also supported by the formation of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises to form a conducive business climate. It can ensure equal business opportunities for large businesses, medium businesses, and small businesses. Then, it can increase micro, small, and medium enterprises' competitiveness through fair business competition.

<sup>1</sup> Suhartono, A.P. dan Wiryawan, I. W. (2013), "Kajian Yuridis Mengenai Persaingan Usaha antara Usaha Mikro, Kecil, Menengah (UMKM) dengan Minimarket." *Jurnal Kertha Semaya*. 1(10) p.2

<sup>2</sup> Financial minister RI. UMKM Bangkit, Ekonomi Indonesia Terungkit. *Artikel DJKN*. Retrieved from, <https://www.djkn.kemenkeu.go.id/artikel/baca/13317/UMKM-Bangkit-Ekonomi-Indonesia-Terungkit.html#:~:text=Menurut%20data%20Kementerian%20Koperasi%2C%20Usaha,jumlah%20pelaku%20usaha%20di%20Indonesia.>

<sup>3</sup> Nugraha, P.P., Dharmakusuma, A.A.G.A. (2016). "Perlindungan Hukum Usaha Mikro, Kecil Dan Menengah Dalam Pelaksanaan Kemitraan Dari Perspektif Undang-Undang No 5 Tahun 1999." *Jurnal Kertha Semaya*. 4(2) p.2

<sup>4</sup> Nurhayati, Y. (2011). "Konstitusionalitas Perjanjian Distribusi dalam Persaingan Usaha Sehat". *Jurnal konstitusi*. 8(6), p.1025

<sup>5</sup> Yusri, (2014). "Perlindungan Hukum Terhadap Usaha Mikro, Kecil Dan Menengah Dalam Perspektif Keadilan Ekonomi." *Kanun Jurnal Ilmu Hukum*. 16(1). p.105



Micro, Small, and Medium Enterprises have several criteria that have been regulated in several legal regulations. Based on article 6 of Constitution Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (MSMEs), several criteria define Micro, Small, and Medium Enterprises. As described in the article criteria, it illustrates that each level of MSMEs has their respective roles as distribution business actors. According to article 1 of the Minister of Trade Regulation Number 22 of 2016 concerning General Provisions for Goods Distribution. Distribution business actors are divided into distributors, sub-distributors, agents, sub-agent, wholesalers, and retailers.

There are two ways to distribute goods domestically, namely direct and indirect distribution.<sup>6</sup> A direct selling system carries out the direct distribution. According to the Law, it can only be carried out by authorized sellers who have been registered as members of direct selling companies with exclusive distribution rights.<sup>7</sup> Meanwhile, indirect distribution distributes goods activity using a general distribution chain, namely through agents and their networks and distributors and their networks.<sup>8</sup> An indirect distribution that uses distributors and their networks consist of distributors, sub-distributors, wholesalers, and retailers.

A distributor's role does not have a registration mark for the exclusive distribution rights, namely supplying his goods directly from the producer by way of appointment or standing on his behalf and selling it to distribution business actors below the network level. Therefore, the price obtained by the distributor must be close to the product price. Then, the distributor can sell an item cheaper than a business actor below its distribution level. Those are retailers whose supplies come from distributors, sub-distributors, agents, sub-agents, wholesalers. However, recently we often meet distributors that open opportunities for consumers to buy their goods at retail. Based on a Central Statistics Agency (BPS)

<sup>6</sup> Article 2, Regulation of the Minister of Trade Number 22 of 2016 concerning General Provisions for the Distribution of Goods

<sup>7</sup> *Ibid*, art. 16

<sup>8</sup> *Ibid*, art. 3



survey, consumers tend to buy a strategic commodity product directly to wholesalers or agents rather than buy them from retailers.<sup>9</sup>

Those explanations explain that distributors and retailers have a relationship in a particular market. Therefore, to regulate the relationship between distributors and retailers, we need a rule called the Law of Business Competition. It is necessary maintaining MSMEs' existence in Indonesia. It is expected to balance the distribution business actors and legal judgments to pretend large business actors or distributors harm Micro, Small, and Medium Enterprises actors. Based on the background above, the issues in writing this journal are: (1). Is a distributor who retail goods to consumers classified as unfair business competition? (2). How is law enforcement on distributors who retail goods to consumers in the MSME sector?

