

CHAPTER I

INTRODUCTION

A. Background

Discussing the issue of competition is not complete without a merger, consolidation and acquisition that often affect the competition in the market. This is because the merger, consolidation and acquisition easily deviate the prohibition of monopolistic practices and unfair competition resulting from the agreement as well as the activities regulated in Law Number 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (Antitrust Law).¹ This Law is the result of the signing of the agreement between the International Monetary Fund (IMF) and the government of the Republic of Indonesia on January 15th, 1998. Based on the agreement, the International Monetary Fund agreed to provide financial assistance of US \$ 43 billion to overcome the financial crisis experienced by Indonesian government provided that Indonesia reformed its economic and certain economic law in which one of these requires Monopoly Act (Antitrust Act).²

The issuance of the monopoly act aims to regulate the competition in order to ensure fair competition and protection toward the consumers³ so

¹ Ridwan Khairandy, 2009, *Perseroan Terbatas: Doktrin, Peraturan Perundang-undangan dan Yurisprudensi*, Yogyakarta, Total Media, p. 279.

² Suyud Margono, 2009, *Hukum Anti Monopoli*, Jakarta, Sinar Grafika, p.26.

³ Pande Radja Silalahi, "Undang-Undang Antimonopoli dan Perdagangan Bebas", *Jurnal Hukum Bisni*, Vol. 19, p. 16, 2002.

that monopoly and unfair competition can be regulated by the act. Recently, unfair competition issues emerge, and one of them is the acquisition of companies that lead to their monopoly. Acquisition is one way of a business actor in expanding his/her presence in the business world. The acquisition is applied by both national companies and foreign-owned enterprises, either as a whole or part of shares. These second tier companies join with similar companies increase the competitiveness toward the market leader companies⁴, such as the takeover of PT. Indosat and PT. Telkomsel shares by Temasek Group, the acquisition of Bank BCA shares and the acquisition of PT. Alfa Retailindo shares by PT. Carrefour Indonesia. and others.

PT Carrefour Indonesia officially bought 75% stake from PT Alfa Retailindo with a purchase value of shares amounting to 49.3 million Euros or equivalent to Rp. 674 billion. Thus, PT. Carrefour Indonesia became the leading retail company in Indonesia, and based on Asian retail data in 2007, PT. Carrefour Indonesia in 2006 had turnover up to Rp. 7.2 trillion and became the leader of the Indonesian retail market, while PT. Alfa Retailindo has a turnover of Rp. 1.9 Trillion ranked 10th.⁵

Quantitatively PT Carrefour Indonesia had a market share of 46.3% in 2007 and after the acquisition of PT Alfa Retailindo the market share increased to 57.99% in 2008. Regarding its share, PT Carrefour Indonesia is legally qualified as having "monopoly" and "dominant position" because

⁴ Elyta Ras Ginting, 2004, *Hukum Anti Monopoli Indonesia*, Jakarta, Citra Aditya, p. 84.

⁵ Syamsul Maarif, "Merger, Konsolidasi, Akusisi dan Pemisahan PT menurut UU No.40 Tahun 2007 dan Hubungannya Dengan Hukum Persaingan", *Jurnal Hukum Bisnis*, Vol. 27 No.1, p. 42, 2008.

it has control over 50% (fifty percent) of market share. Similarly, the results showed that both the above qualifications were misused to suppliers through a scheme known as "trading terms" which brought disadvantages to suppliers.⁶

Business Competition Supervisory Commission (KPPU) as an independent agency which was established to monitor the implementation of Law No. 5 of 1999 has taken action against the impact of the acquisition of PT. Alfa Retailindo by PT. Carrefour Indonesia. The acquisition becomes cases that have been decided by KPPU decision number: 9/KPPU-L/2009 in which PT. Carrefour Indonesia has violated Article 17 paragraph (1) and article 25 Law No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.⁷

Against the KPPU's decision, PT Carrefour Indonesia was objected and brought the case to the South Jakarta District Court. The verdict issued by the South Jakarta District Court won PT Carrefour Indonesia, with the decision No. 1598/Pdt.G/2009/PN.Jkt.Sel on monopolistic and dominant position in the sector of modern retail market by PT. Carrefour Indonesia.⁸

After receiving the copy of the case, the KPPU determined the manner of its defeat in the District Court to filed a cassation to the Supreme Court.

⁶ Helli Nurcahyo, "Jejak Langkag KPPU 2009", *Kompetisi Media Berkala Komisi Pengawas Persaingan Usaha, Edisi 19*, Jakarta, Komisi Pengawas Persaingan Usaha, p. 10, 2009.

⁷ Komisi Pengawas Persaingan Usaha Republik Indonesia, Putusan Nomor: 09/KPPU-L/2009 mengenai Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat yang dilakukan oleh PT Carrefour Indonesia terkait akuisis PT Alfa Retailindo, November 2009.

⁸ Agung Sedayu, "Pengadilan Menangkan Gugatan Carrefour atas Putusan KPPU", taken from <https://m.tempco.co/read/news/2010/02/17/057226493/pengadilan-menangkan-gugatan-carrefour-atas-putusan-kppu>, accesed on Thursday, October 3rd, 2016 at 1:18 pm.

However, after the case examination in the Supreme Court, based on the Supreme Court Decision No. 502K/Pdt.Sus/2010 (KPPU against PT. Carrefour Indonesia) the Supreme Court rejected the KPPU's cassation and imposed sanctions to the KPPU to pay the case in the cassation.

Based on the background discussed in the previous paragraphs, the researcher is interested in conducting a study entitled "Monopoly In The Retail Trade: An Acquisition Case of PT Alfa Retailindo by PT Carrefour Indonesia."

B. Research Problem

Based on the background in the previous section, it can be concluded that the problem formulations are as follows:

1. What is the legal approach used by the KPPU in determining that the acquisition of PT Alfa Retailindo by PT Carrefour Indonesia has violated the Law No. 5 year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition?
2. What are the legal arguments of Supreme Court which reject the KPPU's cassation to annul the decision of the South Jakarta District court Number 1598/Pdt.G/2009/PN.Jak.Sel about the cancellation of the KPPU's decision Number 09/KPPU-L/2009?

C. Research Objectives

1. To analyze the legal approach used by the KPPU in determining the acquisition of PT Alfa Retailindo by PT Carrefour Indonesia which violated the Law No. 5 year 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (Antitrust Law).
2. To analyze the legal arguments of Supreme Court which rejected the KPPU's cassation to annul the decision of the South Jakarta District court Number 1598/Pdt.G/2009/PN.Jak.Sel about the cancellation of the KPPU's decision Number 09/KPPU-L/2009.

D. The Benefit of Research

This research is expected to contribute in the aspects of scientific and practical aspects

1. Theoretically, the study is expected to provide a better understanding of unfair business competition in Indonesia in particular monopoly and a better solution to overcome monopoly problems which are supervised by the Business Competition Supervisory Commission.
2. Practical, this study is expected to anticipate the monopoly practiced by the agents of the retail market in Indonesia. In addition, the study aims to anticipate the development of monopolistic practices and unfair business competition in Indonesia which are supervised by KPPU.