

Comparison of Indonesian and Malaysian Laws on Prohibition of Monopolistic Practices and Business Competition

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ABSTRACT

Monopolistic practices and unfair competition are significant issues in the global economy. Indonesia and Malaysia have legal frameworks that aim to maintain fair competition and prohibit monopolistic practices. This article compares Indonesian and Malaysian laws prohibiting monopolistic practices and unfair business competition by examining the legal basis, supervision, enforcement mechanisms, and protection of consumers and businesses. Although both countries have similar objectives in protecting market competition, there are differences in the approach to law enforcement, merger and acquisition regulations, and philosophy in competition regulation. The results show that Indonesia focuses more on protecting consumers and small businesses, while Malaysia tends to pay more attention to overall market efficiency.

Keywords: Monopoly, Business Competition, Indonesian Law, Malaysian Law, Business Competition Supervisory Commission (KPPU), Malaysian Competition Commission (MyCC), Competition Act 2010, Law No. 5 of 1999, Mergers and Acquisitions.

I. Introduction

With rapid development, the world is progressing and regressing in many areas. The world seems to be entering a golden era regarding technology, information, and knowledge. If the world's development is seen from the aspect of the environment, many studies and articles in famous magazines show that environmental conditions are worsening. This extraordinary world progress has strengthened relations between countries. With developments in science, technology, and advanced means of transportation, countries can establish better relations through diplomacy, student exchanges, cultural missions, and participation in major international forums and organizations (Gautama, Sudargo, 2007). Monopolistic practices and unfair trade competition are problems that affect economic growth, prices of goods and services, and consumer welfare in many countries. Indonesia and Malaysia, two Southeast Asian countries experiencing rapid economic growth, have laws to prevent these practices. While they share similar regulatory objectives, significant differences exist in each country's legal mechanisms and enforcement approaches. To ensure fair competition, economic policies in developing countries must first create the necessary preconditions, the first of which is to establish efficient markets and appropriate price mechanisms. The goal

of this policy is to provide broad market access as well as provide incentives to increase the number of national entrepreneurs. In addition, the level of integration of local and regional markets needs to be strengthened through infrastructure development, such as communication and transportation networks (Muhamad Rizal, 2017).

Monopoly and unfair business competition can harm markets, consumers, and economic actors. Therefore, countries worldwide regulate the prohibition of practices related to business competition regulated by Law No. 5 the Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, while in Malaysia, it is controlled by Law Year 2010. However, both countries aim to regulate monopolistic practices (Mustafa Kamal, 2012). There are differences in the approach, oversight, implementation, and basic principles underlying these policies. This review aims to compare the regulations and enforcement practices between Indonesia and Malaysia regarding the prohibition of monopolistic practices and unfair business competition and analyze the implications for both countries' markets, consumers, and economic development

II. Literature Review

2.1. Legal Framework for Monopoly and Unfair Business Competition

1. Indonesian Law

In Indonesia, the legal basis for regulating monopolistic practices and unfair business competition is governed by Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. This law protects public interests and market dynamics from harmful monopolistic practices. It addresses violations such as cartels, abuse of dominant positions, and anti-competitive mergers or acquisitions. Monopoly is defined as the domination of the market by one or more players who have the power to manipulate prices or control the supply of goods and services, which can disrupt fair competition in the market.

2. Malaysian Law

The Competition Act 2010 is Malaysia's primary legal instrument regulating monopolistic practices and unfair business competition. It prohibits any agreements that restrict competition or abuse of dominant positions. The law focuses on anticompetitive behaviors that harm consumers, other commercial entities, or overall market efficiency. It provides a clear framework for regulating monopolistic actions, with a keen focus on preventing practices that may hinder market competition or harm the interests of consumers.

2.2. Supervision, Mergers and Acquisitions, Sanctions, and Law Enforcement Approaches

1. Supervision in Indonesia and Malaysia

In Indonesia, competition monitoring is carried out by the Business Competition Supervisory Commission (KPPU), which enforces Law No. 5 of 1999. KPPU investigates alleged violations, imposes administrative sanctions, and reviews mergers or acquisitions that could harm competition. KPPU focuses on maintaining a competitive market by preventing dominant players from abusing power. The Malaysian Competition Commission (MyCC) plays a similar role to the KPPU in Malaysia. It investigates potential violations, enforces sanctions, and reviews agreements or mergers that may reduce competition. MyCC also guides businesses to ensure compliance with competition laws.

2. Mergers and Acquisitions

Indonesia and Malaysia regulate mergers and acquisitions (M&As) to prevent market dominance that could harm competition. In Indonesia, the KPPU scrutinizes mergers and acquisitions under Law No. 5/1999. If an M&A reduces market competition, KPPU may cancel or restrict the transaction. In Malaysia, the Competition Act 2010 also regulates M&As. The MyCC assesses whether an M&A

reduces competition or harms market efficiency. If harmful, MyCC can reject or approve the transaction with specific conditions. While both countries share similar provisions, Malaysia tends to focus more on long-term market efficiency and cost benefits, while Indonesia is more concerned with protecting small businesses and consumers.

