

CHAPTER II

LITERATURE REVIEW

A. Monopoly

1. Monopoly

Monopoly is the hallmark of businesses in the New Order Era which affected disadvantages for business and economic developments in Indonesia. The word monopoly is derived from Greek word meaning a single seller. In the United States it is often used with the the term "Antitrust", the word monopoly or antitrust is meaning that it is a law to protect trade and commerce from unlawful restraints and monopolies or unfair business practices.¹ Antitrust law aims to stop the abuse of market power by major corporations and, sometimes, to prevent mergers and acquisitions of companies that will create or strengthen a monopoly.

As regulated in article 1, paragraph (a) of Law No. 5 of 1999, monopoly is a control over production and or marketing of goods and or the use of certain services by a business actor or a group of business actors.² Etymologically, the word comes from the Greek monopoly

¹ Merriam-Webster's Learner's Dictionary, "Full Definition of Antitrust", taken from <http://www.merriam-webster.com/dictionary/antitrust>, accessed on Tuesday, November 1st, 2016 at 3:03 am.

² Indonesia, Law No.5 of 1999 on the Prohibition of Monopoly and Unfair Competition Article 1 (a)

consisting of two words, namely: monos meaning itself and polein which means the seller. Monopoly can be interpreted as a single seller.

In short, the notion of a monopoly can mean as a condition in which there is only one seller who offers a product or service.³ The term monopoly is often used to describe a market structure, as well as the definition given by Meiners that "monopoly is a market structure in which the output of an industry is controlled by a single seller or a group of sellers making joint decisions regarding production and price."⁴

Black's Law Dictionary defines a monopoly in terms of juridical namely a privilege or peculiar advantage is vested in one or more persons or companies, consisting of the exclusive right (or power) to carry on a particular article, or control the sale of whole supply of a particular commodity. It is a form of market structure in which one or only a few firms dominate the total sales of a product or service.⁵

According to Merriam Webster the word monopoly which usually has opposite meaning with the terms of competition is interpreted as a struggle or contest between two or more persons for the same objects.⁶ There are several classifications of monopoly, one of

³ Hermansyah, 2008, *Pokok-Pokok Persaingan Usaha di Indonesia*, Jakarta, Kencana Prenada media Group, p. 18.

⁴ Arie Siswanto, 2004, *Hukum Persaingan Usaha*, Cet.2, Bogor, Ghalia Indonesia, p. 19.

⁵ Henry Champbell Black, 1990, *Black's Law Dictionary*, St. Paul, Minn, West Publishing Co, p 696.

⁶ Encyclopedia Britannica Inc, *Merriam-Webster's Dictionary*, "Competition", taken from: <http://www.merriam-webster.com/>, accesed on Saturday, October 29th, 2016 at 04:06 p.m.

them can be distinguished between legal monopoly and illegal monopoly. According to Arie Siswanto, legal monopoly is a monopoly that is not prohibited by the laws of a country and on the other hand, illegal monopoly is prohibited by law.⁷

Article 17 Law No. 5 year 1999 regulates that business are prohibited from controlling the production and or marketing of goods and or services which may result in monopolistic practices and or unfair business competition. Business actor is suspected or deemed to control the production and or marketing of goods and or services if :

- a. There are no substitutive goods or services
- b. Other business operators can not join into the competition of similar goods and or services
- c. One business actor or a group of business operators control more than 50% market share of a particular type of goods or services.

2. Monopolistic Practise

Monopoly is different from monopolistic practice. According to Article 1 paragraph (b) of Law No. 5 of 1999, the definition of monopolistic practices is the concentration of economic power by one or more businesses that lead to control of the production and or

⁷ Arie Siswanto, *op. cit.* p. 13.

marketing of goods and or services giving rise to unfair competition and can harm the public interest.⁸

Monopolistic practices occur if:

1. Monopoly is awarded to one or several specific company without going through the Act.
2. Monopoly or monopolistic position is obtained from the collaboration between two or more similar organizations both in the forms of regulation of competition among themselves as well as in the form of amalgamation or fusion.

