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Dominant Position in the Aviation Industry: Case Analysis of Appointment of Strategic Business Partners (Wholesaler) By PT.Garuda Perspective UU No. 5 of 1999

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Abstract

In 2019, PT. Garuda Indonesia (Persero) Tbk. introduced the Indonesian Jiddah flight route for Umrah services, employing a wholesaler mechanism through the appointment of strategic business partners. This exclusive arrangement limited Umrah ticket reservations to specific partners and raised concerns about PT. Garuda's potential dominance in the market, which could lead to violations of business competition laws. The aim of this research is to analyze PT. Garuda's behavior in appointing these strategic partners and assess its potential for abusing its dominant position. Additionally, it examines the authority of the Business Competition Supervisory Commission (KPPU) in addressing allegations of PT. Garuda's abuse of its dominant position and explores the broader implications of such abuse on market competition. This study employs a normative juridical approach, scrutinizing relevant statutory regulations and adopting both statutory and case approaches to provide insights into the market concentration and its potential impact on competition.

Keywords: Dominant position, Market control, Wholesaler., PT. Garuda Indonesia

Abstrak

Pada tahun 2019, PT. Garuda Indonesia (Persero) Tbk. memperkenalkan rute penerbangan Jiddah Indonesia untuk layanan umrah, menggunakan mekanisme grosir melalui penunjukan mitra bisnis strategis. Pengaturan eksklusif ini membatasi pemesanan tiket umrah hanya pada mitra tertentu dan menimbulkan kekhawatiran terhadap PT. Potensi dominasi Garuda di pasar yang dapat berujung pada pelanggaran hukum persaingan usaha. Tujuan dari penelitian ini adalah untuk menganalisis PT. Perilaku Garuda dalam menunjuk mitra strategis tersebut dan menilai potensi penyalahgunaan posisi dominannya. Selain itu juga mengkaji kewenangan Komisi Pengawas Persaingan Usaha (KPPU) dalam menyikapi dugaan PT. Penyalahgunaan posisi dominan Garuda dan mengeksplorasi implikasi yang lebih luas dari penyalahgunaan tersebut terhadap persaingan pasar. Studi ini menggunakan pendekatan yuridis normatif, dengan meneliti peraturan perundang-undangan yang relevan dan mengadopsi pendekatan hukum dan kasus untuk memberikan wawasan mengenai konsentrasi pasar dan potensi dampaknya terhadap persaingan.

Kata Kunci : Posisi Dominan, Penguasaan Pasar, Pedagang Besar., PT. Garuda Indonesia

INTRODUCTION

Dominant position is a condition of market concentration due to the behavior of business actors regarding the distribution of goods or services. Such conditions have the potential to give rise to abuse of a dominant position which can be detrimental and reduce the level of welfare of other business actors. Therefore, it is prohibited by Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. A dominant position is not prohibited by the Business Competition Law (Shirazi, 2006). However, you must be careful because it has the potential to lead to abuse of a dominant position which could be the beginning of a violation of the Business Competition Law. Business actors have

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a strong position if they are single-firm exclusionary in the relevant market (Widhiyanti, 2022) (exclusive single company). Business actors who have market power tend to control the prices of goods or services in the relevant market, which can take the form of selling at a loss (predatory pricing) so that they can kill their competitors and also determine production costs fraudulently. This is why abuse of a dominant position is prohibited in anti-monopoly law. In Article 1 letter (d) of Law Number 5 of 1999 'Concerning the prohibition of monopolistic practices and unfair business competition', it is explained regarding the formulation of a dominant position that dominant position is a situation in which a business actor does not have significant competitors in the relevant market in relation to the market share controlled, or the business actor has the highest position among its competitors in the relevant market in relation to financial capacity, ability to access supplies or sales, and ability to adjust supply or demand for certain goods or services (Law Number 5 of 1999). Furthermore, article 25 paragraph (2) of the Business Competition Law states that business actors have a dominant position if:

1. One business actor or one group of business actors controls 50% (fifty percent) or more of the market share of a particular type of goods or services or
2. Two or more business actors or groups of business actors control 75% (seventy five percent) or more of the market share of one particular type of goods or services. Therefore, in this article, business actors are prohibited from using a dominant position to:
    a. Establishing terms of trade so as to prevent consumers from obtaining goods and/or services that compete both in terms of price and quality or
    b. Limiting market and technological development or
    c. Inhibit other business actors who have the potential to become competitors from entering the relevant market.