#### RESEARCH METHOD

Writing in this journal is descriptive analysis with the type of normative juridical research. It is a research method by examining specific laws and regulations and certain legal rules' principles to view and analyze problems. The problem to be examined using a statutory approach, namely the approach by examining norms in all laws and regulations concerning the current faced problems (legal issues). The data source that will be used by the writer in this research is secondary data with library research

#### RESULTS AND DISCUSSIONS

##### Review of the Business Competition Law on distributors who retail goods

Business competition law or competition law is a legal rule that regulates companies or business actors' interaction or relationship in a market. Competition law determines how competition should be.<sup>10</sup> Business competition law is expected to protect the people's welfare from monopolistic Acts and create a conducive business climate. It is expected can

<sup>9</sup> Candra, S.A. (2016, December 15). "Konsumen Indonesia Mulai Beralih ke Pedagang Besar Dibandingkan Eceran," *Republika.Id*. Retrieved from, <https://republika.co.id/berita/ekonomi/makro/16/12/15/oi7u6n383-konsumen-indonesia-mulai-beralih-ke-pedagang-besar-dibandingkan-eceran>, Accessed on July 20, 2020

<sup>10</sup> Suhartono, A.P. dan Wiryawan, I. W, *Loc.Cit*



create an effective and efficient business activity, as stated in the objective of the formation of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (antitrust Act)<sup>11</sup>

Business competition law is support for business actors in maintaining their Business. However, every business actor must also create an integrated way of surviving in his Business to meet market demand. It is a simple measure that no one has absolute loyalty to a product or service in the market, but how these products and services can meet market satisfaction. The incentives are given because the market will be a need them. Those market conditions require business actors to always be creative in maintaining their Business. Likewise with distributor business actors who maintain their Business as a retailer).<sup>12</sup>

The distributors carry out their duties as a distribution chain by selling goods offered at a much lower price than retailers. It is because the source of the distributors' goods suppliers comes directly from cooperating producers. Usually, distributors sell their goods with the requirement, such as purchasing one type of goods in large quantities. However, in increasing their income, they open up a larger market share by opening up opportunities to buy their retail model goods. Then, they get the same unit price as given to retailers.<sup>13</sup> This condition affects retail traders who will find it challenging to compete for the price with the distributors. This condition increases the barriers for retail traders or retailers to develop their markets. The barriers case is not by the objectives of the formation of Law Number 5 the Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition as discussed in the previous paragraph. This situation is similar to the violation impact of article 19 of Law Number 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. It prohibits business actors, either individually or collectively, from carrying out one or several activities that give rise to

<sup>11</sup> Meyliana, D. (2013), *Hukum Persaingan Usaha (Studi Konsep Pembuktian Terhadap Perjanjian Penetapan Harga dalam Persaingan Usaha)*. Malang: Setara Press. p.13

<sup>12</sup> Hertanto, A.W. (2007). Aspek Hukum Perjanjian Distributor dan Keagenan (Suatu Analisis Keperdataan). *Jurnal Hukum dan Pembangunan*. 37(3). p.382

<sup>13</sup> Suvandy, A. (2021, January 4). Interview by Livia,S.



monopolistic or unfair business competitive practices. The letter "A" states, "*refusing and or preventing certain business actors from carrying out the same business activities in the relevant market.*"<sup>14</sup> However, market domination is an action that is closely related to having a dominant position and significant market power in the relevant market.<sup>15</sup> Suppose business actors, either individually or collectively, do not have a strong position in the relevant market. In that case, market control will be difficult to achieve. The statement follows the provisions of the guidelines for implementing Article 19 of Law Number 5, the Year 1999, issued by the Business Competition Supervisory Commission.

This definition illustrates that a dominant position is a condition of the business actor does not have significant competitors in the relevant market. It relates to the market share controlled or its financial capacity, access to supply or sales, and the ability to adjust the supply or demand for goods or specific services. Then, it makes that they the highest position among other competitors in the relevant market.<sup>16</sup> With further explanation in Article 25 paragraph (2) of Law Number 5 the Year 1999, which characterizes the presence of a dominant position, seen in the control over 50% of the market share of one type of goods or services.