According to Kwik Kian Gie, the above mentioned conditions occur because of the state's role to a business entity, either state-owned enterprises, private enterprises or cooperatives.⁹

B. Retail Trade

Retail is an important link of the distribution channel that connects the whole of the business and those that include physical displacement and transfer of ownership of goods and services from the producer or the producer to the consumer. Kotler defines retail businesses (retailing) includes all activities involving the sale of goods or services directly to the end consumer for personal use and not business.¹⁰ While Levy & Weitz

⁸ Indonesia, Law No.5 of 1999 on the Prohibition of Monopoly and Unfair Competition Article 1 (b)

⁹ Kwik Kian Gie, 1994, *Saya Bermimpi Jadi Konglomerat*, Jakarta, Gramedia, p. 233.

¹⁰ Philip Kotler, 2000, *Manajemen Pemasaran*, Edisi Milenium, Jakarta, Prehallindo. p. 592.

suggest that retailing is the set of business activities that add value to the products and services sold to consumers their personal or family use .¹¹

Lamb, Hair, McDaniel said that the retail trade are all direct sales activities related to goods or services to final consumers for non-business use or personal.¹² Retail merchants was very important in helping manufacturers in product sales, since they are the spearhead who deal directly with the end consumer or user.

C. Acquisition

Acquisition is derived from the word *acquisitio* (Latin) and acquisition (English). It literally means that the acquisition is to buy or get things/to add something in object/objects that have been previously owned. In business terminology, the acquisition can be defined as the acquisition of ownership or control over the shares or assets of a company by another company.¹³ Article 28 and article 29 Law No. 5 year 1999 state that businesses are prohibited from doing takeover of another company's share if the charter action may result in monopolistic practices or unfair competition.

Law No. 40 Year 2007 on Limited Liability Company in accordance with Article 1 paragraph 11 mention the acquisition is a legal act carried out

¹¹ Levy & Weitz, 2001, *Retailing Management*, 4th edition, New York, Mc.Graw Hill, Irwin, p. 8.

¹² Charles W. Lamb, Joseph F. Hair, Carl McDaniel, 2001, *Pemasaran*, Edisi Pertama, Jakarta, Salemba Empat, p. 70.

¹³ Muhammad Aji Nugroho, "Skripsi Fakultas Ekonomi: Analisis Perbandingan Kinerja Keuangan Perusahaan Sebelum dan Sesudah Merger dan Akuisisi (Pada Perusahaan Pengakuisisi)", Semarang, Universitas Diponegoro, 2010.

by legal entities or individuals to take over the company's shares which result in the shift of control over the shares of the company.¹⁴ In Government Regulation No. 57 Year 2010 on Consolidation and Acquisition of Enterprises that May Cause Monopolistic Practices and Unhealthy Competition Article 1 paragraph 3 the acquisition is a legal act performed by businesses to take stock enterprise which result in the shift of control of the stock on a company.¹⁵

D. PT. Carrefour Indonesia

Carrefour is an international supermarket group headquartered in France. Carrefour is the second largest retail group after Wal-Mart. Carrefour first opened on June 3, 1957, in Annecy near a crossroads (carrefour, in French). The group was founded by Marcel Fournier and Louis Deforey which then becomes the smallest Carrefour outlet in the world at present.

Carrefour has become family shops in Indonesia since 1998. Since November 19, 2012, 100% of Carrefour shares in Indonesia has been already owned by CT Corp. Along with the change of the shareholders, the company's name changed to PT. Trans Retail Indonesia.¹⁶

¹⁴ Indonesia, Law No. 40 Tahun 2007 on Limited Company, Article 1.

¹⁵ Indonesia, Government Regulation No. 57 of 2010 on Merger and Acquisition Enterprises Stock Company which may Result in the Practice of Monopoly and Unfair Business Competition, Article 1 Point 3.

¹⁶ Carrefour Transmart, "Carrefour Gerai Pilihan Untuk Keluarga Indonesia", taken from: <http://www.carrefour.co.id/id/shop/carrefour/>, accessed on Saturday, October 29th, 2016 at 07:46 pm.

Up to present, there are a total of 87 Carrefour outlets across Indonesia, including Carrefour Express in 28 regencies / cities in Indonesia. In supporting customers services to spend more purchases, Carrefour built a new shopping concept at Groserindo Carrefour in Juanda, Bekasi.

