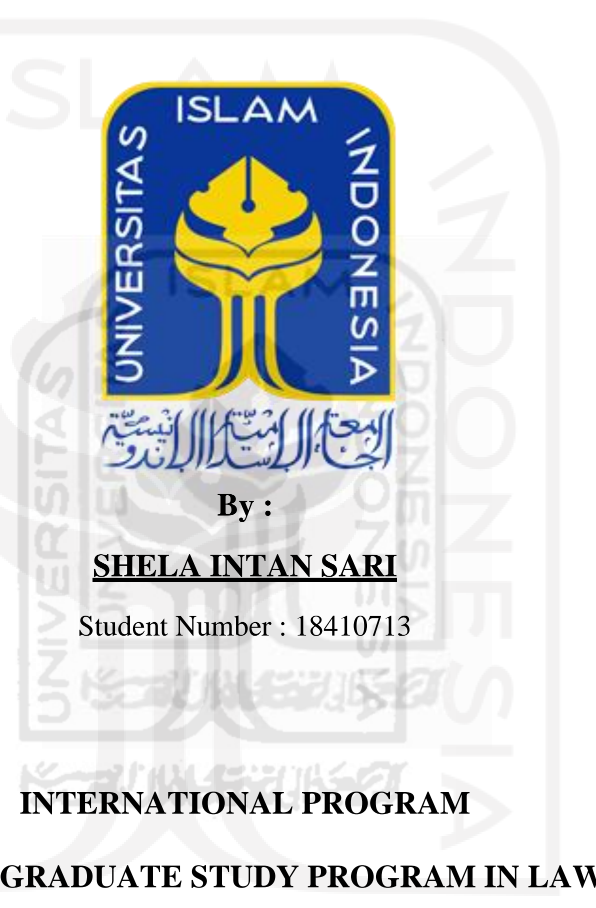
THE SUITABILITY OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF THE PROCUREMENT OF THE COVID-19 VACCINE BY PT. BIO FARMA (PERSERO)

THESIS



By :

SHELA INTAN SARI

Student Number : 18410713

INTERNATIONAL PROGRAM

UNDERGRADUATE STUDY PROGRAM IN LAW

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

YOGYAKARTA

2023

THE SUITABILITY OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF THE PROCUREMENT OF THE COVID-19 VACCINE BY PT. BIO FARMA (PERSERO)

THESIS

Presented as the Partial Fulfillment of The Requirements to Obtain a Bachelor's Degree at The Faculty of Law Universitas Islam Indonesia Yogyakarta

By :

SHELA INTAN SARI

Student Number : 18410713

INTERNATIONAL PROGRAM

UNDERGRADUATE STUDY PROGRAM IN LAW

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

YOGYAKARTA

2023

THE SUITABILITY OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF THE PROCUREMENT OF THE COVID-19 VACCINE BY PT. BIO FARMA (PERSERO)

This bachelor degree thesis has been approved by Thesis Language Advisor to be examined by the Board of Examiners at the Thesis Examination on January 4th, 2023

Yogyakarta, January 4th , 2023

Language Advisor

Wury Anggun Kusumawati, M.pd., Gr.

THE SUITABILITY OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF THE PROCUREMENT OF THE COVID-19 VACCINE BY PT. BIO FARMA (PERSERO)

Telah diperiksa dan disetujui Dosen Pembimbing Tugas Akhir untuk diajukan ke depan TIM Penguji dalam Ujian Tugas Akhir / Pendadaran pada tanggal 8 Februari 2023

Yogyakarta, 9 Januari 2023
Dosen Pembimbing Tugas Akhir,

Siti Anisah, Dr., S.H., M.Hum.

THE SUITABILITY OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF THE PROCUREMENT OF THE COVID-19 VACCINE BY PT. BIO FARMA (PERSERO)

Telah Dipertahankan di Hadapan Tim Penguji dalam Ujian
Tugas Akhir / Pendadaran
pada tanggal 8 Februari 2023 dan Dinyatakan LULUS

Yogyakarta, 8 Februari 2023

Tim Penguji			Tanda Tangan
1. Ketua	:	Siti Anisah, Dr., S.H., M.Hum.	....
2. Anggota	:	Lucky Suryo Wicaksono, S.H., M.Kn., M.H.	....
3. Anggota	:	Agus Triyanta, Drs., M.A., M.H., Ph.D.	....

Mengetahui: Universitas
Islam Indonesia
Fakultas Hukum
Dekan,

1

Prof. Dr. Budi Agus Riswandi, S.H., M.H.
NIK. 014100109

SURAT PERNYATAAN

ORISINALITAS KARYA TULIS ILMIAH BERUPA TUGAS AKHIR MAHASISWA FAKULTAS HUKUM UNIVERSITAS ISLAM INDONESIA

Bismillahirrahmanirrahim

Yang bertanda tangan di bawah ini, Saya :

Nama : SHELA INTAN SARI

NIM 18410713

Adalah benar-benar Mahasiswa Fakultas Hukum Universitas Islam Indonesia yang telah melakukan penulisa Karya Tulis Ilmiah (Tugas Akhir) berupa Skripsi dengan judul:

THE SUITABILITY OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF THE PROCUREMENT OF THE COVID-19 VACCINE BY PT. BIO FARMA (PERSERO).

Karya Ilmiah ini saya ajukan keapda Tim Penguji dalam Ujian Pendadaran yang diselenggarakan oleh Fakultas Hukum Universitas Islam Indonesia.

Sehubungan dengan hal tersebut dengan ini saya menyatakan:

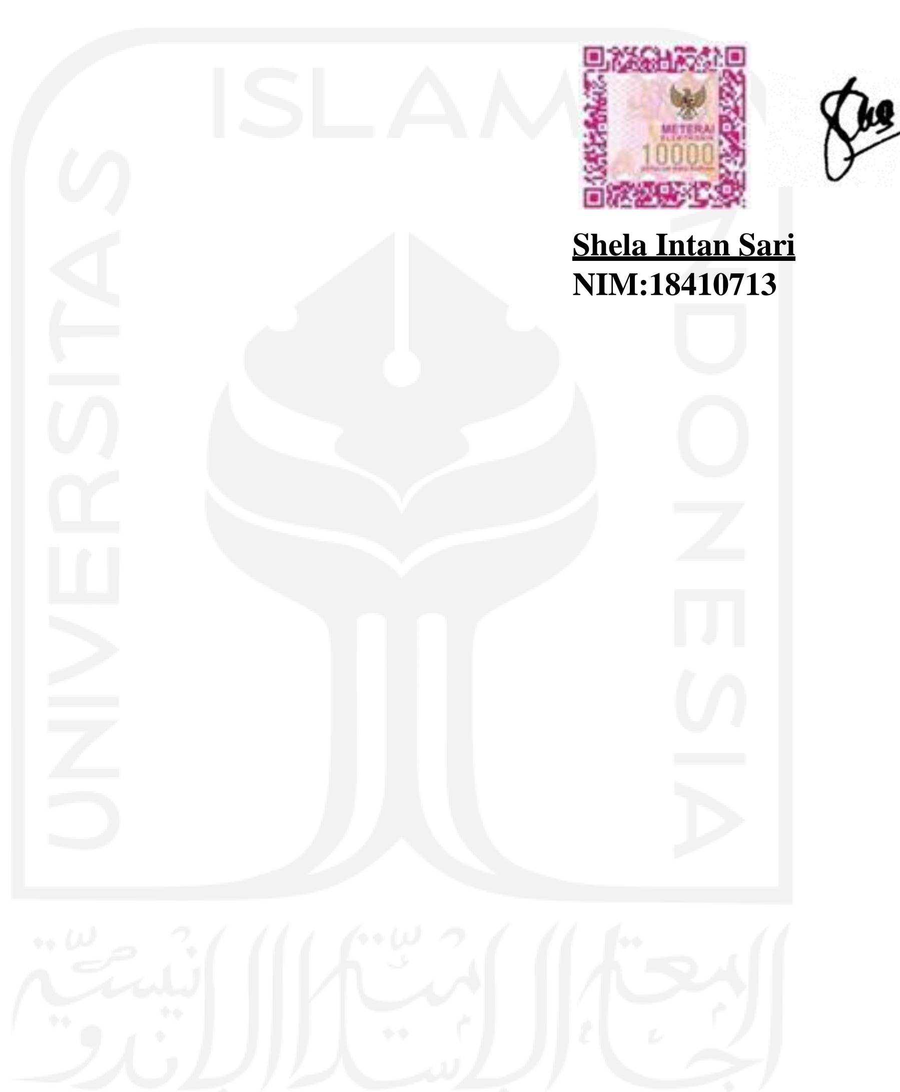
1. Bahwa karya tulis ilmiah ini adalah benar-benar hasil karya saya sendiri yang dalam penyusunan tunduk dan patuh terhadap kaidah, etika dan norma-norma penulisan sebuah karya tulis ilmiah sesuai dengan ketentuan yang berlaku;
2. Bahwa saya menjamin hasil yang dapat dikategorikan sebagai melakukan perbuatan karya ilmiah ini benar-benar asli (orisinil), bebas dari unsur-unsur *„"penjiplakan karya ilmiah (plagiarism)""*;
3. Bahwa meskipun secara prinsip hak milik atas karya ilmiah ini ada pada saya, namun demi kepentingan-kepentingan yang bersifat akademik dan pengembangannya, saya memberikan wewenang kepada Perpustakaan Fakultas Hukum Universitas Islam Indonesia untuk mempergunakan karya tulis ini.

Selanjutnya berkaitan dengan hal di atas (terutama pernyataan butir nomor 1 dan nomor 2), saya sanggup menerima sanksi baik administratif, akademik, bahkan sanksi pidana, jika saya terbukti secara kuat dan meyakinkan telah melakukan perbuatan yang menyimpang dari pernyataan tersebut. Saya juga akan bersikap kooperatif untuk hadir, menjawab, membuktikan, melakukan terhadap pembelaan hak-hak dan kewajiban saya, di depan „"Majelis"" atau „"Tim"" Fakultas HukumUniversitas Islam Indonesia yang ditunjuk oleh pimpinan fakultas, apabila tanda-tanda plagiat disinyalisir/terjadi pada karya ilmiah saya ini oleh pihak Fakultas Hukum Universitas Islam Indonesia.

Demikian surat pernyataan ini saya buat denga sebenar-benarnya, dalam kondisi sehat jasmani dan rohani, dengan sadar dan tidak ada tekanan dalam bentuk apapun dan oleh siapapun.

Yogyakarta, January 2th, 2023

<u>Shela Intan Sari</u>
NIM:18410713



CURRICULUM VITAE

1. Name : Shela Intan Sari
2. Place of Birth : Purwokerto
3. Date of Birth : January 17th , 2001
4. Gender : Female
5. Address : Jalan Dr. Soeparno Perumahan Arcawinangun Estate Blok AB 1 No. 5, Kecamatan Purwokerto Timur, Kota Purwokerto Kabupaten Banyumas

6. Parents Identity
   a. Father : (Alm) Sudarto Karjaya, S.P.
      Occupation : PNS
   b. Mother : Ir. Rr. Esti Kumalaningsih
      Occupation : PNS
7. Education
   a. Elementary School : SD Negeri 3 Kranji Purwokerto
   b. Junior High School : SMP Negeri 6 Purwokerto
   c. Senior High School : SMA Negeri 5 Purwokerto
   d. College : Universitas Islam Indonesia
8. Organization Experiences
   a. Member of the Moot Trade Community (KPS) FH UII (2018-2019).
   b. Member of the Public Relations Section at the Juridical Council Of International Program (JCI) FH UII (2019-2021).
9. Work Experience : Participated during an internship to help with work assignments in the Legislation Section - Invitation to the Regional People's Representative Council (DPRD) in Banyumas Regency.

MOTTO

"With every difficulty, there is relief"
(Surah Ash-Sharh (The Relief) : 6)

"But Allah is your protector, and He is the best of helpers"
(QS. Ali-Imran 3 : 150)

"So be patient. Indeed, the promise of Allah is truth"
(QS Ar-Rum 30:60)

"If you are grateful, I will surely increase you [in favor]"
(Surah Ibrahim 14:7)

"If we are not prepared to change our mentality, our capabilities, we will only be spectators, (not the cogs of change)."
(Minister of State-Owned Enterprises (BUMN) Mr. Erick Thohir)

DEDICATION

This thesis is wholeheartedly dedicated to:

Allah *Subhanallahu wa ta'ala,*

Thanks Allah SWT who always gives me strength, health and broad knowledge which made it possible to complete my thesis;

My beloved mother, Little Sister and Big Family,

who always provided me love, continuous support and affection;

My Alma Mater,

Universitas Islam Indonesia

All of my lectures of Faculty of Law, Universitas Islam Indonesia,

who have taught and guided me to complete my study;

All Staff of Faculty of Law, Universitas Islam Indoenesia,

who always help me during my study

All of My Friends,

who always be on my side in easy and hard times;

My Future

wherever you are, thank you for always encouraging me to finish my study, my prayers will always be there for you, see you in the nearly soon.

ACKNOWLEDGMENT

First of all, *Alhamdulillahirabbil"alamin,* All praise and thank to Allah *Subhanallahu wa ta"ala* who has given me blessing to finish the entire thesis, one of the most important requirements to achieve the bachelor degree in International Undergraduate Program in Law Univeristas Islam Indonesia, in which the thesis is entitled, **''THE SUITABILITY OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF THE PROCUREMENT OF THE COVID-19 VACCINE BY PT. BIO FARMA (PERSERO)".** *Shalawat* and *Salam* shall be granted to Prophet Muhammad *Shallallahu „alaihi wasallam*, for bringing all humankind to a brighter era with the full of knowledge. During the process of making this thesis, the writer realized that the thesis will never be finished without any contribution, assistance, guidance and support from various parties. All gratitude shall be honored to:

1. Allah SWT who have already given the researcher the grace and enlightenment from the beginning to the end of writing this thesis.

2. My beloved parents, is my mother **Ir. Rr. Esti Kumalaningsih** who have always been my support system in the process of writing this thesis, the one and only with pure love.

3. **Mr. Prof. Fathul Wahid, ST., M.Sc., Ph.D** the Rector of Universitas Islam Indonesia.

4. **Mr. Prof. Dr. Budi Agus Riswandi, S.H., M.Hum.,** as Dean Faculty of Law, Universitas Islam Indonesia.

5. **Mrs. Dr. Siti Anisah, S.H., M.Hum**., as my thesis advisor, who has helped me in writing my thesis, because of your guidance, advice and kindness, Alhamdullillah finally, I can finish writing my thesis.

6. **Mr. Dodik Setiawan S.H., M.H., LL.M., Ph.D.** as Head of Undergraduate Study Program in Law, Faculty of Law, Universitas Islam Indonesia.