This research will raise the issue of abuse of dominant position at PT Garuda related to the case of appointing a strategic business partner (wholesaler) in marketing Umrah tickets. PT. Garuda, which is one of the state-owned companies operating in the airline sector, markets air transportation tickets to and/or from Jeddah and/or Medina for Umrah purposes through a wholesaler mechanism, namely by appointing a special business partner. Through the publication of GA Info Number: 001/GA/NH/III/19 concerning Information on MEA Route Ticket Sales Services (effective March 2009), and GA Info Number: 001/GA/NH/III/19 concerning Information on MEA Route Ticket Sales Services (effective March 1, 2019, revision 1). With this wholesaler mechanism, 6 (six) Umrah Travel Organizers (PPIU) were formed who have the authority to sell Umrah tickets to the public. The six business partners in the wholesaler mechanism are as follows:

1. PT Smart Umrah (Kanomas Arci Wisata)
2. PT Maktour (Makasar Toraja Tour)
3. PT NRA (Nur Rima Al Wali Tour)
4. PT Wahana Mitra Usaha (Wahana)
5. PT Aero Globe Indonesia
6. PT Pesona Mozaik

The establishment of a consortium of strategic business partners (wholesalers) within PT. Garuda as the airline has closed the Umrah ticket reservation service for people who previously made reservations directly via; the sales office, ticketing office and branch office have switched to the wholesaler business partner network that has been established by PT. Garuda (Persero) Tbk. So with the behavior of PT. Garuda has resulted in the Umrah pilgrimage market being concentrated in only the five designated business actors and creating market barriers for the majority of Umrah Pilgrimage Organizers (PPIU),

numbering around 302 (three hundred and two) throughout Indonesia. The study is related to the dominant position of a company It is still important and relevant to do this because from several previous studies there has never been one whose object of study was a dominant position as a result of the behavior of business actors, as research by Maulidiana & Renaldy (2020) in his article entitled "Unlimited Share Ownership in a Group of Companies Which Results in the Emergence of a Dominant Position" the article emphasizes that the emergence of a dominant position is due to the existence of unlimited share ownership in a group of companies. Next is Setyawati & Pradana (2022) with the article "Abuse of Dominant Position by Dominant Business Actors Through the Use of Price Algorithms", in this study abuse of dominant position of price algorithms has the potential to cause discrimination and price fixing that is detrimental to consumers. Furthermore, research by M. Alfi Hasbullah (2021) examines the debate on the definition and criteria of dominant position from a regulatory and economic perspective. This research examines the debate and controversy regarding the definition of dominant position as stated in the formulation of business competition law in several countries . The study above has a different aspect when compared to the author's study which emphasizes the behavior of business actors which leads to a dominant position, giving rise to abuse of a dominant position which is prohibited by the Business Competition Law. Next, the author examines the problem; related to PT's behavior. Garuda in appointing a strategic business partner (wholesaler) has the potential to abuse its dominant position, the authority of the business competition supervisory commission (KPPU) in connection with the behavior of PT. Garuda which has appointed a strategic business partner (wholesaler) and the impact of the dominant position on the business competition market.

RESEARCH METHOD

The method used in this research is normative juridical, namely examining positive legal norms in the form of laws and regulations related to business competition rules, legal principles (Rahayu, 2020), legal doctrine in order to answer legal issues related to the dominant position of PT. Garuda Indonesia. Approach used:

1. Legislation (statue approach), namely reviewing applicable laws relating to research material
2. Conceptual approach by examining the doctrines of legal experts
3. Case approach by examining the application of norms contained in cases of violations of business competition law, in this case KPPU decision No. 06/KPPU-L/2020 (case of wholesaler appointment by PT.Garuda).