3. Sanctions and Fines

Both countries have significant sanctions for violations. In Indonesia, the KPPU can impose fines on companies violating competition laws, with penalties reaching billions of rupiahs. Additionally, KPPU can mandate businesses to cease monopolistic practices or unfair competition. In Malaysia, MyCC has the authority to impose fines of up to 10% of the company's annual turnover for violations under the Competition Act 2010, signaling a strong stance on protecting market competition.

4. Philosophy and Enforcement Approaches

Indonesia's approach to competition law enforcement prioritizes consumer protection and the interests of small and medium-sized enterprises (SMEs). The focus is on preventing monopolistic practices that could harm public welfare, such as unfair pricing or limited product choices. Indonesia's competition policy emphasizes the state's role in ensuring a fair and balanced market. In contrast, Malaysia emphasizes market efficiency and economic sustainability. While consumer protection is also important, MyCC tends to evaluate monopolistic practices through the lens of market efficiency. Practices that may appear monopolistic but lead to greater competition and long-term benefits are more likely to be permitted if they do not harm the overall market dynamics.

III. Research Method

This research uses a normative-comparative approach to analyze the regulations and implementation of laws governing the prohibition of monopolistic practices and unfair business competition in Indonesia and Malaysia. This method was chosen because the research focuses on a study of the legal regulations applicable in the two countries and a comparison of their implementation. Normative Approach: This approach analyzes the rule of law governing the prohibition of monopolistic practices and unfair business competition in Indonesia and Malaysia. The focus is on both countries' laws, court decisions, and relevant regulations. Comparative Approach: This approach compares the existing legal regulations and implementation in Indonesia and Malaysia. The main objective is to identify differences and similarities in the legal framework, application of sanctions, and policy effectiveness in both countries.

IV. Result and Discussion

4.1. Regulations Governing the Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia and Malaysia

The Indonesian government has prohibited monopolistic practices and unfair business competition through Law Number 5 Year 1999, which was later strengthened by the issuance of Law Number 6 Year 2023 on the Stipulation of Government Regulation instead of Law Number 2 Year 2022 on Job Creation as Law (Monopoly and Business Competition Law). The Business Competition Supervisory Commission oversees monopolistic practices and unfair business competition by the provisions of Article 30, paragraph (1) of the Monopoly and Business Competition Law. This law provides the following definitions of monopolistic practices and unfair business competition: (<https://www.hukumonline.com/berita/a/monopoli-dan-persaingan-usaha-tidak-sehat-butuh-diatur-undang-undang-baru-lt6527b0cfd012/?page=2>).

1. Article 1 letter b, Monopoly and Business Competition Law
"Monopolistic practice is the concentration of economic power by one or more business actors that results in control over the production and or marketing of certain goods and or services to cause unfair business competition and may harm the public interest." (Article 1, letter b of Law No.5 Year 1999 on the Prohibition of Monopolistic Practices and Business Competition).
2. Article 1 letter f, Monopoly and Business Competition Law
"Unfair business competition is competition between business actors in carrying out production activities and or marketing of goods and or services carried out dishonestly or unlawfully or hampering business competition" (Article 1 letter f of Law No.5 Year 1999 on Prohibition of Monopolistic Practices and Business Competition). Article 3 of the Monopoly and Business Competition Law clearly explains the objectives of the establishment of this law, which include safeguarding the public interest and increasing national economic efficiency for the welfare of the people; creating a healthy business climate by providing clear business opportunities for business actors; avoiding monopolistic practices and unfair business competition; and ensuring efficiency and effectiveness in business activities. In Indonesia, regulations governing monopolistic practices and unfair business competition are regulated in Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Some of the key points of this law are:
 - Article 4: Prohibits monopolistic practices and unfair business competition that may harm the public interest.
 - Articles 5-13: Lists various practices considered monopolies or unfair business competition, such as cartels, excessive market control, and harmful price fixing.
 - Business Competition Supervisory Commission (KPPU): Tasked with overseeing and cracking down on practices that contravene this law. KPPU can conduct investigations, impose administrative sanctions, and refer some instances to the courts.
 - Sanctions: Under this law, companies or individuals found to have committed violations may be sanctioned with fines, dissolution of the company, or criminal penalties.

In Malaysia, the prohibition of monopolistic practices and unfair competition is set out in the Competition Act 2010. The Act is designed to promote fair competition in the market, protect consumers, and prevent practices that may harm competition. Here are the key points in the regulation:

3. Competition Act 2010 (Competition Act 2010)
The Act regulates two main aspects of maintaining fair competition in Malaysia (Deed of Competition, 2010)
 - Prohibition of Anti-Competitive Agreements (Cartels): Section 4(1) prohibits agreements, decisions, or practices that lead to anti-competitive behavior. Such practices include Price fixing, Market sharing, and Restricting the production or distribution of goods and services. These anti-competitive agreements include cartels, which aim to reduce or eliminate competition in the market. In this case, cartel business actors may be subject to severe sanctions (Section 4, Competition Act, 2010).
 - Abuse of Dominant Position: Section 10(1) regulates business actors' prohibition against abuse of dominant position. Suppose a company dominates the market and takes actions that may hinder competition, for example, by Setting excessively high or low prices (predatory pricing), Discouraging competitors from entering the market or staying in the market, Inhibiting or restricting the ability of competitors to compete pretty. In that case, these practices are

considered abuses of a dominant position and violate competition law (Section 10, Competition Act, 2010).