7. **Mrs. Dr. Aroma Elmina Martha S.H., M.H.** as Director of International Program Law Departement, Universitas Islam Indonesia.

8. My Bude is **Rr. Ginding Kumaladewi S.H.** for encouraging me to be able to finish my thesis well, and Pakde **Tri Joko Wahyono S.Pd.** who also gave motivation so that I can quickly finish this thesis.

9. My uncle is **R. Juniman Soetopogiri S. Sos.** who directs me in writing the thesis must be thorough, good and correct.

10. **Putri Ariqah** is a very good friend for me, always kind, and certainly helps me if I have difficulties in college. and always able to encourage and support me in achieving success.

11. **Fidela Nuansa Azzahra**, as a friend who first entered the UII Faculty of Law during the faculty exam period, who always wanted to be good friends with me, until I was at this point, she was always supportive, and always spread kindness and compassion.

12. **Annisa Aulya Putri** can be called Nicul, as an adult, kind and smart friend. always with me up to this point. for sure he always supports me in the process of writing this thesis from the beginning of writing to completion.

13. **Fadhila Asih Pratiwi**, as one of my playmates in Jogja, is kind and funny and likes to tell a lot. she also always supports me in achieving success in this thesis and also in my future.

14. **Agustina, Alika, Tria, Rani, Elvira**, as my best juniors at FH UII who always love and give kindness to me, and support me in completing this thesis.

15. **Mr. Sigit Dwi Yunianto S.H.** as the Head of the Legislation Subdivision, **Mr. Satrya** the Head of the Supervision Facilitation Subdivision, and **Mrs. Nuniek** as the Head of the General Subdivision at the Banyumas Regency DPRD Secretariat

and also several members of the council but I cannot mention one by one here, because He is the one who also gave me encouragement, support and prayer during my internship when I was also writing my thesis.

16. **Mba Lina, Mas Dwika, and Mas Gilang** as staff in the Legislation section where I was placed in that section, he also always supported me to be able to successfully complete this thesis even though at that time I was also carrying out an internship.

17. And I will never forget my new friends who were very kind during my internship **Atikah, Asfiya, Adit, Arum and Devie** who came from Jenderal Soedirman University, because they always encouraged and provided support until I successfully finished this thesis.

18. **My classmates (IP Batch 2018)** that I cannot mention one by one. Thank you guys for all the best memories of the last four years together in class.

Finally, the author realized that there are still a lot of things that need to be improve, hence any kind of suggestion will be gladly accepted and considered for better future knowledge. Hopefully this thesis can be useful for anyone who reads this.

Yogyakarta,January 2th,2023

Author,

Shela Intan Sari

TABLE OF CONTENTS

TITLE PAGE i

SUBMISSION PAGE ii

ENDORSEMENT PAGE iii

APPROVAL PAGE iv

ORIGINALITY STATEMENT vi

CURRICULUM VITAE viii

MOTTO ix

DEDICATION x

ACKNOWLEDGEMENT xi

TABLE OF CONTENT xiv

ABSTRACT xvii

CHAPTER I 1

INTRODUCTION..... 1

A. Background 1

B. Problem Formulation 10

C. Purpose of Research 10

D. Orisinalitas of Research 11

E. Literature Review 25

F. Operational Definition 32

1. Business Competition 32

2. Procurement 33

3. Asiggnment 33

G. Method of Research 33

1. Research Typology 33

2. Approach 33

3. Source of Data 34

4. Data Collection Method 35

5. Research Focus 35

6. Research Analysis 35

H. Writing Systematics 36

CHAPTER II 38

STUDY OF THE LEGAL THEORY OF BUSINESS COMPETITION, ANTITRUST IMMUNITY, SOE AND PROCUREMENT DUTIES 38

A. Business Competition Law and Anti-Monopoly 38

1. The Meaning of Business Competition Law 38

2. Business Competition Law Policy 38

3. Principles and Objectives of Monopoly and Unfair Competition 40

4. Agreements Prohibited in Monopoly and Business Competition 41

5. Things Excluded in Monopoly 42

B. Application of Antitrust Immunity 43

1. Antitrust Immunity Policy 43

2. Comparison of Application of Competition Law and Antitrust Law in Several Countries 45

C. The Concept of Assignment of State-Owned Enterprises 61

1. Definition of Assignment of State-Owned Enterprises 61

2. Legal Basis of Assignment of State-Owned Enterprises 62

D. The Concept of State-Owned Enterprises and Procurement of Goods and Services for State-Owned Enterprises 63

1. The Meaning and Legal Basis of State-Owned Enterprises 63

2. Purpose and Benefits of State-Owned Enterprises ... 65
3. The functions and roles of SOEs are as follows ... 66
4. Procurement of Goods and Services for State-Owned Enterprises ... 66
5. Government Assignments to State-Owned Enterprises ... 69
E. Business Competition Law in the Perspective of Islamic Law ... 70
CHAPTER III ... 72
RESEARCH RESULTS REGARDING APPROPRIATE ANTITRUST IMMUNITY IN ASSIGNMENT OF PROCUREMENT OF COVID-19 VACCINE TO PT. BIO FARMA (PERSERO) ... 72
A. PRESIDENTIAL REGULATION (PERPRES) CONCERNING VACCINE PROCUREMENT AND VACCINATION IMPLEMENTATION IN THE CONTEXT OF COMBATING THE 2019 CORONA VIRUS DISEASE (COVID-19) PANDEMIC INCLUDED IN ANTITRUST IMMUNITY ... 72
B. THE OCCURRENCE OF A VIOLATION OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF PT. BIO FARMA AS A STATE-OWNED ENTERPRISE IN VACCINE PROCUREMENT ... 76
CHAPTER IV ... 80
CLOSING ... 80
A. Conclusion ... 80
B. Recommendation ... 81
BIBLIOGRAPHY ... 85

ABSTRACT

The emergence of the Covid-19 virus outbreak, brings several negative impacts on people health and the economy of which the recovery will take a quite long time. The initial action taken by many countries is to improve the quality of their respective health, including producing a Covid-19 vaccine. In Indonesia, the Government has assigned PT Bio Farma, which is a State-Owned Enterprise, to procure Covid-19 vaccines, in accordance with Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccine Implementation in the Context of Eradicating Corona Virus Disease 2019 (Covid19 Pandemic. This study examines the suitability of Antitrust Immunity in the assignment of COVID-19 vaccine procurement to PT. Biofarma. Furthermore, there is Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccine Implementation in the Context of Eradicating the 2019 Corona Virus Disease (Covid-19) Pandemic, including Antitrust Immunity. Antitrust immunity is a exceptions to the prohibition of monopolistic practices for business actors with certain criteria. Provisions that are excluded from the application include Article 50 letter a and Article 51 of Law Number 5 of 1999. Based on this arrangement, the Covid-19 Vaccine Assignment in Indonesia should only focus on PT Bio Farma PT Bio Fa RMA is a BUMN that is appointed directly based on the applicable laws and regulations by taking into account the fulfillment of community needs. Furthermore, if in carrying out the assignment PT Bio Farma requires goods and or services, then it should be done by tender.

Keywords: Antitrust Immunity, Assignment, Procurement, Covid-19 Vaccine.

CHAPTER I

INTRODUCTION

A. Background

Across all countries were shocked by the emergence of the COVID-19 outbreak in the early 2020. The very first case was found in Wuhan, China and its spread has an alarming speed until a case found in Indonesia on March, 2020. Many people were infected by this virus and caused the high death rate in various countries. Due to this pandemic, several countries have created vaccines, which ultimately can be given to countries in the world to prevent and protect their citizens from being exposed to COVID-19.

In Indonesia there is a Bio Farma Company, namely one of the State-Owned Enterprises (BUMN), PT. Bio Farma was officially appointed by President Joko Widodo to procure the corona or covid-19 vaccine in Indonesia. This assignment also involves BUMN subsidiaries, such as PT. Kimia Farma tbk, and PT. Indofarma tbk. In accordance with the provisions contained in Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccine Implementation in the Context of Eradicating the 2019 Corona Virus Disease (Covid-19) Pandemic.[1]

PT. Bio Farma is a State-Owned Enterprise engaged in the pharmaceutical sector which focuses on the production of vaccines and antisera. Reporting from the official website of Bio Farma, the company based in Bandung, West Java was first established on August 6, 1890 under the name Parc Vaccinogene. Since its inception, Bio Farma has continued to play an active role in producing, marketing, and developing vaccine technology to ensure the independence of domestic vaccine needs

[1] Presidential Regulation No. 99 of 2020 concerning Vaccine Procurement and Vaccine Implementation in the Context of Combating the Corona Virus Disease 2019 (Covid-19) Pandemic.

and help meet the world's vaccine needs.[2] Until now, vaccine products for Bio Farma have received prequalification recognition from the World Health Organization (WHO) so that they are trusted to meet vaccine needs in more than 140 countries.

In Presidential Regulation Number 99 of 2020, Article 4 paragraph (1) explains that the implementation of the procurement of the Covid-19 vaccine as referred to in Article 3 is carried out through:

a. Assignment to SOEs

b. Direct appointment of the provider business entity; and/or

c. Cooperation with international institutions/agencies

Then, in Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Eradicating the Corona Virus Disease (Covid-19) Pandemic in Article 5 paragraph (1) it is explained that the assignment as referred to in Article 4 paragraph (1) letter a to PT Bio Farma (Persero) is carried out by the Minister of Health. And paragraph (3) explains that the assignment to PT Bio Farma (Persero) may involve subsidiaries of PT Bio Farma (Persero), namely PT Kimia Farma Tbk and PT Indonesia Farma Tbk. By registered at:

a. Article 7 paragraph (1)[3] explains that Cooperation with international institutions/institutions as referred to in Article 4 paragraph (1) letter c is carried out with international institutions/agencies that offer or cooperate in research, production, and/or provision of Covid-19 vaccines.

---

[2] Riwayat Singkat Perusahaan Bio Farma Sebagai salah satu BUMN, https://www.biofarma.co.id/media/image/originals/uploads/2019/09/Riwayat-Singkat-Perusahaan.pdf

[3] Presidential Regulation No. 99 of 2020 concerning Vaccine Procurement and Vaccine Implementation in the Context of Combating the Corona Virus Disease 2019 (Covid-19) Pandemic.

b. Article 7 Paragraph (3) explains that the type and amount of procurement of the COVID-19 Vaccine through cooperation as referred to in paragraph (1) is determined by the Minister of Health by taking into account the handling of Corona Virus Disease. Committee (COVID-19) and National Economic Recovery.

Based on the explanations above, the research leads to the discussion about Antitrust Immunity. The term antitrust is taken from United States law which was originally created to combat trust business.[4] In American language, antitrust laws are immunities and exemptions that limit or prevent the application of antitrust laws to certain behaviors or industries. This step was taken by the United States (US) to overcome the pandemic. Instead of limiting it, the US government has legalized monopolistic practices for a group of corporations that want to produce a corona vaccine. In Indonesia Antitrust is the government's policy to overcome monopoly. Antitrust laws aim to stop the abuse of market power by large corporations and, sometimes, to prevent mergers and acquisitions of companies that would create or strengthen monopolies.[5]

In this case, we can pay attention to Presidential Regulation Number 99 of 2020 which regulates the Procurement of the Covid-19 Vaccine whether it is included in Antitrust immunity. Antitrust Immunity is an exception to the prohibition of monopolistic practices for business actors with certain criteria. In general, antitrust immunity is created under conditions to address national problems of an emergency nature or accelerate the production of goods and/or services that are urgently needed

---

[4] Chrinstine A. Varney, "Remarks as Prepared for the American Antitrust Institute's 11th Annual Conference: Public and Private: Are the Boundaries in Transition?" Journal of Antitrust Immunities, June 2010,https://www.justice.gov/atr/file/518206/download

[5] Kamus Ekonomi : Apa Arti Antitrust https://ekonomi.bisnis.com/read/20130820/9/157641/kamus- ekonomi-apa-arti-antitrust

by society.[6] so that the President in issuing Presidential Regulation Number 99 of 2020 regarding PT. Bio Farma as a state-owned company appointed for Vaccine Procurement has met the requirements for Antitrust Immunity. and actions that can be taken in Antitrust Immunity, one of which is the Antitrust Immunity Policy in the context of Procurement of Covid-19 Vaccines in Indonesia. Because antitrust immunity largely serves to reconcile conflicting laws, and otherwise lacks a unifying principle.[7] As we know that in Indonesia the Covid-19 Vaccine Assignment has its own rules in making Antitrust Policy.

Anderson in Arie Siswanto argues that competition in the economic field is one of the most important forms of competition among the many competitions between humans, community groups, or even nations. Anderson's opinion seems to be supported by the historical fact that in the past European countries competed fiercely to acquire and control economic resources in Asia, Africa, and South America. One form of competition in the economic field is business competition, which can simply be interpreted as competition between sellers in “seizing” buyers and market share.

According to Arie Siswanto, the Business Competition Law is a legal instrument that determines how competition should be conducted.[8] Although it specifically emphasizes the "competition" aspect, competition law is also closely related to the eradication of monopoly, because what is also a concern of competition law is to regulate competition in such a way that it does not become a means to obtain a monopoly. . In addition, Hermansyah also revealed that business competition law is a set of legal rules that regulate all aspects related to business competition, which

---

[6] Pandemi dan Antitrust Immunity https://analisis.kontan.co.id/news/pandemi-dan-antitrust-immunity

[7] ArticlebyWilliamMarkham, San Diego Attorney.2021. https://www.markhamlawfirm.com/antitrust- exemptions-and-immunities-by-william-markham-2021/

[8] Arie Siswanto, *Hukum Persaingan Usaha*, Cetakan Pertama. Jakarta : Ghalia.2002, p.70.

include things that are allowed to be done and things that are prohibited from being done by business actors.

From the various definitions of law and business competition mentioned above, it can be concluded that business competition law is a legal instrument consisting of several rules that regulate and supervise business competition actions or practices carried out by business actors, with the aim of avoiding fraudulent business competition practices. Unfair Trade Competition) which can harm other business actors and the public interest as well as create fair and non-monopoly business competition.

In direct appointment, PT Bio Farma (Persero) is a company that is not alone in the process of implementing the COVID-19 Vaccine Assignment. But also cooperate with other institutions/business entities or international bodies. With the regulation that grants monopoly rights to PT Bio Farma, this of course must comply with Article 50 letter A and Article 51 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. However, this research also leads to finding the possibility of a violation of antitrust immunity in the direct appointment of PT Bio Farma as a State-Owned Enterprise in the Procurement of Vaccines. Because this can be noticed if PT. Bio Farma makes direct appointments, when carrying out vaccine procurement, and besides that, antitrust violations occur when the making of regulations is based on a financial profit motive that will later be received by policy makers or the government.