The aim of this research is to analyze and find the dominant position of PT. Garuda in appointing wholesaler for worship ticket sales.

RESULTS AND DISCUSSION

PT Garuda's dominant position in Umrah ticket sales

PT. Garuda Indonesia is one of the State-Owned Enterprises (BUMN) Persero, based on deed number 8 dated March 4 1975 Jo. LN. 68 August 1975 which operates in the airline sector with domestic and international flight routes; Australia, China, Europe, Middle East Middle East includes Jeddah and Medina, Southeast Asia. Together with other airlines, Lion Air, City Link. PT. Garuda has opened air flights for the Umrah pilgrimage, one of which is via the Solo-Jeddah, Solo-Madinah routes.

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Based on article 86 number (2) Law no. 2019 concerning the Hajj and Umrah that the implementation of the Umrah pilgrimage is carried out by PPIU, which has obtained official permission from the Ministry of Religion. According to data from the Ministry of Religion, there are ± 900 PPIUs that have official permission from the Minister of Religion of the Republic of Indonesia,4 so on March 13 2019 PT. Garuda Indonesia issued letter (Ga info) Number 001/GA/NH/III/19 concerning Information on MEA Route Ticket Sales Services (effective March 1 2019) which was later revised through letter (GA Info) No. 001/GA/NH/III/19 concerning MEA Route Ticket Sales Services (effective March 1 2019 Revision 1) based on the letter PT. Garuda Indonesia gives special authority to strategic business partners (wholesalers) as Umrah Travel Organizers (PPIU) to book Umrah tickets. Meanwhile, the PPIUs appointed are: (1) PT Smart Umrah (Kanomas Arci Wisata), (2) PT Maktour (Makasar Toraja Tour), (3) PT NRA (Nur Rima Al-Waali Tour), (4) PT Wahana Mitra Usaha (Wahana), (5) PT Aero Globe Indonesia and (6) PT Pesona Mozaik (added wholesaler in September 2019) through the PPIU consortium, it is closed to purchasing Garuda tickets directly at the sales office, ticketing office and branch offices from PT authorities. Garuda Indonesia Tbk. That with the issuance of the reservation service policy through these 5 (five) business actors, the market for organizing Umrah pilgrimages has become concentrated only on these five business actors (Wherry, 2012). This results in and creates market barriers for the majority of ± 392 PPIUs to gain access to reservations and ticket price offers. There are several elements of violation of the Business Competition Law as a result of PT's behavior. Garuda by appointing 5 (five) wholesalers; 1) The concentration of PT's Umrah ticket sales market. Garuda to the five wholesalers. 2) There is a barrier to entry for other PPIUs to gain access to Garuda Umrah pilgrimage ticket reservations. 3) Loss of price offers for consumers.

Market concentration

Market concentration (market control) can occur if the market for the sale of certain goods or services only revolves around one or a certain group of business actors so that other business actors are unable to compete because of the large hegemony over market control. Therefore, market control has the aim of gaining profit accompanied by actions that are contrary to the law. Excessive market hegemony can position business actors at a monopoly level so that they tend to commit violations of competition law such as monopolistic practices and discrimination (Taqyuddin & Anggraini, 2022; Yamey, 1974).

Market control is determined in article (19) of Law 5/1999 as follows; Business actors are prohibited from carrying out one or several activities, either alone or together with other business actors, which could result in monopolistic practices and/or unfair business competition in the form of;

1. Refuse and/or prevent certain business actors from carrying out the same business activities in the relevant market; or
2. Prevent consumers or customers of competing business actors from entering into business relations with the competing business actors; or
3. Limiting circulation and/or services in the relevant market; or
4. Carrying out discriminatory practices.

With the existence of a wholesaler mechanism for selling Umrah tickets by PT. Garuda, Umrah ticket reservations can only be made at wholesaler PT. Garuda is a PPIU consortium. In this way, the substance of the market concentration element is fulfilled.