The business actors who have a dominant position are not prohibited. However, the prohibitions arise when there is an abuse of their dominant position.<sup>17</sup> It excludes or restricts other business actors from entering the market or exploiting consumers or other business actors.<sup>18</sup>

In the case of a distributor who retails their goods, the distributor's actions are not against the retailer's presence. They also benefit from having retailers who supply goods

<sup>14</sup> Business Competition Supervisory Commission. (2012). *Draft Pedoman Pelaksanaan Ketentuan Pasal 19 Undang-undang No. 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat*. Retrieved from, <https://www.kppu.go.id/wp-content/uploads/2012/03/Pedoman-Pasal-19.pdf>

<sup>15</sup> Lubis, A.F., et al. (2009). *Hukum Persaingan Usaha Antara Teks & Konteks*. Jakarta: KPPU p.83

<sup>16</sup> Article 1 point 4, Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition

<sup>17</sup> Alfarizi, M.F., Endrawati, L., & Widhiyanti, H.N. (2014). "Penyalahgunaan Posisi Dominan Dalam Perspektif Kejahatan Korporasi Berdasarkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat." *Jurnal Hukum Fakultas Hukum Universitas Brawijaya*. April 2014. p.4

<sup>18</sup> Margono, S. (2009). *Hukum Anti Monopoli*. Jakarta: Sinar Grafika. p.125



from distributors. Distributors also do not exploit consumers. Instead, distributors benefit consumers by offering lower prices. These distributors also have significant competitors from distributors who offer different products. However, its ability to have a large capital makes it easier for them to access producers to get their goods at lower prices and close to production prices. Thus, they were making it a higher position than retailers in offering prices to consumers, which are used to develop distributor capacity.

Based on the description above, it can be said that it is true that the distributor has a domination indication. He also uses his domination to develop his market to get a higher income, which by his actions, either deliberately or unintentionally, limits retailers to survive in the market. This case focused on distributors who retail goods to consumers. It does not have the element of market share control as contained in the dominant position's characteristics. However, the guidelines for article 25 of Law Number 5/ 1999 issued by the Business Competition Supervisory Commission. It explains that evidence of abuse of dominant position does not always have to be accompanied by market share control. It can be the domination related to market control in article 19.

Due to the previous explanations, distributors of retail goods to consumers may be classified as engaging in unfair business competition. It can violate Article 19 of Law Number 5, the Year 1999, regulating market control. However, static laws have limitations in answering all emotional problems in detail. Therefore it is necessary to have regulations that support the regulation of business competition in more detail. Then, the Minister of Trade Regulation No. 22/2016 on general provisions for distributing goods has been amended to the Minister of Trade Regulation No. 66/2019. The regulation clearly states that distributors are prohibited from retailing goods to consumers. Article 1 of Law Number 5 of 1999 defines unfair business competition in the form of "*competition between business actors in carrying out production and or marketing activities of goods and or services carried out dishonestly or illegally or hindering business competition.*" Distributors retail goods are engaging in unfair business competition because they have violated the law by violating Regulation of the Minister of Trade Number 22 of 2016, precisely in article 19.



### Law Enforcement of the Goods Distribution

Distributors who retail goods as previously explained, are classified as engaging in unfair business competition. Referring to the provisions of Law Number 5 Year 1999, these activities violate Article 19 and / or Article 25 of the Anti-Monopoly Law, namely that they can be categorized as market control behavior and / or dominant position. Violation of those articles according to the same law in article 48 stipulates that in law enforcement, each violation should be given sanctions in the form of criminal sanctions as low as IDR. 25,000,000,000.00 (twenty-five billion rupiahs) and a maximum of IDR 100,000,000,000.00 (one hundred billion rupiahs), or imprisonment instead of a fine of no longer than 6 (six) months. The Business Competition Supervisory Commission (KPPU) carries out every law enforcement implementation regulated in Law Number 5/1999.<sup>19</sup> They can take action when there is a public report or the KPPU's initiative to investigate<sup>20</sup> with all the enforcement procedures in accordance with "Business Competition Supervisory Commission Regulation Number 1 of 2019 concerning Procedures for Handling Cases of Monopolistic Practices and Unfair Business Competition. However, what if the violation is committed by a Micro, Small, and Medium business actor distributor?