Regarding existing legal issues, problems related to the presence of Covid-19 vaccine is believed to be a breath of fresh air to restore the national economy.

However, the monopoly[9] plan for the procurement of corona vaccines by the government has the potential to dwarf the role of the private sector.

Chairman of the Committee for Handling Covid-19 and National Economic Recovery Airlangga Hartanto said his party had secured the procurement of a corona vaccine for 135 million Indonesians until 2021. This was conveyed in a press release in Jakarta, Monday, October 12, 2020.

Like an oasis in the desert, the good news was immediately welcomed by investors and market participants. The Composite Stock Price Index (JCI) closed up 31.64 points, or appreciated 0.62% to 5,124.81 the next day. Business people are waiting for the presence of a corona vaccine. The reason is that social restrictions efforts to break the pagebluk chain have reduced consumers' purchasing power. The consumption achievement in the second quarter of 2020 fell to -5.51%. In fact, with a share of 57.9%, the role of consumption is very large in supporting the national economic order. The government itself has set six priority groups for corona vaccine recipients. Starting from medical personnel, the elderly, educators, civil servants, BPJS participants, to the general public. Cumulatively, there are 160 million Indonesians who will be injected with the corona vaccine until 2022.

Viewed by business viewpoint, the determination leads to questions. First, whether the corona vaccine is free, and second whether the private sector is able to enjoy. The government has regulated the corona vaccine procurement scheme through Presidential Decree No. 99/2020. Based on these regulations, vaccine procurement is carried out by three parties, namely Bio Farma, the provider business entity, and/or international institutions.

[9] R.J. Akyuwen, "Kriteria Badan Usaha Milik Negara Yang Diberikan Hak Monopoli Dalam Perspektif Hukum Persaingan Usaha". 2016.

Looking at Private Opportunities from the facts above, it seems that the national vaccine roadmap will be dominated by the role of the government. The proof is that the Ministry of Finance has allocated Rp. 18 trillion, equivalent to 11% of the total health budget in the 2021 State Budget for the procurement of Covid-19 vaccines.

However, the government's attempt to be the only one hero needs to be recalibrated as the state revenue. The Fiscal Policy Agency (BKF) of the Ministry of Finance announced that the realization of tax revenue until July 2020 only reached Rp. 711 trillion, or minus 14.7% in a year. Weak fiscal strength opens up opportunities for the private sector to be actively involved in procuring a corona vaccine. This sign is evidenced by the number of private hospitals that provide COVID-19 swab test services independently, the price of which has just been set by the government at IDR 900,000 per test.

In this case, the corona vaccine is a rare item. Its production and distribution are very vulnerable to being monopolized. So it can still be questioned whether the government can guarantee that the procurement of the corona vaccine is free from unfair business competition practices. If we look at historical data, the answer is "not necessarily". The Business Competition Supervisory Commission (KPPU) noted that there were two potential business competition violations that occurred during the corona pandemic. Uniquely, both are carried out by the government. First, the alleged mafia of medical devices (alkes). On April 23, 2020, KPPU wrote to the Ministry of SOEs regarding the alleged monopolistic practice of procuring medical devices within the government. SOE Minister Erick Thohir himself agrees that around 90% of our raw materials for medicine come from abroad because of the import mafia that makes our SOEs complacent and lazy to produce. Second, the pre-employment card program. The appointment of partners that seem to be favoritism and a procurement

system that is far from transparent are the two issues highlighted by KPPU. Before the corona vaccine is produced, it is not impossible that these two naughty practices will repeat themselves. In practice, it turns out that many countries are implementing Antitrust Immunity in a pandemic situation like today. including Indonesia. An example for the United States in implementing Antitrust Immunity during this pandemic is the existence of conditions that cause the United States to allow monopolies. This condition is caused by the current Covid-19 pandemic. It is hoped that by allowing monopoly an effort to save sectors affected by the Covid-19 pandemic. Seeing the emergency experienced, namely the need for vaccines quickly and in large quantities. The United States government has legalized a monopoly practice for a group of companies that want to produce a vaccine for COVID-19. This is done to meet the needs of the community regarding vaccines.[10] Then unlike Japan, in Japan they have an antitrust law called the Antimonopoly Law (AML). With the issuance of the law, several large companies had to be restructured by splitting themselves into smaller companies.[11] Meanwhile in the UK, antitrust policies are judged on what policy makers decide in the public interest. This approach is relatively permissive to mergers and acquisitions. However, the British state in the mid-1980s followed America's lead in basing antitrust policies on consumers, whether changes in competition were detrimental. In some large countries in the European Union there are pursuing policies to build national power, companies are allowed to choose to enjoy some monopoly power in their country which is used to make their foreign competitors more effective. However, during the 1990s the European Commission became increasingly active in antitrust policy, seeking to

[10] Sheila Namira Marchellia, "Penggunaan Antitrust Immunity dan Kartel di Masa Pandemi", Jurnal Persaingan Usaha, Vol. 1 No. 1 Tahun 2021, p.20.
[11] Ivindo Brena Tarigan "Kajian Perbandingan Tentang Komisi Pengawas Persaingan Usaha Di Indonesia Dibandingkan Dengan Komisi Pengawas Persaingan Usaha Negara Jepang", Jurnal Ilmu Hukum, Tahun 2019, p.3.

promote competition within the European Union.[12] From the above descriptions regarding the application of Antitrust Immunity in various countries, the authors in reviewing this research see very clearly that there is a close relationship between PT Bio Farma as a state-owned company appointed for direct Assignment with Antitrust Immunity, with whether the regulation or assignment can categorized as Antitrust Immunity and whether it violates the law and competition principles, especially in Indonesia. The main explanation regarding the meaning of Antitrust Immunity itself. Antitrust immunity is an exception to the prohibition of monopolistic practices for business actors with certain criteria. In general, antitrust immunity is created to address national problems of an emergency nature or accelerate the production of goods and/or services that are urgently needed by the community. This step was taken by the United States (US) to overcome the pandemic. Instead of limiting it, the US government has legalized monopolistic practices for a group of corporations that want to produce a corona vaccine. As a result, four US vaccine companies have now entered phase three clinical trials.

Given that the emergency conditions have been met, antitrust immunity can be an incentive for local companies to collaborate with each other to build the Red and White vaccine industry. Not relying on SOEs which have been dictated by importers. However, the antitrust immunity policy needs to be guarded by three things so that the practice does not harm the community. First, business actors who are granted exemptions from the prohibition of monopolistic practices must be closely monitored by KPPU. Second, corporations involved in the Merah Putih vaccine industry must consist of state-owned enterprises, the private sector, and academics. So that the

[12] Kamus Ekonomi : Apa Arti Antitrust
https://ekonomi.bisnis.com/read/20130820/9/157641/kamus- ekonomi-apa-arti-antitrust#:~:text=00%3A03%20WIB-,Bisnis.com%2C%20JAKARTA%20%2D%20Antitrust%20merupakan%20kebijakan%20pemerintah%20untuk%20menangani,akan%20menciptakan%20atau%20memperkuat%20monopoli.

principle of healthy business competition is maintained and the price of the corona vaccine is affordable for all people.

Finally, antitrust immunity is only temporary. When the corona vaccine is no longer a rare item, this rule must be repealed. With these three "fences", the goal of creating a national vaccine industry is no longer just a hope. Efforts to restore the national economy can also run optimally.[13] Based on what has been described above, the authors are interested in researching the suitability of Antitrust Immunity in the Covid-19 Vaccine Procurement Assignment to PT. Bio Farma (Persero).

B. Problem Formulation

1. Is Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Overcoming the Corona Virus Disease (Covid-19) Pandemic included as antitrust immunity?
2. Are there any possibilities of violation antitrust immunity in the direct appointment of PT Bio Farma as a BUMN in Vaccine Procurement?

C. Purpose of Research

1. To Present an analysis on Antitrust Immunity in relation to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Overcoming the Corona Virus Disease (Covid-19) Pandemic.
2. To find out if there is a possible violation of Antitrust Immunity in the Direct Appointment of PT Bio Farma as a BUMN in the Procurement of Vaccines.

[13] Artikel Analis Bank Indonesia Sumatera Utara : Adhi Nughroho, “Pandemi dan Antitrust Immunity”, Tahun 2020.p.2.

D. Orisinalitas of Research

No	Research Name and Research Title	Problem Formulation	Research Result	Difference with Research Plan
1.	Tri Utomo Wignarto, Asenar, and Elisatris Gultom , Legal Aspects Of Business Competition In The Procurement Of Covid-19 Vaccine By Bio Farma LTD.[14]	Analyzing the elimination of monopolies by SOEs Business Entities (BUMN) based on the provisions of the business competition law in Indonesia Procurement of Covid-19 vaccine by Bio Farma (Persero) Ltd Indonesia is being hit by the	1. The legitimacy of granting a monopoly to SOEs ideally there will be three main businessmen in the Indonesian economy, namely: First, State-Owned Enterprises (BUMN) as bodies representing the state in realizing the mandate of the Constitution to manage and utilize natural resources for the prosperity of all Indonesian people.	In this study, Tri Utomo Wignarto, Asenar, and Elisatris Gultom only focused on analyzing the elimination of monopolies by State-Owned Enterprises (BUMN) based on the provisions of the business competition law in the procurement of Covid-19 vaccines by Bio Farma (Persero) Ltd Indonesia, which was being hit hard. by the Covid-19 outbreak. While in the

[14] Legal Aspects Of Business Competition In The Procurement Of Covid-19 Vaccine By Bio Farma LTD http://www.jurnal.unsyiah.ac.id/kanun/article/view/20416

		Covid-19 outbreak. This condition has a negative impact in various fields. To To overcome this, one of the government's efforts is to bring in vaccines to prevent the spread, and vaccine procurement was given to Bio Farma Ltd. There are indications of monopoly the act of procuring a Covid-19	BUMN is an Economic institution that will handle production branches that are important for the state and control the lives of many people. Second, cooperatives will handle the small and medium business sector, especially the traditional trade sector (retail traders), agriculture, home industry and the like. Third, the private sector will handle business sectors that have not been handled by SOEs and Cooperatives, such as industries with high technology and capital intensive,	research the author discusses the suitability of Antitrust Immunity in the Procurement of the Covid-19 Vaccine Assignment by PT. Bio Farma, in which the research problem is analyzing Presidential Regulation Number 99 of 2020 whether it includes Antitrust Immunity and Analysis of the possibility of a violation of Antitrust Immunity in the direct appointment of PT. Bio Farma as a BUMN in the procurement of vaccines.

		vaccine by Bio Farma Ltd.	including the service business sector which ideally does not include BUMN and Cooperatives such as insurance, banking, transportation, telecommunications. 2. Legal Aspects of Business Competition in Covid 19 Vaccine Procurement Activities by Bio Farma (Persero) Ltd related to the procurement of Covid-19 vaccine by Bio Farma (Persero) Ltd, it can be analyzed as follows: First, the element of “the existence of an act and or an agreement”. Where	

			there is a Covid-19 Vaccine procurement activity by Bio Farma (Persero) Ltd, therefore this element is fulfilled. Second, elements of “Aims to Implement”. So, from here the author argues that the "aimed at implementing" element is fulfilled based on the first element. Because Bio Farma (Persero) Ltd carries out what is the government's instructions/orders (in this case through Presidential Regulations and Minister of Health Regulations). It just needs to be seen	

			whether the government's instructions/orders can be categorized as statutory regulations. Third, elements of "Legislation". The definition of this statutory regulation is very firmly regulated in Law no. 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation. In Article 1 number 2 of Law no. 15 of 1999 it is stated that statutory regulations are written regulations that contain legally	

			binding norms in general and are formed or determined by state institutions or authorized officials through procedures stipulated in laws and regulations.	
2.	Agus Riyanto and Iwan Erar Joesoef , Assignment of State-Owned Enterprises in Toll Road Concession: Assignment Study of PT. Hutama Karya (Persero) in Toll Road	1.Does PT. Hutama Karya (Persero) can be given an assignment to accelerate the construction of toll roads in Sumatra? 2. How should the assignment of PT. Hutama Karya (Persero) to accelerate the	1.Overview of Toll Road Concession in Indonesia a. The period of Law Number 13 of 1980 concerning Roads In 1980, PT Jasa Marga (Persero) with the enactment of Law no. 13 of 1980 on December 27, 1980, based on the authority given by the government to carry out the operation of	In this research, Agus Riyanto and Iwan Erar Joesoef only focus on how a state-owned company can be given an assignment quickly in toll road concessions and the assignment still takes into account the General Principles of Good Governance (AAUPB).

	Concession in Sumatra[15]	construction of toll roads in Sumatra in accordance with the general principles of good governance (AUPB)?	toll roads, covering all activities to realize the target of toll road development and its operational activities including toll collection, regulation of the use and security of toll roads, other businesses in accordance with the aims and objectives of the implementation Toll road. b. The period of Law no. 38 of 2004 concerning Roads With the enactment of Law no. 38 of 2004 concerning Roads, dated October 18, 2004 and PP No. 15 of 2005 concerning	While in the research the author discusses the arrangement that appoints PT Bio Farma as a BUMN in the Vaccine Assignment, where the assignment contains the Conformity of Antitrust Immunity in the Procurement of the Covid-19 Vaccine Assignment by PT. Bio Farma, starting from analyzing the regulations governing Vaccine Assignment and the possibility of a violation of Antitrust Immunity in the direct appointment of PT.

[15] Penugasan Badan Usaha Milik Negara Dalam Pengusahaan Jalan Tol: Studi Penugasan PT. Hutama Karya (Persero) Dalam PengusahaanJalanTolDiSumatera http://www.bpkp.go.id/public/upload/unit/puslitbangwas/files/Penugasan%20BUMN%20dalam%20Jalan%20Tol_compressed(3).pdf

			Toll Roads. The authority to administer toll roads which was previously handed over by the government to PT Jasa Marga (Persero) is returned to the Government and in accordance with Article 45 paragraph (1) and paragraph (2) of Law No. 38 of 2004 is carried out by the Toll Road Business Entity (BPJT), with the authority The toll road operation includes: regulation, guidance, operation, and supervision of toll roads. 2.Overview of the Feasibility Level of	Bio Farma.

			the Trans Sumatra Toll Road In accordance with Government Regulation Number 15 of 2015 concerning Toll Roads, Article 13 paragraph (3), the Minister determines a toll road development plan based on the results of a pre-feasibility study which includes, among others: socio-economic analysis, traffic projection analysis, selection of road corridors. toll roads, and analysis of construction cost estimates as well as economic feasibility analysis.	