Barrier to entry in the relevant market

Barriers to entry can occur in business traffic when business actors are prevented from entering the relevant market because of the large product capacity owned by other business actors by flooding the market with the goods or services they produce (Simbolon, 2013). Market obstacles are caused by concerns about the entry of new competing business actors who are more innovative and aggressive (Kangramanto, 2008). As an indication of the occurrence of a barrier to entry, it can be seen through;

1. The number of companies entering the relevant market
2. Are there any new companies that have successfully entered?
3. Is the barrier to entry intended to damage the level of competition that has been well established previously?
4. Are barriers to entry born naturally?
5. Are there any costs that have been incurred by new business actors who have successfully entered the relevant market? (Kangramanto, 2008).

In the general provisions of Chapter 1 article (1) number 10 the relevant market is a market that is related to a certain marketing range or area by business actors for the same or similar goods and services or substitutes for said goods and/or services. In competition law the relevant market is divided into 2 (two);

1. The product market is a market where there are certain products that compete and substitute for each other.
2. Geographical market, namely the range or area where business actors can increase their prices without having to attract other business actors or without significantly losing the number of customers (Copy of KPPU Decision No. 06/KPPU-L/2020, page. 4).

Garuda ticket reservations which can only be accessed through wholesalers or strategic PPIUs have resulted in the concentration of Garuda ticket sales so that other PPIUs as competitors cannot gain prosperity from the proceeds from Garuda ticket sales. Because there are barriers to entry in the relevant market, whether the product market is in the form of Garuda flight tickets for the Umrah pilgrimage or the geographical market, namely the sales area is all over Indonesia, then when Garuda ticket reservations cannot be made at other PPIU locations in Indonesia, it can be said to have entered the monopoly criteria (Idris, 2019).

Pricing

Price fixing can occur when business actors make agreements with competing business actors to determine the price of goods or services in the relevant market, thus price fixing occurs when there is an agreement between competing business actors to determine the price of goods or services that must be paid by consumers or distributors (Kangramanto, 2008). Regarding price determination, it is determined in article (5) of Law no. 5 of 1999 concerning Price Determination;

1. Business actors are prohibited from making agreements with competing business actors to determine the price of goods or services that must be paid by consumers or customers in the same relevant market.
2. The provisions as intended in paragraph (1) do not apply to:
   a. An agreement made in a joint venture; or
   b. An agreement based on applicable law. Then article (6) states that business actors are prohibited from making agreements that result in one buyer having to pay a different price from the price that other buyers have to pay for the same goods and/or services.

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At PT. Garuda, which directly appointed its strategic business partner (PPIU) to make Umrah ticket reservations, resulted in price discrimination on Umrah tickets due to price differences between PT airlines. Garuda and other airlines because of the market power it has. Therefore, market power characterizes price discrimination (Akyuwen, 2011).

The three criteria in the PT wholesaler mechanism. Garuda; market concentration, entry barriers and Umrah ticket reservation price policies provide enough clues to a condition where PT. Garuda has market power in providing Umrah tickets which in turn makes PT. Garuda is in a dominant position. There are at least 4 requirements for business actors who have a dominant position; a. Market share, b. Financial capability, c. Ability to access supplies or sales, and d. The ability to customize supplies or certain goods or services (Makka, 2021).

KPPU's authority regarding the appointment of wholesalers by PT. Garuda in making reservations for Umrah tickets in a discriminatory manner

1. The Business Competition Supervisory Commission (KPPU) is a law enforcement agency in anti-monopoly law that is independent and responsible to the President who received legitimacy through Presidential Decree Number 75 of 1975. Its task is to provide an assessment of agreements that could result in monopolistic practices and/or business competition. not healthy.
2. Carry out an assessment of business activities and/or actions of business actors that could result in monopolistic practices and/or unfair business competition.
3. Carry out an assessment of whether or not there is abuse of a dominant position which could result in monopolistic practices and/or unfair business competition.
4. Take action in accordance with the commission's authority as regulated in Article 36 of Law no. 5 of 1999.
5. Providing suggestions and considerations to the government relating to Law no. 5 of 1999.
6. Prepare guidelines and/or publications related to Law no. 5 of 1999.
7. Provide regular reports on the results of the commission's work to the President and DPR (Makka, 2021).