Carrefour partnered with more than 4,000 suppliers from around Indonesia that 70% of the amount included in the category of Small and Medium Enterprises (SMEs). Through Carrefour, the suppliers can provide thousands products to customers which 90% of them are local products. Carrefour also provides ease and convenience of shopping through Home Delivery program. Therefore, shopping becomes cheaper and easier.

In Indonesia, there are five types of Carrefour in Indonesia, namely:

1. Transmart Carrefour, There are five outlets.
2. Groserindo, There is one outlet.
3. Carrefour Hypermarket, There are eighty three outlets.
4. Carrefour Market, There are seven outlets.
5. Carrefour Express, there are three outlets.

E. PT. Alfa Retailindo

PT Alfa Retailindo which is established in Jakarta on August 27, 1989, is engaged in retail and wholesale trade. By operating the self-service outlets, PT Alfa retailindo provides various kinds of daily necessities,

household supplies, including electronics and outlets that serve a purchase in bulk.

Between 1989 to 1994, the business activities are divided into two divisions, namely self-service division that handles retail and wholesale divisions. In 1994, PT Alfa Retailindo formed a new division that is the distribution division, but in 1996, the distribution division broke away and formed a separate company, PT Atri Distribusindo. Operational headquarters of PT Alfa Retailindo is located in Jl. MH Thamrin no. 9, Cikokol, Tangerang.

PT Alfa Retailindo also has subsidiary company namely PT Beta Setia Mega. PT Beta Setia Mega is one of the exclusive distributor of Unilever products in some parts of Jakarta with two working units in Sunter, North Jakarta and Palmerah, South Jakarta. PT Alfa Retailindo head office is located in Jakarta with branch offices spread across the cities in Java, Bali and Sulawesi. To support business success, beginning on January 18, 2000 PT Alfa Retailindo has listed and trades on the Jakarta Stock Exchange (JSX).

PT Alfa Retailindo Tbk offers distribution, dealership, and wholesale of grocery products in Indonesia. It also operates hypermarkets and supermarkets. In December 31, 2009, it had 16 hypermarkets under the 'Carrefour' name; 12 supermarkets under the 'Carrefour Express' name; and 3 supermarkets under the 'Carrefour Market' name. The company was

founded in 1989 and is headquartered in Jakarta, Indonesia. PT Alfa Retailindo Tbk operates as a subsidiary of Carrefour SA.¹⁷

F. Dominant Position

Based on Article 1 paragraph (d) Law No. 5 of 1999 dominant position is a situation where businesses in marketing does not have a competitor in marketing their product which means in the relevant market in terms of market share in the market, or businesses have the highest position among its competitors in the relevant market in terms of financial capability, the ability to access on supply and sales, as well as the ability to adjust the supply of or demand for certain goods and services.¹⁸

Dominant position regulated in article 25 Law No. 5 of 1999 states that business are prohibited from using dominant position either directly or indirectly to:

1. Regulate trade in order to prevent or prohibit consumers to obtain competitive goods or services, in terms of both price and quality.
2. Limit the market and technology development.
3. Inhibit other businesses which are potential competitors to enter the relevant market.

Business actors have a dominant position if:

¹⁷ Bloomberg, "Food and Staples Retailing, Company Overview of PT Alfa Retailindo Tbk", taken from: <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=12722164>, accessed on Sunday, October 30th, 2016 at 03:44 pm.

¹⁸ Indonesia, Law No.5 of 1999 on the Prohibition of Monopoly and Unfair Competition Article 1 (d)

1. One business actor or a group of business actors controls 50% or more market share of a particular type of goods or services.
2. Two or three business actors or a group of business actors control 75% or more market share of a particular type of goods or services.

G. Per Se Illegal and Rule of Reason Approach

Per se illegal and rule of reason approach have long been applied to assess whether a particular action of businesses violates the Antimonopoly Law.¹⁹ Rule of reason approach is an approach used by competition authorities agency effort to make an evaluation of the impact the agreement or certain business activities, in order to determine whether an agreement or activity inhibit or promote competition.

On the other hand, the per se illegal approach declares that any agreement or certain business activities are as illegal, without further evidence on the impact of the agreement or the business activities. Activities that are considered as per se illegal typically includes collusive pricing on certain products, as well as setting the resale price.

¹⁹ Andi Fahmi Lubis dkk, 2009, *Hukum Persaingan Usaha Antara Teks dan Konteks*, Indonesia, KPPU, p.55.