			3.Assignment of PT Hutama Karya (Persero) in Toll Road Concession in Sumatra in the Perspective of Government Administration Law Government assignment to PT. Hutama Karya (Persero) to carry out toll road concessions on 24 toll roads in Sumatra is a form of delegation of government authority whose implementation is mandatory based on laws and regulations and general principles of good governance.	
3.	QAIDA D UNTSA, Dr.	1. What is the legal basis for	Based on the results of the study, it can be	In this study, QAIDA D UNTSA, and Dr.

	AM Tri Anggraini, S.H., M.H. , Mechanism of Direct Appointment on Electricity Infrastructure Development in the Perspective of Business Competition Law[16]	direct appointment in Electricity Infrastructure Development (PIK), the implementation of the law carried out by KPPU regarding the mechanism for direct appointment of BUMN? 2. Is the direct appointment mechanism in the Electricity Infrastructure Development in accordance with the	concluded that the mechanism for direct appointment of the Electricity Infrastructure Development (PIK) is based on Presidential Decree no. 38 of 2015 Concerning Government Cooperation with Business Entities in the Provision of Infrastructure and SOE Ministerial Decree No. 15 of 2012 concerning General Guidelines for the Implementation of the Procurement of State-Owned Goods and Services. KPPU may	AM Tri Anggraini, S.H., M.H. focus on knowing the legal basis for direct appointment in Electricity Infrastructure Development (PIK), the implementation of the law carried out by KPPU regarding the mechanism for direct appointment of SOEs and knowing whether the mechanism for direct appointment in Electricity Infrastructure Development is in accordance with the principles of fair competition in business competition

[16] Mekanisme Penunjukan Langsung Pada Pembangunan Infrastruktur Ketenagalistrikan Dalam Perspektif Hukum Persaingan Usaha http://etd.repository.ugm.ac.id/home/detail_pencarian/112702

		principles of fair competition in business competition and the provisions of Law no. 5 of 1999?	apply Law no. 5 of 1999 on direct appointment of SOEs based on Article 19 letter d and Article 22 of Law no. 5 of 1999. Direct appointment in PIK is not in accordance with the principles of fair competition in business competition and Law no. 5 of 1999.	and the provisions of the Law. No. 5 of 1999. Meanwhile, in this research, the author discusses to find out whether Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in Order to Overcome the Corona Virus Disease (Covid-19) Pandemic is included as antitrust immunity and whether there is a possibility of a violation of antitrust immunity in the direct appointment of PT Bio Farma as BUMN in Vaccine

				Procurement.
4.	Ressy Prieta, Direct Appointment of State-Owned Enterprises (BUMN) In Relation to Business Competition for the Procurement of Goods and Services (Study at PT Semen Baturaja (Persero) Tbk)[17]	1. What are the legal provisions for direct appointment of SOEs as mandatory from SOE Ministerial Regulation Number 8 of 2019 concerning Guidelines General Implementation of Procurement of Goods and Services for Owned Enterprises State in the	1. From a juridical aspect The direct appointment to fellow SOEs violates the principle of business competition which healthy as regulated in Law Number 5 of 1999 2. SOE Ministerial Regulation Number PER08/MBU/12/2019 has juridical and practical implications for the procurement of goods and services. services at PT Semen Baturaja (Persero) Tbk.	In Ressy Prieta's research, she discusses the juridical aspects of The direct appointment to fellow SOEs violates the principle of business competition which healthy as regulated in Law Number 5 of 1999 and SOE Ministerial Regulation Number PER08/MBU/12/2019 these have juridical and practical implications for the procurement of goods and services. services at PT Semen Baturaja (Persero)

[17] Penunjukan Langsung Badan Usaha Milik Negara (BUMN)
Dalam Kaitannya Dengan Persaingan Usaha Pengadaan Barang dan Jasa (Studi Pada PT. Semen Baturaja (Persero) Tbk)
https://repository.unsri.ac.id/55355/2/RAMA_74102_02022681923049_0028077301_01_front_ref.pdf

		perspective of business competition law? 2. What are the legal and practical implications of direct appointment? BUMN against business competition in the procurement of goods and services in SMBR? 3. What is the role of the Business Competition Supervisory Commission (KPPU)	3. The need to increase the role of the Commission Supervision of Business Competition (KPPU) in the procurement of goods and services in BUMN	Tbk. and the lack of a role from the Business Competition Supervisory Commission (KPPU) in the procurement of goods and services in BUMN. Meanwhile, in the research the author discusses the analysis of Antitrust Immunity, regarding Presidential Regulation No. 99 of 2020 and an analysis of the possibility of a violation of antitrust immunity in the direct appointment of PT Bio Farma as a BUMN in Vaccine Procurement.

		in the procurement of goods and services in BUMN?		

E. Literature Review

The Business Competition Law actually regulates conflicts of interest between business actors where one business actor feels disadvantaged by the actions of another business actor. Therefore, business competition law is basically a civil dispute. Moreover, violations of competition law have criminal, even administrative elements. This is because the violation of competition law will ultimately harm the community and harm the country's economy.

Regarding Business Competition Law as a legal analysis that will be discussed, In general it can be said that business competition law is the law that regulates everything related to business competition. According to Christopher Pass and Bryan Lowes, what is meant by competition law is part of the law governing monopolies, mergers and takeovers, restrictive trade agreements, and anti-competitive practices. In other words, business competition law is the law that regulates the interaction of companies or business actors in the market, while the behavior of companies when interacting is based on economic motives.[18]

Unfair Business Competition is the impact of business competition practices. The condition of business competition in several respects also has negative aspects, one of which is when the competition is carried out by dishonest

[18] Andi Fahmi Lubis, et.al., "Hukum Persaingan Usaha Buku Teks", https://www.kppu.go.id/docs/buku/FinalTextbookHukumPersainganUsahaKPPU2ndEd_Up20180104.pdf

economic actors, contrary to the public interest. The extreme risk of this competition is of course the possibility of unfair competition because competition is considered an opportunity to get rid of competitors in any way.[19]

Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition provides legal certainty guarantees to further encourage the acceleration of economic development in an effort to improve people's welfare, as well as the implementation of the spirit and spirit of the 1945 Constitution of the Republic of Indonesia.

Broadly speaking, the history of the birth of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is divided into three parts:

1. Juridical Foundation

In the Preamble to the 1945 Constitution of the Republic of Indonesia, it is clearly stated that the purpose of national development is to "protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and justice." social".

In the Economic Sector, the 1945 Constitution of the Republic of Indonesia requires the realization of the prosperity of the people equally, not the prosperity of individuals. Juridically, through the basic legal norms (state gerund gezet), the desired economic system is a system that uses the principles of balance, harmony, and provides joint business opportunities for every citizen. Strictly speaking, Article 33 of the 1945 Constitution of the Republic of

[19] Galuh Puspaningrum, Hukum Persaingan Usaha Perjanjian dan Kegiatan yang Dilarang dalam Hukum Persaingan Usaha di Indonesia, Yogyakarta : Aswaja Pressindo, 2013, p.71.

Indonesia is the basic concept of the national economy which according to Mohammad Hatta is socialist-cooperative.[20]

2. Socio-Economic Foundation

Socio-economically, the enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is to create a solid economic foundation to create an economy that is efficient and free from market distortions.[21]

3. Political and International Platforms

Politically and economically, there are parties who do not accept this law because they are more in a weak position. In the context of international relations, the enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is also a consequence of the ratification of the Marrakesh Agreement by the DPR with Law Number 7 of 1974 which requires Indonesia to open up. and not subject to discriminatory treatment. such as providing protection against corporate entry barriers and pressure from the IMF, which has been Indonesia's creditor, to limit the monetary crisis that hit and caused the Indonesian economy to slump widely.

The objectives of Law Number 5 of 1999[22] concerning the Prohibition of Monopolistic Practices and Unfair Business Competition are as follows:

1. Creating a conducive business climate through the regulation of fair business competition, so as to ensure the certainty of equal distribution of business

[20] Article 33 of the Constitution of the Republic of Indonesia Indonesia in 1945

[21]Muhamad Sadi Is. Hukum Persaingan Usaha di Indonesia Sebagai Upaya Penguatan Lembaga Komisi Pengawas Persaingan Usaha, Malang : Setara Pers. 2016, p.21.

[22] Law No. 5 of 1999 on https://www.kppu.go.id/docs/UU/UU_No.5.pdf

opportunities for large business actors, medium business actors, and small business actors.

2. Maintaining the public interest and increasing the efficiency of the national economy as an effort to improve people's welfare.

3. Preventing monopolistic practices and or unfair business competition caused by business actors.

4. Creating effectiveness and efficiency in business activities.

Thus, the discussion on business competition is relatively close to antitrust immunity terminology, Antitrust Immunity is an exception to the prohibition of monopolistic practices for business actors with certain criteria. In general, antitrust immunity is created under conditions to address national problems of an emergency nature or accelerate the production of goods and/or services that are urgently needed by society. In Indonesia Antitrust is a government policy to overcome monopoly. Antitrust laws aim to stop the abuse of market power by large corporations and, at times, to prevent mergers and acquisitions of companies that would create or strengthen monopolies. and actions that can be taken in Antitrust Immunity, one of which is the Antitrust Immunity Policy in the context of Procurement of Covid-19 Vaccines in Indonesia. Because antitrust immunity largely serves to reconcile conflicting laws, and otherwise lacks a unifying principle. As we know that in Indonesia the Covid-19 Vaccine Assignment has its own rules in making Antitrust Policy.

In terms of Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Eradicating the Corona Virus Disease (Covid-19) Pandemic, including as Antitrust Immunity, because Antitrust immunity is an exception to the prohibition

of monopoly practice for business actors with certain criteria. The term antitrust is taken from United States law which was originally created to combat the business of trust.[23] In American language antitrust laws are immunities and exemptions that limit or hinder the application of antitrust laws to certain behaviors or industries. This step has been taken by the United States (US) to overcome the pandemic. Instead of limiting it, the US government has legalized monopolistic practices for a group of corporations that want to produce a corona vaccine. In the United States, the First Amendment and the antitrust laws serve as twin pillars upholding political and economic liberty.) This Article examines the interplay of the antitrust laws and the First Amendment right to petition, or what is more commonly referred to as Noerr-Pennington immunity. In brief, Noerr provides immunity from antitrust liability for anticompetitive harms that flow from exercising the right to petition. While significant attention has been paid to the potential for Noerr immunity to be misused in efforts to use governmental processes to impose costs upon competitors, there has been virtually no discussion with respect to whether the First Amendment right to petition may be used to immunize cooperative/collusive behavior that could nonetheless adversely impact competition. This has been compounded by the Supreme Court's failure to articulate a clear explanation for when private conduct is considered immune under the First Amendment. Moreover, while there have been scholarly efforts to provide a coherent doctrine governing when private conduct is immune from antitrust liability, none has provided a doctrinal explanation of Noerr immunity through the lens of the right to petition that is consistent with its historic role in Anglo-American government. Specifically, this Article examines whether

[23] Chrinstine A. Varney, “Remarks as Prepared for the American Antitrust Institute’s 11th Annual Conference: Public and Private: Are the Boundaries in Transition?” Journal of Antitrust Immunities, June 2010,https://www.justice.gov/atr/file/518206/download

settlement agreements and consent decrees resulting from what would otherwise be immunized litigation are protected from antitrust scrutiny and liability under Noerr. In order to conduct this analysis, this Article develops a methodology for detennining immunity by focusing the immunity examination upon the means used to petition government and the source of the alleged injuries. II Ultimately, private conduct is immune from antitrust scrutiny when it represents a valid attempt to persuade an independent governmental decision-maker in an effort to solicit government action, and the alleged injuries result from that persuasive effort. The validity of any effort depends upon the forum in which the petitioning is conducted without reference to antitrust. By focusing upon the means used to petition government, this analysis ensures that Noerr immunity protects the people's right to petition their government for the redress of grievances without unnecessarily limiting the protection afforded by the antitrust laws.[24] In Indonesia Antitrust is the government's policy to deal with monopolies. Antitrust laws aim to stop the abuse of market power by large corporations and, sometimes, to prevent mergers and acquisitions of companies that would create or strengthen monopolies.[25]

Antitrust immunity is an exception to the prohibition of monopolistic practices for business actors with certain criteria. In general, antitrust immunity is made under conditions to address national issues that are emergency or accelerate the production of goods and/or services that are urgently needed by the community.[26] Historically, in times of war or national emergencies, governments

---

[24] Antitrust Immunity, the First Amendment & Settlements: Defining the Boundaries of the Right to Petition https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3656630
[25] Kamus Ekonomi : Apa Arti Antitrust https://ekonomi.bisnis.com/read/20130820/9/157641/kamus- ekonomi-apa-arti-antitrust
[26] Pandemi dan Antitrust Immunity https://analisis.kontan.co.id/news/pandemi-dan-antitrust-immunity

have dealt with antitrust collaboration issues through legislation or agency actions.[27] and also actions that may be taken in Antitrust Immunity, one of which is the existence of the Antitrust Immunity Policy in the aim of Procurement of the Covid-19 Vaccine in Indonesia. Because antitrust immunity largely serves to reconcile conflicting laws, and otherwise lacks a unifying principle.[28] So as we know that in Indonesia the Covid-19 Vaccine Assignment has its own regulations in making Antitrust Policy. Antitrust Immunity in the Journal of Antitrust Immunity, First Amendment & Settlements: Defining the Limits of Petition Rights, Specifically, this Article examines whether settlement agreements and consent decisions resulting from what should be immunized litigation are protected from antitrust scrutiny and liability under Noerr. To carry out this analysis, this Article develops a methodology for determining immunity by focusing the examination of immunity on the means used to petition the government and the source of the alleged harm. Ultimately, private behavior is immune from antitrust scrutiny when it is a legitimate attempt to persuade independent government decision makers in an attempt to solicit government action, and the alleged cost of such persuasion. The validity of any attempt depends on the forum in which the petition is made without reference to antitrust. By focusing on the means used to petition governments, this analysis ensures that Noerr's immunity protects people's right to petition their government for damages without necessarily limiting the protection provided by antitrust laws.[29]

---

[27]Cravath,“Covid19:AntitrustConsiderationsforcompetitorcollaborations,March2020.https://www.cravath.com/a/web/12360/3b29dV/5333219_1.pdf

[28]ArticlebyWilliamMarkham, San Diego Attorney.2021. https://www.markhamlawfirm.com/antitrust- exemptions-and-immunities-by-william-markham-2021/

[29] Antitrust Immunity, the First Amendment & Settlements: Defining the Boundaries of the Right to Petition https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3656630

In general, antitrust immunity is created to address national problems of an emergency nature or accelerate the production of goods and/or services that are urgently needed by the community. so that this regulation is actually made specifically so that there is no clear deviation between PT Bio Farma and other companies, even though from a business competition perspective this regulation favors one company or can be said to be one-sided. as regulated in Law Number 5 of 1999, the exceptions to the provisions of this law are: Article 50 letter b. agreements relating to intellectual property rights such as licenses, patents, trademarks, copyrights, industrial product designs, integrated electronic circuits, and trade secrets, as well as agreements relating to franchises.[30]

F. Operational Definition

Operational definitions are intended to make it easier for readers to understand various related terms in the title of this study as well as term restrictions. In accordance with the research title, namely "The Suitability Of Antitrust Immunity In The Assignment Of The Procurement Of The Covid-19 Vaccine By PT. Bio Farma (Persero)" So the operational definitions that need to be explained are :

1. Business Competition

Competition comes from English, namely (competition) which means competition itself or competitive activity, match, competition. Meanwhile, in the management dictionary, Competition is the effort of two or more companies that each of them is active in obtaining orders by offering the most favorable price or terms. This competition consists of of several forms including price cuts,

[30] Article 50 letter b of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition

advertising and sales promotion, quality variation, packaging, design and segmentation market.