Meanwhile, the KPPU's authority is as follows;

1. Receive reports from the public and/or from business actors regarding allegations of monopolistic practices and/or unfair business competition.
2. Conduct research on suspected business activities and/or actions of business actors that could result in monopolistic practices and/or unfair business competition.
3. Carrying out investigations and/or examinations of cases of alleged monopolistic practices and unfair business competition reported by the public or by business actors or discovered by the commission as a result of its research.
4. Conclude the results of investigations and/or examinations regarding whether or not there are monopolistic practices and/or unfair business competition.
5. Summon business actors who are suspected of violating the provisions of this Law.
6. Call and present witnesses, expert witnesses.
7. Request assistance from investigators to present business actors who are unwilling to comply with the commission's summons.
8. Request information from government agencies regarding investigations and examinations.
9. Obtain, research and/or assess documents and other evidence.

10. Decide and determine whether or not there is any loss on the part of other business actors or the public.
11. Notify the commission's decision to business actors suspected of carrying out monopolistic practices and/or unfair business competition.
12. Imposing sanctions in the form of administrative action on business actors who violate the provisions of this Law (KPPU, 1999).

Based on the KPPU's authority as determined in Article 36 of Law no. 5 of 1999 Jo. Presidential Decree Number 75 of 1999, in connection with alleged violations of anti-monopoly law in the practice of Umrah ticket reservations by the PPIU consortium as a result of the appointment of PT. Garuda Indonesia Tbk. then the KPPU does the following things:

Receive reports

Based on reports from the public regarding alleged violations of business competition law, especially related to efforts to close access to distribution channels for direct sales of Umrah tickets to and from Jeddah and Medina by PT. Garuda through a wholesaler program. This behavior resulted in the majority of Umrah Travel Organizers (PPIU) experiencing entry barriers because they could not get access to Umrah ticket sales from PT. Garuda (Usaman, 2013).

Examination of violation cases by KPPU

Before carrying out an examination of a case, the KPPU first carries out the stages of investigation, filing and filing a report and if it is believed that this process is sufficient then it is recommended that an examination be carried out starting with checking the identity of the PT. Garuda. Types of business activities and alleged violations of business competition law provisions, related to this authority are to collect sufficient evidence to complete the clarity of reports, study results, research results and supervision results in the context of enforcing business competition law as stated in Article 36 letter h. Jo. Article 47 of the Anti-Monopoly Law. Jo. Constitutional Court Decision Number 85/PUU-XIV/2016 that the KPPU's authority to carry out inspection and/or investigation processes is not the same as investigations as intended in the KUHAP which reflects Pro Justitia (Wulandari & Ibrahim, 2013). Regarding the inspection of PT. Garuda by KPPU produces;

1. PT. Garuda Persero, which appointed a strategic business partner (wholesaler) in distributing Umrah tickets, fulfilled the elements of violating the anti-monopoly law, especially Article 19 letter (d), namely committing discriminatory practices.
2. There is an impact on business competition that can result from Article 19 letter (d), namely;
   a. There are business actors who have been eliminated from the relevant market
   b. There are competing business actors whose role is reduced in the relevant market
   c. There is one group of business actors who can impose their will on the relevant market
   d. The creation of various barriers to competition in the relevant market
   e. Reduced healthy business competition in the relevant market
   f. Can give rise to monopolistic practices
   g. Reduced consumer choice
3. PT behavior. Garuda causes and/or creates market barriers for the majority of PPIUs or at least 302 PPIUs to gain access to PT reservations and/or ticket prices. Garuda.
4. As a result of the concentration of ticket reservations at certain wholesalers, BPIU has increased.

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5. KPPU's decision regarding violations of the anti-monopoly law by PT. Garuda regarding the appointment of strategic business partners (wholesalers) in the distribution of Umrah tickets

The decision of the Business Competition Supervisory Commission which already has legal force must still be requested for a decree of execution from the District Court which can be interpreted as meaning that the KPPU's decision is under the supervision of the Chairman of the District Court because there is no irah-irah so that the KPPU's decision can only be initial evidence of the investigation if an objection is submitted to the District Court.