- Mergers and Acquisitions that Harm Competition: Section 54 regulates mergers and acquisitions that may substantially lessen competition. Before any merger or acquisition, companies must obtain approval from Suruhanjaya Persaingan Malaysia (MyCC), which will conduct an assessment to ensure that the transaction is not detrimental to market competition (Seksyen 54, Akta Persaingan, 2010).

4. Suruhanjaya Persaingan Malaysia (MyCC)

MyCC is the body responsible for enforcing the Competition Act 2010 in Malaysia. Some of MyCC's primary duties are to investigate and deal with alleged competition law violations, impose sanctions or orders to stop anti-competitive practices, and provide guidance and information on fair competition in the market (MyCC, 2021).

5. Sanctions and Penalties

Fines Companies found in violation may be fined up to 10% of the company's annual turnover under Section 40. Settlement and Remedial Measures: The MyCC may order the company to stop the practice that harms competition, remedy the market situation, or take other remedial measures. (Section 40, Competition Act, 2010)

4.2. Implementation and Enforcement of Laws Against Monopolistic Practices and Unfair Business Competition in Both Countries

Applying and enforcing laws against monopolistic practices and unfair business competition in different countries differ depending on the legal system, economic policies, and the country's objectives in protecting markets and consumers. The following is an overview of the application and enforcement of laws against monopoly and unfair business competition in Indonesia and Malaysia.

1. Application and Enforcement of Law in Indonesia

In Indonesia, the application of laws related to monopoly and unfair business competition is regulated in Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. This law aims to maintain a climate of healthy business competition in order to realize economic efficiency and protect consumer interests. The Business Competition Supervisory Commission (KPPU) is authorized to supervise and enforce laws related to monopolistic practices and unfair business competition in Indonesia. KPPU conducts investigations and inquiries into alleged violations, such as cartels, monopolistic practices, or abuse of dominant positions by large companies. KPPU can also impose administrative sanctions in the form of fines or orders to stop practices that harm competition.

2. Application of Law

- Monopoly: In Indonesia, monopolies that harm competition and consumers can be penalized. Indonesian law does not prohibit monopolies absolutely, but the prohibition applies to monopolies that abuse market power to curb competition.
- Unfair Business Competition: Cartel or collusion practices, price fixing, market sharing, and production arrangements that reduce competition are illegal. KPPU examines and sanctions the alleged practices through fines or cartel dissolution actions.

3. Law Enforcement

Sanctions can be in the form of substantial fines, up to 10% of the company's annual turnover. In addition, KPPU can also give orders to change company policies that violate the law. In Malaysia, the

application and enforcement of laws relating to monopoly and unfair competition are governed by the Competition Act 2010. The Act aims to create open, competitive, and efficient markets by reducing barriers that hinder fair competition in the market. Suruhanjaya Persaingan Malaysia (Malaysia Competition Commission, MyCC) is responsible for enforcing competition law in Malaysia. MyCC monitors monopolistic practices and unfair competition, conducts investigations, and can impose administrative sanctions if violations are found.

4. Application of Law

- **Monopoly:** Under Malaysian law, monopolies are not prohibited outright, but companies with a dominant position must not abuse that market dominance. Abuse of a dominant position to hinder competition or harm consumers is considered a violation of the law.
- **Unfair Business Competition:** Cartels, price fixing, market sharing, and production arrangements aimed at reducing competition in the market are prohibited practices in Malaysia. MyCC is tasked with investigating and acting against practices that reduce market efficiency.

5. Law Enforcement

MyCC can impose fines on companies involved in competition law violations, up to 10% of the company's annual global turnover. MyCC can also issue orders to change business conduct or restructure certain cases. Both countries impose substantial fines on violators, at around 10% of the company's annual turnover. However, Malaysia tends to be more flexible in providing sanctions and warnings, while Indonesia more often emphasizes administrative sanctions in the form of fines or orders to stop monopolistic practices. Indonesia tends to focus more on large companies' abuse of market power to hinder competition. Malaysia also prohibits abuse of market dominance but emphasizes policing mergers and acquisitions that may reduce competition.

V. Conclusion

Indonesia and Malaysia have fairly comprehensive regulations prohibiting monopoly and unfair business competition. However, in terms of implementation and enforcement, Malaysia seems to be more advanced, especially regarding regulatory clarity and firmness of sanctions. Indonesia still faces challenges in terms of more effective law enforcement.

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