2. **Procurement**

According to the KBBI, procurement means the process of making something that did not exist before into something. In general, the procurement of goods and services is an activity to obtain goods or services whose process starts from planning requirements until the completion of all activities to obtain goods or services.[31]

3. **Asiggnment**

The meaning of assignment in KBBI is : process, method, act of assigning or assigning, assigning tasks (to).[32] And according to Moekijat, the task is a part or one element or one component of a position. Tasks are combined of two elements (elements) or more so that it becomes an activity complete.

G. Method of Research

1. Research Typology

In this research, the writer examines the laws and regulations and basically does not require field data, so the writer uses normative legal research methods in writing and researching related to the discussion in this thesis proposal. The use of normative research methods in research efforts and writing this thesis is based on the suitability of the theory with the research methods needed by the author.[33]

2. Approach

The approach used by the author in this study is a statutory approach, because what will be studied are various legal rules that are the focus as well

---

[31] Kamus Besar Bahasa Indonesia (KBBI) means from Procurement
[32] Kamus Besar Bahasa Indonesia (KBBI) means from Assignment
[33] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif; Suatu Tinjauan Singkat, Jakarta : RajaGrafindo Persada.2001,p.25.

as the central theme of the research and how the laws and regulations regulate business competition. Another approach that is used next is the conceptual approach, because understandings of the views/doctrines that develop in legal science can be used as a basis in building legal arguments against the legal issues being studied. This view/doctrine can clarify ideas by providing legal understandings, legal concepts, and legal principles that are relevant to the problem. In addition, the Historical approach is also used by the author by mentioning the establishment and development of PT Bio Farma as a State-Owned Enterprise.

3. Source of Data

The source of data used by the author in this study is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials.

1. The primary legal material that the author presents includes hierarchical laws and regulations, namely Presidential Regulation No. 99 of 2020 concerning Vaccine Procurement and Vaccine Implementation in the Context of Combating the Corona Virus Disease 2019 (Covid-19) Pandemic, Law No. 5 of 1999 concerning Prohibition Monopolistic Practices and Unfair Business Competition Article 51 Law Number 5 of 1999, Article 30 paragraph 1 regarding the status of KPPU, Article 2 Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition, Article 33 of the Constitution of the Republic of Indonesia Indonesia in 1945, Article 17 paragraph 1 of Law no. 5 of 1999, and Article 1365 of the Civil Code.[34]

[34] Article 17 paragraph 1 of Law no. 5 of 1999, and Article 1365 of the Civil Code.

2. Secondary legal materials include books, electronic journals, papers, Big Indonesian Dictionary (KBBI), English Dictionary and relevant articles related to the research theme.
3. Tertiary legal materials, including data from the Big Indonesian Dictionary, and search for journals and articles via the internet.

4. Data Collection Method

Legal materials are collected through recording procedures and identification of laws and regulations, as well as classification and systematization of legal materials according to research problems. Therefore, the data collection technique used in this research is literature study. Literature studies are carried out by reading, studying, recording and studying library materials related to the author's research, namely "The Suitability Of Antitrust Immunity In The Assignment Of The Procurement Of The Covid-19 Vaccine By PT. Bio Farma (Persero)".

5. Research Focus

The focus of the research in this study is to find out whether Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Overcoming the Corona Virus Disease (Covid-19) Pandemic is included as antitrust immunity, and to analyze whether there is a possibility of violating antitrust immunity in direct appointments. PT Bio Farma as a BUMN in Vaccine Procurement.

6. Research Analysis

The legal materials that have been collected above are analyzed by referring to the qualitative method, which is one of the research methods that produces analytical descriptive information, which then describes the existing facts so that conclusions and suggestions can be drawn by utilizing

deductive thinking, namely drawing conclusions. conclusions that come from things that are general to things that are specific.

H. Writing Systematics

The title used in this study is “The Suitability Of Antitrust Immunity In The Assignment Of The Procurement of The Covid-19 Vaccine By PT. Bio Farma (Persero)". The subtitle contains CHAPTER I, CHAPTER II, CHAPTER III, CHAPTER IV. To facilitate the discussion in this study, the data were compiled using the following methods:

1. CHAPTER I (Introduction), as an introduction and introduction, This chapter contains the background of the problem, problem formulation, research objectives, research originality, literature review, operational definitions, research methods and the last is writing systematics.
2. CHAPTER II (Literature Review), in this chapter contains a review/study of legislation and literature review in the form of doctrine, expert opinion, and theory relevant to the research topic, namely "Antitrust Immunity Conformity in the Assignment of Procurement of Covid-19 Vaccines by PT Bio Farma (Persero)”. The author will write down several references in writing about the general review starting from the theory of Business Competition Law, Antitrust Immunity Theory and Theory of Procurement Tasks given to State-Owned Enterprises.
3. CHAPTER III (Discussion and Research Results), in This chapter the author will describe and discuss:
    1. Is Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Overcoming the Corona Virus Disease (Covid-19) Pandemic included as antitrust immunity?

2. Are there any possibilities of violation antitrust immunity in the direct appointment of PT Bio Farma as a BUMN in Vaccine Procurement?

4. CHAPTER IV (Closing), This chapter contains conclusions and suggestions. The conclusion contains a summary of the answers to the problems studied. The number of conclusions corresponds to the number of problem formulations. Suggestions contain things that are proposed for improvement. Suggestions must be related to the research findings.

CHAPTER II

STUDY OF THE LEGAL THEORY OF BUSINESS COMPETITION, ANTITRUST IMMUNITY, SOE AND PROCUREMENT DUTIES

A. Business Competition Law and Anti-Monopoly

1. The Meaning of Business Competition Law

According to R. Soeroso, the notion of law is a set of regulations made by the authorities with the aim of regulating the order of people's lives. The characteristics of the law are ordering, prohibiting, and coercing by imposing legal sanctions that are binding on anyone who violates it.[35]

In general, it can be said that business competition law is the law that regulates everything related to business competition. In the Complete Dictionary of Economics written by Christopher Pass and Bryan Lowes, what is meant by Competition Laws is part of the legislation governing monopolies, mergers and takeovers, restrictive trade agreements and anti-competitive practices.[36]

Correspondingly, the author defines business competition as a set of legal rules that regulate is a set of legal rules that regulate all aspects related to business competition, which include things that are allowed to be done and things that are prohibited by business actors.

2. Business Competition Law Policy

In the Complete Dictionary of Economics written by Christopher Pass and Bryan Lowes, what is meant by Competition Policy is a policy related to increasing the efficiency of resource use and protecting the interests of consumers. The use of antitrust immunity can not be just like that. The objective

[35] Pengertian Hukum Menurut Para Ahli dan Penggolongannya https://www.detik.com/edu/detikpedia/d-5798560/pengertian-hukum-menurut-para-ahli-dan-penggolongannya#:~:text=Soeroso%20berpendapat%2C%20pengertian%20hukum%20adalah,bagi%20siapa%20pun%20yang%20melanggar.

[36] Hermansyah, Pokok-Pokok Hukum Persaingan Usaha di Indonesia, Jakarta : Kencana. 2009, p.2.

of the Competition Policy is to ensure the optimal implementation of the market, in particular the lowest production costs, reasonable prices and profit levels, technological advances, and product development.

Accordingly, it can be said that business competition policy is a policy relating to issues in the field of business competition that must be guided by business actors in carrying out their business activities and protecting the interests of consumers.[37] Basically, competition policy is the main instrument to improve the efficient use of natural resources and improve consumer welfare. Competition policy also plays a role in regulating market concentration so as not to interfere with competition and plays a role in increasing the flexibility of a country to survive in changing world economic conditions.

With these diverse functions, there are two main components of a comprehensive competition policy. The first component relates to government policies that support the creation of fair business competition in the market. Meanwhile, the second component is effective business competition law enforcement.

There are several components that have a direct influence on the decision to invest in a country:

a. The first component is trade policy. A country's trade policy plays an important role in shaping the country's economic condition. In order to create positive and optimal business competition, trade policies must be able to encourage the growth of new companies while maintaining the position of existing companies.

---

[37] *Ibid*

b. The second component is the openness of the industrial sector. The level of competition in a country is reflected in government policies in encouraging the growth and development of new players in the business world. If a country's business competition regime makes it difficult for new companies to grow and develop, the level of investment flowing into that country will be low and the level of business competition created will also be low.

c. The government's privatization policy is also an influential component, where the right privatization policy has the potential to create healthy business competition by creating conducive conditions for new players to enter the market.

In addition, there are several things that must also go hand in hand with business competition policies, namely labor regulations, procedures for stopping business activities, and consumer protection policies. The business competition regime that is in line with these three things is certainly able to create conducive economic conditions for investors to invest in a country.[38]

3. Principles and Objectives of Monopoly and Unfair Competition

In doing business in Indonesia, business actors must be based on economic democracy by paying attention to the balance between the public interest and business actors. Meanwhile, the objectives of Law Number 5 Year 1999 are as follows:

a. Maintaining the public interest and increasing the efficiency of the national economy as an effort to improve people's welfare.

[38] Kebijakan Persaingan : Umpan Negara Memancing Investasi https://kppu.go.id/blog/2011/05/kebijakan-persaingan-umpan-negara-memancing-investasi/#:~:text=Pada%20dasarnya%2C%20kebijakan%20persaingan%20adalah,dalam%20meningkatkan%20fleksibilitas%20suatu%20negara

b. Creating a conducive business climate through the regulation of fair business competition so as to ensure the certainty of equal business opportunities for large, medium and small business actors.

c. Prevent monopolistic practices and unfair business competition caused by business actors.

d. Creating effectiveness and efficiency in business activities.[39]

4. Agreements Prohibited in Monopoly and Business Competition

When compared to Article 1313 of the Civil Code, Law No. 5 of 1999 explicitly states business actors as legal subjects, in this law, an agreement is defined as an act of one or more business actors to bind themselves to one or more other business actors. under any name, whether written or unwritten. This however still causes confusion. An agreement with "understanding" can be called an agreement. This agreement, which is more often referred to as a tacit agreement, has been accepted by the Anti-Monopoly Law in several countries, but in its implementation in Law no. 5 of 1999 has not yet been able to accept the existence of the "conceived agreement".

For comparison, in Article 1 of the Sherman Act, what is prohibited is not only contracts, including tacit agreements but also combinations and conspiracy. So the scope is indeed broader than just an "agreement" unless the action—collusive behavior—is included in the category of activities prohibited by the Anti-Monopoly Law. Agreements that are prohibited in Law No. 5 of 1999 are agreements in the following forms:

[39] Hukum Anti Monopoli dan Persaingan Usaha Tidak Sehat https://ejournal.unuja.ac.id/index.php/keadaban/article/download/2859/1050

a. Oligopoly. Oligopoly is a market condition with a small number of producers and buyers of goods so that it can affect the market, then:

1) Business actors are prohibited from entering into agreements with business actors by jointly controlling the production and or marketing of goods and or services.

2) Business actors should be suspected of controlling the production and or marketing of goods or services if two or three business actors or groups of business actors control >75% of the market share of a certain type of goods or services.

b. Pricing. In the context of market neutralization, business actors are prohibited from entering into agreements, including but not limited to:

1) Agreements with competing business actors to determine prices for goods and or services that must be paid by consumers or customers in the same relevant market.

2) An agreement that results in the buyer having to pay a price different from the price paid by other buyers for the same goods and or services.

3) Agreements with competing business actors to set prices below market prices.

4) Agreements with other business actors that contain requirements that the recipient of the goods and or services does not sell or resupply the goods and or services received at a price lower than the promised price.

5. Things Excluded in Monopoly

In the Anti-Monopoly Law Number 5 of 1999, there are things that are excluded, namely:

a. Article 50

1) Actions and or agreements aimed at implementing the applicable laws and regulations.
2) Agreements relating to intellectual property rights such as licenses, patents, trademarks, copyrights, industrial product designs, integrated electronic circuits, and trade secrets, as well as agreements relating to franchises.
3) Agreements for establishing technical standards for goods and or services that do not curb and or hinder competition.
4) An agreement within the framework of an agency whose contents do not contain provisions to resupply goods and or services at a lower price than the agreed price.
5) Research cooperation agreements for the improvement or improvement of the living standards of the wider community.
6) International treaties that have been ratified by the Government of the Republic of Indonesia.
7) Agreements and or actions aimed at exports that do not interfere with the needs and or supply of the domestic market.
8) Business actors belonging to small businesses.
9) Cooperative business activities that specifically aim to serve its members.