In-Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Antitrust Law), there is an exceptional article, which regulates matters that are excluded from the enactment of the law, one of which is certain parties which in article 50 letter h of the Antitrust Law, mentions: "*Exempted from the provisions of this Law are Business actors classified as small businesses.*"<sup>21</sup>

A small business is an independent, productive economic business run by an individual or business entity. It is not a subsidiary or branch of an owned, controlled, or directly or

<sup>19</sup> Sukarmini, W., Idrus, N.S. (2020). "Penerapan Prinsip Efektivitas Dan Prinsip Transparansi Dalam Penyelesaian Perkara Persaingan Usaha Oleh Komisi Pengawas Persaingan Usaha (KPPU)." *Jurnal Yuridis*. 7(1). P.49

<sup>20</sup> *Ibid.* p.51

<sup>21</sup> Marlissa, D.R. (2015), "Upaya Hukum Pemerintah Kota Yogyakarta Untuk Mencegah Penyimpangan Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Tidak Sehat oleh UMKM." *Jurnal Fakultas Hukum Universitas Atma Jaya Yogyakarta*. Juli 2015. p.4



indirectly part of a medium or large company, which meets the Small Business's criteria referred to in Law Number 20 of 2008.

The exemption from Law Number 5 /1999 applies to small business actors and micro-business actors.<sup>22</sup> Suppose a distributor whose retail goods are still classified as a small or micro business. In that case, all the provisions contained in the antitrust law do not apply to him. It is different if a distributor whose retail goods are classified as a medium-sized business actor. The rules and sanctions related to the antitrust law apply as long as market control and dominant position criteria are met.

The exception of Law Number 5 of 1999 against Small Businesses is intended to maintain small business actors' existence. Then, it is considered that all forms of violations committed do not significantly impact the economy in the broader community.<sup>23</sup> However, in the case of distributors in the MSME sector who sell goods in retail, if it is carried out by many distributors, and it continues for a long time, it will be detrimental to many retail traders in Indonesia. In the search for regulations on law enforcement against distributors as MSME actors who sell goods at retail to consumers, then refer to letter k in article 12, paragraph 2 of Law Number 23 of 2014 concerning Regional Government (as referred to in Law No.23 of 2014). Small businesses are placed in mandatory government affairs which not related to basic services. By letter q number 7 and 8, attachment of Law No.23 of 2014, second-level regions are given the authority to carry out guidance and development of micro, small and medium enterprises and create new business actors. Government Regulation Number 17 of 2013 concerning implementing regulations for Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (as referred in PP No. 17 of 2013) describes the form of MSME development. It is carried out not solely focused on developing MSMEs but also on control over MSMEs' actions.

<sup>22</sup> Business Competition Supervisory Commission. (2011). *Peraturan Komisi Pengawas Persaingan Usaha Nomor 9 Tahun 2011 Tentang Pedoman Pasal 50 Huruf H Undang-undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat*. Retrieved from, <https://kppu.go.id/wp-content/uploads/2011/09/Perkom-9-Pasal-50h.pdf>

<sup>23</sup> Jauhari, H. (2008). "Tinjauan Pengecualian Undang-Undang NO5 Tahun 1999 Bagi Usaha kecil dan Koperasi." *INFOKOP*. 16-September 2008. p.56



The exception in Law Number 5 of 1999 against small businesses does not make local governments look at MSME development aspects. An aspect that is no less important, namely related to the possibility of fraud by small businesses, must also be reviewed included in regulations governing MSMEs.<sup>24</sup>

Regarding the state of the regulation in Law Number 5 of 1999 which does not regulate in detail and some exceptions in the Law, as well as Government Regulation Number 1 of 2013 which focuses only on violations of MSMEs, but is not detailed regarding violations in the distribution of goods, then The Minister of Trade Regulation Number 66 of 2019 in conjunction with the Regulation of the Minister of Trade Number 22 of 2016 concerning General Provisions for the Distribution of Goods appears as a clearer regulation to enforce the law on distributors who sell goods in retail to consumers carried out by MSME players.