Regarding the case of PT. Garuda KPPU issued decision no. 6 contents:

1. PT. Garuda legally and convincingly violated Article 19 letter (d) of Law no. 5 of 1999
2. Sentence the reported party to pay a fine of IDR 1,000,000,000 (one billion rupiah)
3. Order the reported party to pay the fine no later than 30 (thirty) days after this decision has permanent legal force
4. Submit a copy of proof of fine payment to KPPU
5. Order to submit a bank guarantee of 20% of the fine value to the KPPU no later than 14 working days after receiving the notification
6. Pay a late fine of 20% per month of the fine value

Impact of dominant position on competitive markets

Healthy business competition is an important keyword for the growth of business activities, because a healthy business climate will certainly bring blessings to business actors (Ahyani et al., 2022). Therefore, strong determination is needed from all business actors to commit to upholding business ethics and the provisions that have been ratified in laws and regulations related to business competition law. Business actors in running their business certainly want to get excessive profits, but what needs to be taken into account is the existence of norms in carrying out business activities so that monopolistic practices, cartels and abuse of dominant positions in the traffic of activities do not arise. business is not prohibited, but what is prohibited is the abuse of a dominant position, therefore a business actor is said to have committed a violation of the law if, using his dominant position, he commits an act that is prohibited by the business competition law (Gunawan, 2016). A dominant position in the market consists of; preventing or hindering consumers from obtaining competing goods or services, limiting markets and technological development, inhibiting other business actors as competitors from entering the market, holding concurrent positions, share ownership, mergers, consolidations and takeovers of business entities or share (Usaman, 2013). The appointment of a strategic business partner (Wholesaler) by PT Garuda in marketing Umrah pilgrimage tickets has created a dominant position for the airline, which in turn is used to close ticket reservation access to certain groups of business actors or Umrah pilgrimage organizers (PPIU). while PPIU is permitted for only 6 (six) groups. In the perspective of the anti-monopoly law, PT Garuda has discriminated in the appointment of PPIU and violated Article 19 letter d of Law Number 5 of 1999 "Business actors are prohibited from carrying out one or several activities, either alone or together with other business actors, which could result in monopolistic practices and or unfair business competition in the form of: (d) carrying out discriminatory practices against certain business actors." Therefore, to avoid abuse of the dominant position that exists in PT Garuda, this company should not need to provide special treatment to certain business actors in providing Umrah ticket services. considering that the number of Umrah travel organizers who have received official permission from the government is

around 309, so getting Umrah tickets can be done at PPIU which has received per mission from the government.

CONCLUSION

PT. Garuda Indonesia is a state-owned company with Persero status which operates in the airline sector. In 2019, it published GIA Info with official letter No. 001/GA/NH/III/19 concerning MEA Route Ticket Services via the letter PT. Garuda appointed six Umrah travel organizers with a wholesaler (strategic business partner) mechanism. As a result of this appointment, ticket sales were closed at all sales offices and PPIU throughout Indonesia, so that Garuda ticket reservations for the Umrah pilgrimage were centered on six PPIU groups specially appointed by PT. Garuda, the impact for competing business actors is that they are unable to market PT Umrah tickets. Garuda, as well as consumers, lose their right to vote in booking Umrah tickets. Thus, PT. Garuda has created a dominant position in the relevant market, namely geographic and product markets.

KPPU as the enforcer of business competition law handed down a decision regarding the violation of Article 19 letter (d) of the anti-monopoly law that PT. Garuda has discriminated in the appointment of strategic business partners, so through KPPU decision No. 06/KPPU-L/2020. PT. Garuda was sentenced to a fine of IDR 1,000,000,000 (one billion rupiah).

PT. Garuda Indonesia as a BUMN which has the capacity; capital, management, market share, should avoid abuse of dominant position. Therefore, the appointment of business partners should be done openly and not burden other PPIUs with small capital, so that prosperity can be felt by all business actors, and create healthy business competition among business actors.

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