B. Application of Antitrust Immunity

1. Antitrust Immunity Policy

Richard Posner in his book Antitrust Law states that in entering into a price fixing agreement, business actors do not need to sign a contract or verbally agree to a price fixing agreement. Simply by giving an indication of an increase in the price of a product, other business actors will also increase

the price of the product. This practice is known as tacit collusion. This practice can be announced by business actors who will increase prices by announcing it in the mass media with the excuse of rising prices of raw materials for production.[40] The use of antitrust immunity can not be just like that. It must be used under the right conditions. Not all circumstances can be used as an excuse to relax Law no. 5 of 1999. Except for Article 50 and Article 51 which are in Law no. 5 of 1999 which explains and states that there are other provisions that are exempt from this law. KPPU must be able to ensure that no other alternative is available other than this easing.[41] It was found in this study that antitrust immunity and cartels can help business actors, workers, and consumers, namely the community. However, this easing must also meet certain conditions, which are a last resort. When the Covid-19 pandemic ends, the enactment of Law Number 5 of 1999 will return to normal. During this effort, the Business Competition Supervisory Commission (KPPU) has a very important role in supervising business actors. In the end, healthy business competition can still be realized.[42] Antitrust immunity is made to overcome national issues that are emergency or to accelerate the production of goods and/or services that are urgently needed by the community. So, it can be concluded that its use can only be used if a situation is an emergency or urgent.[43]

Currently, various countries with various backgrounds and reasons are making changes to a market economy system and enacting the Law of

[40] Posner, Richard, Antitrust Law, Cet.2 (Chicago:Chicago University Press,2001) p.53.
[41] Sheila Namira Marchellia, “Penggunaan Antitrust Immunity dan Kartel di Masa Pandemi”, Jurnal Persaingan Usaha, Vol. 1 No. 1 Tahun 2021, p.23.
[42] *Ibid*
[43] Kurnia Togar P Tanjung. (2020) Penegakan Hukum Persaingan Usaha di Era Pandemi. [Online]. Available: https://katadata. co.id/redaksi/indepth/5ee720073c882/ penegakan-hukum-persaingan-usaha-di-era-pandemi

Competition Law. UNCTAD (United Nations Conference on Trade and Development) noted that between 1980-1990 to date there have been around 50 countries in the world that have adopted Competition Law laws in their legal systems. The terms used are quite varied, some call it Antitrust Law like the United States, or Competition Law in the European Union, but in general all laws in various countries focus on the same goal, namely efficiency, general welfare or equality of business opportunity. In a brief description of competition law in several countries, there are three important substances that will be covered, namely:

a. Legislation governing competition law in each country and its background.

b. Substances prohibited by laws and regulations.

The existence of an institution or agency that carries out the supervisory function and the mechanism for its implementation.

2. Comparison of Application of Competition Law and Antitrust Law in Several Countries

So in this case the author will write a comparison of Business Competition Law in the United States, Germany, European Union, Australia, Japan and South Korea.

a. Competition Law in the United States

1) Applicable regulation

The United States has a modern set of legal rules and is the reference for competition law in many countries in the world. The United States itself is the second country in the world to have laws governing competition (1890) after Canada (1889). Courts in the US always try to prevent business practices that are contrary to the

public interest. Accordingly, any form of business agreement entered into with the aim of reducing or eliminating competition is never given a place in the US Legal system. Such an attitude is clearly shown by the judges in the Court who clearly reject claims that tend to give place to fraudulent or dishonest business practices.

Before the US congress passed the Antitrust Act, there was no formal prohibition aimed at any attempt made individually or jointly to limit or reduce competition. And although the existing law has provided a certain understanding of acts that fall into the category of anti-competitive, the US system still gives a large role to judges in Courts to determine the types of actions or business practices that can reduce or limit competition. The short and simple language used in the Antitrust Law provides an opportunity for judges in the Court to make interpretations according to the existing conditions. Government institutions that are assigned the task of implementing the Antitrust Law are also given the authority to determine their own actions which are categorized as contrary to the Law.

So, in essence the Antitrust Law which regulates the prohibition on the prohibition of monopolistic practices and unfair competition in the US consists of four main laws, namely: *the Sherman Act, the Clayton Act, the Robinson-Patmen Act*, and the Federal Trade Commission *Act*, all of which aim to create a healthy and competitive business climate, and prevent

monopolistic practices and unfair business competition. *(The Antitrust Laws seek to control the exercise of profit economic power by preventing monopoly, punishing cartels, and otherwise protecting competition).*

During the period of more than one hundred years since the promulgation of the Sherman Act, the US has undergone various changes and additions according to the needs and demands of the times. The order of the legislation is as follows:

a) Sherman Antitrust Act (1890).
b) Clayton Act (1914).
c) Federal Trade Commission (1914).
d) Robinson-Patman Act (1934).
e) Celler-Kefauver Antimerger Act (1950).
f) Hart-Scott-Rodino Antitrust Improvement Act (1976)
g) International Antitrust Enforcement Assistannce Act (1994)

Antitrust laws are the reflection of the United States government's efforts to increase the effectiveness of these various laws, to suit the needs of the times and economic progress in order to create fair competition. As Hander puts it: "…The Antitrust laws are designed to protect the market, and if they are not doing the job effectively, they should be improved," and it can be said that antitrust laws are evolving very dynamically following developments and the rapid progress of the economy.

It should be noted that in 1994, The International Antitrust Enforcement Assistance Act was enacted, which mandated the Department of Justice and the Federal Trade Commission (FTC) to cooperate with law enforcement officers of other countries interested in efforts to overcome unfair business competition. healthy, in all its forms. This law, among other things, allows the establishment of cooperation with other countries to provide data or evidence held by the Ministry of Justice and the FTC. If necessary, the Department of Justice (Antitrust Division) and the FTC can assist in conducting investigations to assist the same agency from another country, in an effort to bring together the same agency from other countries.[44]

2) Acts prohibited in Antitrust Laws

In general, Antitrust laws (the Sherman Act, the Clayton Act, the FTC Act, Robinson-Patman Act, and the Celler Kefauver Antimerger Act) regulate four types of business conduct that are expressly prohibited, namely:

a) Monopolization

Section 2 of The Sherman Act not only prohibits the monopoly itself, but also prohibits anti-competitive and predatory tactics that could create a monopoly. Since the purpose of the US Antitrust Laws is to protect competition, in order to create an anti-competitive effect, competitive behavior must be carried out by a company that has a dominant position.

[44] U.S. Antitrust Law and Contract New Rules and Guidelines, A Synopsis of U.S. Antitrust Law and the International Application-dalam: International Contract Advisor Volume II No. 2. Diakses dari: http://Ijextra.com./practice/internat/USARhtml.05/10/97

b) Horizontal Barriers

Included in these horizontal restraints are:

(1) Pricing or price fixing.

(2) Control over market allocation and production (Market Allocation and Production Control); dan

(3) Carry out boycotts

c) Vertical Barriers

Included in this definition of vertical restraints are restrictions on distribution such as:

(1) Resale Price Determination, where the company of a product attempts to set a lower price so that retailers cannot resell the product.

(2) Restrictions imposed through shippers and distributor agents;

(3) Restrictions on territory and customers and restrictions on supplier power, such as trying arrangements and exclusive dealing arrangements.

d) Merger

Mergers are succinctly provided for in Section 7 of the Clyton Act and Section 1 of the Sherman Act. In its development, the Justice Department in 1984 and 1985 and also has been perfected in 1992 by the Federal Trade Commission, in collaboration with the Justice Department to formulate guidelines (guidelines) specifically in conducting mergers.

1) Institutions and Authorities

The United States is considered a pioneer country for Competition Law Act which also incorporates the enforcement of consumer protection laws under the supervision of the same agency. The agency that has the authority to handle the administration of competition law is the Federal Trade Commission (FTC). The Federal Trade Commission is authorized by the Federal Trade Commission Act to interpret and implement the provisions of competition law, including the Clyton Act, Robinson-Patman Act, and the Unfair Trade Practices Act. While the implementation of the Sherman Act remains the exclusive jurisdiction of the federal judiciary. In the authority and process of examining the Federal Trade Commission established under the Federal Trade Commission Act 1914, the Federal Trade Commission is an independent agency (Independent Regulatory Body or Self Regulatory Body) established by the government with special expertise in competition control and consumer protection. The Federal Trade Commission was established to resolve issues of competence and independence in deciding business competition cases in the United States.

b. Competition Law in Germany

1) Applicable regulation

In 1957 Parliament (Bundestag) approved the Competition Protection Act (Gesetz gegen Wettbewerbs-Beschrankun-gen/GWB or The Act Against Restraints of Competition), but the Act is better

known to the German public as the Cartel Act. . The enactment of the law did not mean that the problems were over, as surveys by the European Economic Community (EEC) conducted in 1958 and 1962 showed that industrial concentration in (West) Germany had even increased. In 1960 alone, one hundred large industries controlled 40% of the total national production, while the banking world was only controlled by three large banks.

With the reunification of West Germany and East Germany as one country (Federal Republic of Germany), the two laws governing the competition together with the government regulation on bonuses (premium ordinance) and rebates act apply throughout German. The two German competition laws are also the sources and references for the preparation of the European Union (EU) competition rules and many other countries have also studied them in drafting legislation in the field of business competition.[45]

2) Institutions and Authorities

As implementing and supervising the law, Germany established an independent institution under the Federal Ministry of Economy, called the Bundeskartellamt or the Federal Cartel Office or the Anticartel Agency.

In Germany, there are five institutions that play an important role in the process of enforcing business competition law, the five institutions consist of the Anticartel Agency (Bunderskartellamt or Federal Cartel Office) which is responsible for controlling mergers

[45] Global Harmonization of National Antitrust/Competition Law, International Contract Advisor, Volume II. No. 2. http://www.Ijextra.com/practice/internat/GLOBAL.html.05/09/97

and abuse of dominant position. In its authority, the Anticartel Agency is an administrative institution that is multifunctional in nature, which has a quasi-legislative, quasi-judicial, and quasi-judicial role under the coordination of the Federal Ministry of Economy. Although the position of the Articartel Agency is under the Federal Ministry of Economy, this body is independent in the examination process and its decisions regardless of the influence of other institutions or institutions.

c. Competition Law in the European Union

The regulation of business competition in the European Union has a special uniqueness, because the European Union is not a country, but is the economic cooperation of most of the countries in Europe.

Each country can apply EU competition rules as well as its own competition rules to cases that arise, and can adjudicate based on administrative procedures and judicial procedural law in their respective countries. Meanwhile, the European Union only enforces its own competition rules and may not use member state rules. If there are cases that hinder competition (restraint of trade) which is prohibited, either by the competition rules of member countries or the European Union, then the rules issued by the European Union take precedence. Thus, the location of another uniqueness is that the competition law of the European Union and member countries is run and enforced together in a harmonious system, in what Jason Hoerner calls the Dual Enforcement System.[46]

1) Applicable Regulation

[46] New Numbering of EC Treaty Article, The European Commision, Directorate General IV, http://www.europa.eu.int/comm/dg04/amsterdamtreatyart.12.html.6/15/00

So, there are two main objectives of competition rules in the European Union, namely: First is to prevent restrictive practices on trade that can affect the process of economic integration of other member states (separate member states) in the single European market. The second is to protect and promote EU competition rules.

2) Supervisory Agency

At the European Union level, Competition Law Enforcement is carried out by The European Commission. The European Commission has an important role and has the power to prosecute cases and stop violations of competition law. To that end, The European Commission has the authority to carry out investigations, including forcing companies to disclose the requested information, and submit this information to local investigators.

d. Competition Law in Australia

Australia has a different history when it comes to enacting their Competition Law Act. Based on the history of Common Law in the 17th century, in fact it has begun to regulate agreements which have hampered the competition process. Then, there was a paradigm shift regarding the barriers to competition related to the public interest as well as one's freedom to trade. After that, in the 19th century modern doctrine was introduced with an emphasis on freedom of contract which was a reflection of the public interest. As a result, the judiciary sets a "reasonableness" measure in finding a situation. At that time the economic benefits as a result of the competitive process enjoyed by the public were

ignored and competition was even seen as something scary. This situation then inspired the need for a law that regulates fair competition.

1) Applicable Regulation

In line with progress in the economic and trade fields, the Australian Industries Preservation Act has felt many shortcomings, because it can no longer accommodate various obstacles due to increasingly modern business practices. In order not to be left behind, in 1965 The Australian Industries Preservation Act was repealed and a new law was made called The Trade Practice Act. However, for some constitutional reasons, The Trade Practice Act in 1971 was replaced by a new law called the Restrictive Trade Practice Act. This law was finally replaced again, because in 1974 when the government enacted The Trade Practice Act, this Law consisted of 9 Chapters and 110 Articles, which comprehensively regulates the protection of fair trade in order to improve the welfare of the Australian people through efforts to promote competition. health and consumer protection as mandated in Article 2 of The Trade Practice Act.[47]

2) Supervisory Agency

The Trade Practice Commission, known as the Australian Competition and Consumer Commission/ACCC, was formed in 1974. ACCC is a merger of The Trade Practice Commission and The Price Surveillance Authority. As stated above, that in terms of implementing policies related to anti-competitive actions, restrictive trade practices,

[47] Article 2 *The Trade Practice Act* 1974: "The object of this Act is to enhance the welfare of Australia through the promotion of competition and fair trading provision of consumer protection"

and pricing policies, the ACCC is responsible to the Minister of Industry, Technology and Tourism Affairs.

In general, the ACCC operates under the jurisdiction provided by the two laws, which includes market information including complaints regarding violations of laws, deciding or rejecting proposed merger plans, providing advice to the government, and on the initiative also conducting investigations. The duties related to the Price Suveillance Act include assessing price increase proposals from various business organizations under their supervision, submitting inspections of price practices and submitting reports to the Minister of Commonwealth, and monitoring prices, costs and profits of an industry or business and reporting it to the Minister. In carrying out its duties, the ACCC is more inclined to efforts to communicate, consult, and determine its own regulations (self-regulation). The Commission also determines the application of exceptions to the law in section VII.

The full authority structure and functions of the ACCC are regulated in Chapter 2 Article 6-Article 29 of the Trade Practice Act. Different from other countries, the judicial process for violations of competition law is carried out in a special Court, namely the Commercial Competition Court (The Australian Tribunal/ACT) which also has the authority to examine appeals submitted by business actors related to decisions issued by the ACCC, regarding the structure, limits of powers and functions of The Australian Tribunal are regulated in Chapter 3 Articles 30-44 of the Trade Practice Act.[48]

---

[48] Johnny Ibrahim. Hukum Persaingan Usaha Filosofi, Teori dan Implikasi Penerapannya di Indonesia. Malang: Bayumedia Publishing, 2009.p.172.

e. Competition Law in Japan

1) Applicable Regulation

Competition Law in Japan is referred to as Antimonopoly Law (Dokusen Kinshiho), the main legislation in Japanese competition law is the law concerning the prohibition of private monopoly and preservation of fair trade (Shiteki dokusen no kinshi oyobi kosei torihiki ni kansuru horitsu). Furthermore, Law no. 54 of 1947 has undergone several changes and the last with Law no. 4 April 6, 1991. This law is also known as The Antimonopoly Law.

For Japanese society, which is known as a society based on collectivity and consensus, competition law is something new. In their culture, they work in groups and emphasize harmony more than working on the basis of competition.[49] Japanese society only knew competition law when Japan was occupied by the allies led by the United States. At that time the occupation power felt that one of the causes of the Japanese aggression in 1942 was the support from conglomerates (zaibatsu). Therefore, the purpose of enacting competition law at that time was to eliminate conglomerates, deconcentrate large companies, and eliminate cartels. A cartel that existed before the war.