Article 19 paragraph (1) Minister of Trade regulation number 22 of 2016 stipulates that "*distributors, sub-distributors, wholesalers, wholesalers, agents, and sub-agents are prohibited from retailing goods to consumers.*" The article is clear regarding the conditions that occur. Distributors whom retail goods violate this article, and there are no further provisions in the Minister of Trade Regulation Number 22 of 2016 and Number 66 of 2019 concerning exceptions made by MSMEs. Therefore, law enforcement in this case will refer to that Minister of Trade Regulation. Distributors who violate article 19, according to article 25 are subject to administrative sanctions, which are given in stages, in the form of:

1. Written warning
2. Business license suspension
3. Business license revocation

In law enforcement, distributors who retail goods will refer to the Regulation of the Minister of Trade Number 36 of 2018. It concerns the Implementation of Supervision of Trade Activities, which can be carried out through periodic supervision or special supervision based on:

1. Complaints from the public;

<sup>24</sup> Marlissa, D.R. *Op.Cit.* p.6



2. Information through print media, electronic media, other media; or
3. Other information related to trading activity issues

The authority to carry out supervision belongs to the Minister of Trade, who has the right to delegate his authority to the Director-General. Then, the director-general can also delegate his authority to the Director, in this case, the Director of distribution. In carrying out the supervision, the Minister will appoint a Trade Orderly Supervisory Officer (PPTN) and a Trade Civil Servant Investigator (PPNS-DAG).

In the follow-up, PPTN or PPNS-DAG will supervise directly in the field, with the results found will be reported to the head of the unit. Suppose the distributor is proven to retail their goods to consumers. In that case, the supervision report will recommend the first sanction, namely a written warning. Suppose the distributor business actor does not heed the written warning. In that case, the next sanction will be given, up to the business license revocation.

The Minister of Tradeable is not only to enforce the law on distributors who retail goods to consumers, but this authority also belongs to the Governor. The latter can delegate authority to the Head of the Provincial Service for Trade. However, unlike the Minister who can carry out trade supervision at the national level, the Governor's authority is limited to his working area.

## CONCLUSIONS

The distributor is one of the distribution business actors and retail traders, but they have different roles. Between the two businesses, actors have a relationship that must be regulated in the business competition law. The distributor retails goods to consumers. It means they violate the law of business competition. This action causes the retail trader to face difficulties in developing their market due to competing on price. However, this case has not been regulated in Law Number 5/ 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. However, there is an indication that these activities cause a similar impact that may arise if market control activities occur as stipulated in article 19 of the antitrust law. It is stated in all the elements in the guidelines



regarding market control. In that case, there is a connection with the dominant position ownership. A dominant position becomes prohibited if there is an abuse of that position. In the case of distributor's retail goods to consumers, it is proven that they have a dominant position to maintain their Business. However, they do not contain elements of dominating market share of up to 50% and above. Therefore, the distributor's actions are not classified as absolutely abusing the dominant position in Article 25 of Law Number 5/1999, but rather the dominant position related to market control. It can be concluded that it is included in the Act of unfair business competition.

Of the existing regulations regarding law enforcement against distributors who sell goods at retail to consumers, it is most appropriate to refer to the Regulation of the Minister of Trade Number 6 of 2019 jo. Regulation of the Minister of Trade Number 22 of 2016 concerning General Provisions for the Distribution of Goods, because there are articles that clearly regulate sanctions for distributors who sell goods at retail and there are no exceptions that limit the application of this Regulation. In the implementation of law enforcement, it starts from the supervision which becomes the authority of the Minister of Trade in the national scope and the Governor's authority in his working area's scope. Following the provisions of the Minister of Trade Regulation Number 22 of 2016, if there is a distributor who sells goods at retail to consumers, they will be subject to administrative sanctions in stages. At the initial stage, a written warning will be given. If the warning is not heeded, the next step will be to freeze the business license. However, suppose the distributor also ignores the two sanctions. In that case, the final step is in the form of revoking the business license. If the business license is revoked, the business actor will no longer be able to conduct trading until the business license is returned

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