Considering that Japanese competition law was introduced during the occupation by the US, Japan's competition law has very much adopted US competition law. However, in its development many things are different from competition law in the US, because the laws

[49] Jean-Hubert Moitry, “Competition Law in Japan,” 32 World Competition, Law and Economic Review Tahun 1988.p.8.

of a country reflect the aspirations of the people of that country. Since its promulgation until now, Japan's Antitrust Law has undergone several changes. In 1953, the law was amended with several changes. For example, the previous cartel agreement was per se illegal, then it was abolished and only declared prohibited if it was proven to cause restraint of trade (barriers to trade) in certain fields. Similarly, resale price maintenance is allowed. Several new provisions were added to the amendment to the Antimonopoly Law, such as the exclusion of forms of cartel depression and cartel rationalization, lifting of the prohibition on the exploitation of unequal economic power, reduced control over the strong against mergers or acquisitions, as well as the enactment of exceptions to the determination of resale prices (resale price maintenance). From 1953 until around 1960, it can be said that competition law enforcement in Japan was weak.

Since the mid-1960s, various economic factors such as inflation that continues to hit the Japanese economy, the emergence of consumerism, trade liberalization, and capital transactions, as well as changes in economic policy objectives from growth to prosperity have influenced the implementation of the Antimonopoly Law in Japan.

According to Article 1 of the Antimonopoly Law in Japan, the purpose of the Antimonopoly Law is as follows: “This law…aims to promote free and fair competition, to stimulate the initiative of entrepreneurs, to encourage business activities. of enterprises, to heighten the level of employment and national income, and thereby to promote the semocratic and wholesome development of national

economy as well as to assure the interest of the general consumer." In other words, the purpose of the Japanese Antitrust Act is as follows:[50]

a) Increase freedom and fairness to compete.

b) Encouraging the growth of Entrepreneurial Initiatives.

c) Encouraging business activities of business actors.

d) Increase the level of employment opportunities and national income.

e) Promote democratic and healthy national economic development.

2) Supervisory Agency and Its Authorities

The Japanese Antitrust Law is enforced by both the Fair Trade Commission (FTC Japan) and the Judiciary. The FTCJ has the authority to investigate, examine, and decide on violations in competition cases. This ruling can then be appealed to the high court or to the Supreme Court in Tokyo. The FTCJ consists of a chairman and four commissioners. The FTCJ is administratively under the authority of the prime minister. However, according to the National Government Organization Act, the FTCJ is an Extra Ministerial Agency incorporated into the prime minister's office. In carrying out their duties, the chairman and commissioners of the FTCJ have the freedom guaranteed by law. The chairman and commissioners of the FTCJ are appointed by the prime minister with the approval of the lower house and upper house drawn from individuals with expertise in the fields of law and economics. The appointment and dismissal of the chairman of the FTCJ is confirmed by the Emperor of Japan. The term of office of the chairman and

[50] Hermansyah, Pokok-pokok Hukum Persaingan Usaha di Indonesia. Kencana Prenada Media Group, 2009.p.141

commissioners of the FTCJ is five years. The age of the FTCJ chairman and commissioners at the time of appointment is at least 35 years old, and when they reach the age of 65 they are required to resign.

There are three legal consequences as a result of violating the law, namely:

a) The FTCJ places an order to stop actions or activities that constitute a violation (case and desist order), in which the FTC imposes administrative sanctions on parties involved in price cartels or other cartels. In general, this process is most often done.
b) Efforts to claim compensation for alleged violations of the law based on Article 25, Article 26, or Article 709 of the Civil Code.
c) Violations that are categorized as crimes (criminal).

The FTCJ's authority can be categorized in three ways, namely:

a) Administrative Authority
b) Quasi-legislative powers
c) Quasi-Judicial Authority[51]

f. Competition Law in South Korea

The competition law situation in South Korea is almost the same as Japan. Initially, development in all fields, especially economic development in South Korea was under strict control from the government. In fact, cartel development was assisted in its development, while seeking competitive prices for basic necessities in daily life did not get any attention. Understandably, because all efforts are needed to build a new country out of the devastation caused by the war with North Korea

[51] Johnny Ibrahim.Op.cit.p.158.

that occurred after the end of World War II. South Korea, as a newly industrialized country, has learned a lot from what has been achieved by its neighboring country (Japan) in regulating monopoly and fair competition. Likewise, South Korea's industrial and trade structure almost resembles that of Japan. Many of the giant industries are controlled by rich families, so there is a grouping of economic power.

What South Korea is currently enjoying is the result of the conditions and climate of business competition that it is trying to create through the rule of law, especially business competition law. That is why there are those who call this competition law an economic constitution for a new era.[52]

1) Applicable Regulation

It was only on December 31, 1980 that there was a fairly basic change in the field of competition with the enactment of Law no. 3320 which was named the Regulation of Monopolies and Fair Trade Act. The law consists of 62 articles and is enacted through Presidential Decree No. 10267 on April 1, 1981. With the rapid development of the South Korean economy, the law has been amended seven times. In order to minimize the chances of violating the competition law, three new laws have been promulgated. Meanwhile, the aims and objectives to be achieved in this law are as explained in Article 1 which summarizes the outline of the substance regulated and the ideal description to be achieved through the regulations stipulated for the Korean nation's economy. The purpose of this law is to encourage the

[52] Seong Min Yoo, (Fellow, Korean Development Institute), Substantive Provisions of Korea's Competition Law. http://www.oecd.org/daf/clp/nonemberactivities/dname16.htm.10/1/00

creation of free and fair economic competition by prohibiting the abuse of dominant position and excessive concentration of economic power, through restrictions on improper cooperation, fraudulent business practices for the realization of creative business activities, protecting consumers for the creation of a balanced national economic development.

2) Supervisory Agency and Its Authorities

The law stipulates that the Minister of Economic Planning Board (EPB) is responsible for overseeing the implementation of this law. If a violation is found, the EPB will issue an informal notification to the party committing the violation and the corrective steps to be taken, if the violator agrees to the EPB proposal. This step is similar to the consent decree in the Antitrust Law system in the United States. However, if the violator rejects the EPB proposal, then the matter is submitted to the Korean Fair Trade Commission to carry out the necessary corrective action. So, before a problem is handled by the Korean Fair Trade Commission, the EPB will first try to solve it.

C. The Concept of Assignment of State-Owned Enterprises

1. Definition of Assignment of State-Owned Enterprises

According to the Big Indonesian Dictionary (KBBI), the meaning of the word assignment is the process, method, act of assigning or assigning. Another meaning of assignment is assignment (to).[53] in the context of the research here, it means that this assignment is assigned from the government to state-owned enterprises because of a particular interest, especially in the procurement of goods

[53] Kamus Besar Bahasa Indonesia (KBBI) means from Assignment

or services, as is the case under investigation, namely the Covid-19 Vaccine Assignment.

2. Legal Basis of Assignment of State-Owned Enterprises

In Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN) itself, basically, the government's assignment to BUMN has been regulated, namely Article 66 of the BUMN Law as quoted as follows :[54]

a. The government may give special assignments to BUMN to carry out public benefit functions while still taking into account the aims and objectives of BUMN activities.

b. Each assignment as referred to in paragraph (1) must first obtain approval from the General Meeting of Shareholders (GMS)/Minister.

Observing the provisions of Article 66 of the BUMN Law on the basis of special assignents to BUMN, there has been a legal basis in the BUMN Law. The explanation of Article 66 paragraph (1) and paragraph (2) of the BUMN Law states:

a. Although BUMN was established with the intent and purpose of pursuing profit, it is possible for urgent matters, BUMN to be given a special assignment by the government. If the assignment according to the study is not financially feasible, the government must provide compensation for all costs incurred by the BUMN including the expected margin.

b. Since the assignment in principle changes the existing work plan and company budget, the assignment must also be known and approved by the GMS/Minister."

The Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER - 08 / MBU / 12 / 2019 concerning General Guidelines

[54] Penugasan Pemerintah pada Badan Usaha Milik Negara Sektor Ketenagalistrikan Dalam Perspektif Hukum Korporasi http://jurnal.unpad.ac.id/pjih/article/view/13927

for the Implementation of Procurement of Goods and Services for State Owned Enterprises. which in its provisions in Article 2 states that, this Ministerial Regulation applies to all procurement of goods and services carried out by SOEs whose financing comes from the SOE Budget, including those whose funds are sourced from state capital participation, SOE funds for the implementation of subsidies/public service obligations. service obligation) / Government assignments that are replaced from the State Revenue and Expenditure Budget / Regional Revenue and Expenditure Budget, and BUMN Loans from the Government.[55]

D. The Concept of State-Owned Enterprises and Procurement of Goods and Services for State-Owned Enterprises

1. The Meaning and Legal Basis of State-Owned Enterprises

BUMN is a State-Owned Enterprise in the form of a Limited Liability Company (PERSERO) as referred to in Government Regulation Number 12 of 1998 and the Company General (PERUM) as referred to in Government Regulation Number 13 of 1998. State-Owned Enterprises (BUMN) are one of the important actors in economic activities in the national economy, which together with other economic actors, namely the private sector (big-small, domestic-foreign) and cooperatives, are the embodiment of the form of economic democracy that we will continue to develop gradually and sustainably.[56]

BUMN is a business entity whose capital is wholly or most of the capital owned by the state through direct participation originating from separated state assets. Persero is a BUMN in the form of a limited liability company whose capital is divided into shares wholly or at least 51% (fifty one percent) of its shares are owned by the Republic of Indonesia whose main goal is to pursue

[55] Peraturan Menteri BUMN Tentang Pedoman umum Pelaksanaan Pengadaan Barang dan Jasa Badan Usaha Milik Negara https://jdih.bumn.go.id/lihat/PER-08/MBU/12/2019
[56] Tentang BUMN https://berkas.dpr.go.id/puskajianggaran/kamus/file/kamus-240.pdf

profit. Public Company (PERUM) is BUMN whose entire capital is owned by the state and is not divided into shares, which aims to public benefits in the form of providing high quality goods and/or services at the same time pursuit of profit based on the principles of corporate management.[57]

According to Ibrahim R., the role of BUMN is not only limited to resource management resources and production of goods which cover the livelihoods of many people, but also various production and service activities which are the private portion, such as to maintain economic stability, monopoly over resources, and certain economic activities that are in the hands of the state. The state plays a direct and indirect role in economic life to avoid external impacts and specifically side effects for the natural environment and social environment. The role of the state appears in various forms, for example:

a. Stability of the economic system; and

b. Allocation and distribution of resources, including products and consumption.[58]

The legal basis for the existence of State-Owned Enterprises can be seen in government regulations in lieu of Law (Perpu) Number 19 of 1960 concerning State Companies, Law Number 19 of 1969 concerning Stipulation of Perpu Number 1 of 1969 concerning Forms of State-Owned Enterprises to become State Owned Enterprises. Constitution. Then after the existence of this law, there was another change regarding BUMN, which was regulated in Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN).[59]

---

[57] *Ibid*

[58] Ibrahim R., "Landasan Filosofis dan Yuridis Keberadaan BUMN: Sebuah Tinjauan", Jurnal Hukum Bisnis, Vol. 26, No. 1, 2007, p.5.

[59] Artikel Dasar Hukum dan Pengertian Badan Usaha Milik Negara (BUMN) https://bantuanhukum- sbm.com/artikel-dasar-hukum-dan-pengertian-badan-usaha-milik-negara-bumn

Article 1 of Perpu Number 19 of 1960 only states, State companies are all companies in any form whose capital is wholly the assets of the Republic of Indonesia, unless determined by or based on law.60

In article 1 point 1 of Law no. 19 of 2003 states that BUMN is a business entity whose capital is wholly or most of the capital is owned by the state through direct participation originating from separated State assets.[61]

2. Purpose and Benefits of State-Owned Enterprises

Based on the Law of the Republic of Indonesia Number 19 of 2003 concerning Business Entities State-owned, it is explained through article 2 that BUMN has the aims and objectives in the form of:

a. Contribute to the development of the national economy in general and state revenue in particular.
b. The pursuit of profit.
c. Organize public benefits in the form of providing high quality and adequate goods and/or services for fulfillment of the people's livelihood.
d. Become a pioneer in business activities that have not been can be implemented by the private sector and cooperatives.
e. Actively participate in providing guidance and assistance to entrepreneurs from economically weak groups, cooperatives, and the community.[62]

SOEs in their functions and roles have various kinds of benefits provided to the state and people of Indonesia. Benefit State-Owned Enterprises (BUMN) are as follows:

1) Providing convenience for the community in obtaining the necessities of life in the form of : goods and services[63]

---

[60] *Ibid*
[61] *Ibid*
[62] Tentang BUMN https://berkas.dpr.go.id/puskajianggaran/kamus/file/kamus-240.pdf

2) Open and expand employment opportunities for the population of the labor force

3) Prevent the monopoly of the private sector in the market in the fulfillment of goods and services

4) Increase the quantity and quality of export commodities in the form of a good foreign exchange earner oil and gas and non-oil.

5) Filling the state treasury with the aim of advancing and developing the country's economy.

3. The functions and roles of SOEs are as follows

a. As a provider of economic goods and services that are not provided by the private sector.

b. It is a government tool in managing economic policy.

c. As the manager of the production branches of natural resources for the community at large.

d. As a service provider in the community's needs.

e. As a producer of goods and services for the fulfillment of many people.

f. As a pioneer in business sectors that are not yet in demand by the private sector.

g. Job opening.

h. The country's foreign exchange earner.

i. Assistant in the development of small cooperative businesses.

j. Encouragement of community activities in various business fields.64

4. Procurement of Goods and Services for State-Owned Enterprises

Procurement of goods and services is an activity for obtain goods and services performed by the Agency State-Owned Enterprises whose financing comes from

---

[63] *Ibid*

[64] *Ibid*

State-Owned Enterprises budget whose process begins from requirements planning to handover working result.

a. The purpose of this regulation regarding the Procurement of Goods and Services is

1) Produce goods and services of the right quality, quantity, time, cost, location, and provider;
2) Support the creation of added value in SOEs;
3) Improve efficiency;
4) Simplify and speed up the retrieval process decision;
5) Increase independence, responsibility, and professionalism;
6) Realizing procurement that produces value for money in a flexible and innovative way but still competitive, transparent, accountable based on procurement ethics the good one;
7) Increase the use of domestic production;
8) Increase the role of national business actors;
9) Increase the synergy between SOEs, Subsidiaries, and/or SOE Affiliated Company.

b. The Procurement of Goods and Services is required to apply the following principles

1) Efficient, means that the procurement of goods and services must endeavored to obtain optimal results and the best in a short time by using funds and capabilities as optimally as possible in a reasonable manner and not just based on the lowest price. For strategic procurement of goods and services have significant value can be done total cost of ownership (TCO) approach;

2) Effective, means that the procurement of goods and services must be in accordance with with defined needs and provide the maximum benefit according to with the target set;
3) Competitive, means that the procurement of goods and services must open to Goods and Service Providers who meet requirements and is carried out through competitive healthy among equal providers of goods and services and meet certain conditions/criteria based on clear and transparent provisions and procedures;
4) Transparent, means all provisions and information regarding the Procurement of Goods and Services, including the terms technical procurement administration, evaluation procedures, results evaluation, determination of prospective providers of goods and services, are open to participants in the Goods and Services Providers interested;
5) fair and reasonable, means giving the same treatment the same for all prospective Goods and Services Providers who qualify;
6) open, meaning that the procurement of goods and services can followed by all Goods and Service Providers who qualify; and
7) accountable, meaning that it must achieve the target and be able to accountable so as to keep away potential for abuse and abuse.

c. The Procurement of Goods and Services is required to implement the Policy among others

1) Improve the quality of consolidative planning and strategy for the Procurement of Goods and Services for optimize value for money;
2) Aligning procurement objectives with achievement company goals;

3) Carry out more procurement of goods and services transparent, competitive and accountable;
4) Prioritizing domestic products according to regulations utilization of domestic production;
5) Provide opportunities for national business actors and small business;
6) Strengthening institutional capacity and resources Human Procurement of Goods and Services;
7) Utilizing information technology;
8) Provide opportunities for subsidiaries and/or synergy between SOE/Subsidiaries SOE Affiliated Company/Company;
9) Implement strategic, modern, innovative procurement; and/or
10) Strengthen procurement performance measurement and risk management.

5. Government Assignments to State-Owned Enterprises

According to Jimly Asshidiqqie in his book The Idea of People's Sovereignty in the Constitution and Implementation in Indonesia, he stated that the restriction on the function of the state 'night watchman' developed in the political and economic fields. In the economic field, the notion of 'laizzes faires' has also developed, namely an understanding which postulates that the state must allow or free its citizens to manage their respective economic interests so that economic activity in the country becomes healthy. However, in subsequent developments, symptoms of capitalism emerged in the economic field which gradually created a poverty gap that was difficult to resolve with minimal state responsibility in the concept of a 'night watch' state. Jimly explained that this situation resulted in new awareness regarding the importance of state involvement in dealing with and overcoming the problems concerned, thus the state could no longer discharge its

responsibility in improving people's welfare and needed to intervene "so that the sources of prosperity are not controlled by a few people". Companies with state-owned capital invested in them are a universal phenomenon and are almost known in all countries. Generally, such companies are called 'state companies' which are now known as BUMN or in the literature also referred to as 'government enterprises' or 'public enterprises'. According to Tjip Ismail, the fourth paragraph of the Preamble and the body of the 1945 Constitution of the Republic of Indonesia (UUD 1945) and Article 33 as the constitution of the Republic of Indonesia is the basis and purpose of establishing BUMN, as one of the economic actors in the national economy based on economic democracy.

E. Business Competition Law in the Perspective of Islamic Law

Talking about business competition will not be separated from market studies. This is because the market is a place for transactions to create a business competition between business actors. Business actors are actually competitors among themselves and then consolidate and join together in a business forum or association. The association regulates the duties and responsibilities of its members, also issues internal regulations that can be categorized as trade barriers (eg basic rules regarding commissions, discount issues, transaction times, or business hours) which can be categorized as other forms of trade barriers (non-price trade restraint).

A country with a policy, either a free market or a planned economy, has its own basic arguments why one of them is chosen as the basis for policy. For more than two decades the Indonesian nation has experienced economic development with a governed economic system and in the late 1990s experiencing an economic transition to the market mechanism is a new thing for the government, business actors and consumers. The planned economic system does not provide free space

for business actors to do business. Islamic economics views that the market, state, and individual are in balance (iqtishad), there should be no subordinates, so that one becomes dominant over the other. The market is guaranteed freedom in Islam. The free market determines the methods of production and prices, there must be no disturbance that causes damage to the market balance. But in reality it is difficult to find a market that runs itself fairly (fairly). Market distortions still occur frequently, which can be detrimental to the parties. Business competition according to Islamic economic law is a permitted competition, as long as the business competition is carried out in a healthy manner, but if the business competition is monopolistic in nature in order to take advantage, Islamic economics prohibits it. This is because Islamic economics provides a line that business competition must be conducted fairly (fair play) with the principles of honesty (honesty), transparency (transparency), and justice (justice). Meanwhile, according to Law no. 5 of 1999, business competition is a competition that is permitted, but if competition between business actors in carrying out production and or marketing activities of goods and or services is carried out in a dishonest or against the law or hinders business competition, then according to the provisions of Article 17 paragraph (1) Law no. 5 of 1999, such business competition is prohibited. Prospects of implementing Law no. 5 of 1999 as an effort to prevent monopolistic business competition in Indonesia resulting in competitive prices with the best quality, competition can spur better innovation, competition can encourage social mobility, competition has productive efficiency and allocative efficiency, laws that are conducive to the implementation of business competition , and stability and predictability.[65]

[65] Iis Susanto.et.al.," Persaingan Usaha Tidak Sehat di Indonesia Menurut Hukum Ekonomi Islam dan Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Monopoli dan Persaingan Usaha Tidak

CHAPTER III

RESEARCH RESULTS REGARDING APPROPRIATE ANTITRUST IMMUNITY IN ASSIGNMENT OF PROCUREMENT OF COVID-19 VACCINE TO PT. BIO FARMA (PERSERO)

A. PRESIDENTIAL REGULATION (PERPRES) CONCERNING VACCINE PROCUREMENT AND VACCINATION IMPLEMENTATION IN THE CONTEXT OF COMBATING THE 2019 CORONA VIRUS DISEASE (COVID-19) PANDEMIC INCLUDED IN ANTITRUST IMMUNITY

In Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Eradicating the Corona Virus Disease 2019 (COVID-19) Pandemic, it has a legal basis, namely Article 4 paragraph (1) of the 1945 Constitution and Law Number 2 of 2020. Presidential Regulation This regulation regulates the acceleration of handling COVID-19 which is carried out by accelerating the procurement of the COVID-19 Vaccine and the implementation of the COVID-19 Vaccination. In the analysis, it can be seen from Article 50 letter a of Law Number 5 of 1999 which states that what is excluded from the provisions of this law are acts and or agreements that aim to implement the applicable laws and regulations, and also Article 51 of the Law Number 5 of 2020 which states that Monopolies and or concentration of activities related to the production and or marketing of goods and or services that affect the livelihood of many people as well as production branches that are important to the state are regulated by law and organized by State-Owned Enterprises and or other bodies or institutions. established or appointed by the Government. So that this Presidential Regulation Number 99 of 2020 was formed in accordance with Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

Sehat".Vol.3 No.2,tahun 2019.

Regarding Antitrust Immunity, Presidential Regulation Number 99 of 2020 is included in Antitrust Immunity. the most important thing is the conditions that must be met in order to be able to issue a regulation as Antitrust Immunity, the condition is to have complied with Article 50 letter a and Article 51 regulated in Law Number 5 of 1999 even though in this way the Government potential violates Law Number 5 of 1999 if in carrying out the direct appointment, sub-contracting to business partners PT Bio Farma without going through an auction. In general, antitrust immunity is created to address national problems of an emergency nature or accelerate the production of goods and/or services that are urgently needed by the community. so that the President in issuing Presidential Regulation Number 99 of 2020 concerning PT Bio Farma as a State-Owned Enterprise appointed for Vaccine Procurement has complied with the requirements of Antitrust Immunity.

Thus, in this section the author describes Antitrust Immunity in more detail, the first being Federal Antitrust Enforcement. Federal antitrust enforcement followed an erratic course over the early decades of its existence but gradually assumed a significant place in the realm of national economic ideology if not policy and has become a principal responsibility of federal law enforcement.[66]

[66] *Jhon J. Flynn* “Trends In Federal Antitrust Doctrine Suggesting Future Directions For State Antitrust Enforcement” *The Journal Corporation Law*. P. 480.

While the great depression brought flirtation with wholesale cartelization of the economy as one remedy for what was viewed as the excesses of laissez-faire,' a pragmatic mixture of increased antitrust enforcement, significant affirmative regulation of some industries, and public ownership characterized the New Deal response to widespread economic distress. In recent years, public enforcement of antitrust policy has been institutionalized to the point of routine prosecution of traditional antitrust violations and has branched out to deal with mergers, foreign trade,' and government regulation. Private enforcement in the past two or three decades has exploded as treble damage litigation has become a widespread and lucrative practice, as well as a tool in many cases for rectifying injury resulting from predatory, exclusionary or otherwise competitive adverse harm. For the past two or three decades, federal antitrust enforcement has been of great and growing significance to the bar, the government and those potentially subject to its constraints and penalties.

A less noticed but potentially significant recent development has been the widespread revitalization of state antitrust laws and their enforcement. The gradual realization of the existence of state antitrust statutes and the responsibility of state attorneys general to enforce such statutes has been gaining momentum over the past decade. A number of factors have rekindled the interest in state enforcement.' In part, state involvement as plaintiffs in treble damage litigation under federal antitrust laws has both served to educate state attorneys general to the economic significance of antitrust violations and the legal intricacies of antitrust doctrine and litigation. In addition, it has become apparent that federal enforcement resources are limited and must be devoted to cases of major economic or geographic significance. The urge to displace competition by private agreement takes place regularly in local markets under local circumstances beyond the resources, interest, and, on occasion, jurisdiction of federal

enforcement agencies. Frequently, local violations tend to be more blatant and on occasion highly predatory. This results, in part, because of a vacuum of continuous local antitrust enforcement by state officials sensitizing local businessmen to the basic requirements of the law.

More recently, the attention of state attorneys general, stimulated by the availability of federal grant funds intended as "seed money" for establishing state antitrust enforcement programs, has been drawn to enforcing state antitrust laws directly in addition to state participation in federal treble damage litigation. Recognition of an independent responsibility to enforce state antitrust statutes has, in many states, raised at least two immediate problems. The first is the fact that many state antitrust statutes are inadequate in substantive scope, jurisdictional reach, enforcement tools and/or remedies. Many state statutes phrase substantive standards in the quaint but vague and underdeveloped language of a bygone era, limit the prohibition of restraints of trade to those involving goods and commodities, provide awkward or inappropriate tools for investigation and discovery, or limit remedies in such a way as to severely restrict the necessary flexibility of prosecutor and court in rectifying or responsibly serving the public interest. The response to this problem has been a widespread movement to reform existing state antitrust statutes, usually closely patterning new state statutes after the federal antitrust statutes, remedies and enforcement devices. Potential conflict is kept at a minimum by closely following federal substantive standards.

The second difficulty encountered in recognizing a responsibility to enforce state antitrust laws is efficient and effective allocation of limited state enforcement resources to achieve the maximum public benefit. At present, state antitrust enforcement appears to be aimed primarily at participation in treble

damage litigation under federal law to recover illegal overcharges to the state and its political subdivisions, at least to the extent permitted by the curious limitations of the Illinois Brick doctrine. In addition, many state enforcement programs appear to be directing considerable effort to the prosecution under state law of local price fixing, bid rigging, boycotts, tying arrangements and divisions of markets. What will be suggested here is that state antitrust enforcement programs should also contain as a major component a constructive and ongoing reexamination of state and local regulatory schemes from an antitrust perspective. In the long run, it will be argued, the economic, political and social consequences of a state initiated reexamination of state and local regulation impinging upon the competitive ideal may be of greater significance than the combined consequences of state treble damage activity and prosecution of privately initiated local restraints under state law. In addition, the use of state antitrust enforcement in this area may serve to deter the further evolution of some troublesome and difficult to apply emerging federal doctrines responding to outmoded state imposed barriers to competition and the failure to vigorously enforce state antitrust policy at the local level for many decades.

Furthermore, the emerging federal doctrine is, In at least two areas the federal courts, led by the Burger Court, are developing federal remedies for anticompetitive state regulation or anticompetitive private activity permitted or authorized by state regulatory legislation. The first is the narrowing of immunity for state sanctioned restraints of trade by the gradual dismantling of the Parker v. Brown doctrine." The second is a vague, amorphous but growing recognition of economic rights under the rubric of an expanded definition of speech under the First Amendment to encompass advertising and a right to “hear” and the use of federal civil rights legislation to protect economic rights as well as political and social rights.Both developments are troublesome because of the absence of

workable standards delineating the scope and direction of the pragmatic goals the federal courts are seeking to achieve; the absence of clearcut ideological signals defining the values which the courts are seeking to implement, the consequences for a number of related fields of law because of the broad generalizations being stated and implemented; and, the complexities engendered in such cases by concerns with principles of federalism.

Furthermore there is Take State Action Immunity, Increased federal antitrust scrutiny of activity displacing competition pursuant to state laws that command, mandate, authorize or permit such conduct has been taken place recently through assaults mounted against the “state action” exemption. The genesis of the “state action” exemption, Parker v. ZtroPre," created a broad umbrella of immunity from federal antitrust policy for conduct which “derived its authority and its efficacy from the legislative command of the state” For three decades, the aura of Parker v. Brown served to immunize a wide range of anticompetitive activity finding some sanction in, association with, or authorization by state or local law. As a result of both judicial abdication of scrutiny of federal regulation vis a vis federal antitrust and abandonment of substantive due to process review of state economic regulation by federal courts, a wide door for establishing immunity from antitrust policy was established. 'The determination of economic policy, for good or bad, was vested in legislative bodies national, state and local with minimal judicial review. Presumably, establishment of the appropriate balance between competition and regulation would be struck in the political sphere, with courts limited to the function of determining what balance had been struck by the legislature rather than what balance should be struck in the mind of a court.

The accumulation of a wide range of economic regulation at all levels of

government has become a growing concern in the antitrust sphere. Much of this regulation has not been the product of a reasoned balance between competition or regulation, but rather reflects special interest political power or ad hoc responses to the real, imagined or contrived difficulties of particular industries in a particular time and circumstances. Frequently, the interface between regulation and competition was left vague or unstated, with wide discretion vested in the regulator or assumed by the regulatee to define what activity was and was not in the public interest. Although the N.R.A. invitation to cartelization died in its infancy on the altar of substantive due process, many significant industries became carielized in fact through the creation of industry or government administered entry barriers, licensing restrictions, rate bureaus and conferences, and a host of other limitations and restrictions upon all or some of the activity of the industry. Beginning in the 1960's, however, a growing antitrust presence began to be felt at the federal level in regulatory decision making. Inquiries into the appropriate scope of federal regulation became more common in antitrust attacks on conduct initiated by private interests claiming immunity by virtue of the presence of regulation. Through both public and private antitrust litigation, the federal courts have been called upon with increasing frequency to reconcile the appropriate limitations for federal regulation and federal antitrust and have gradually built up a presumption in favor of competition except where Congress has expressly or impliedly declared otherwise, with most doubts resolved against a finding of exemption from antitrust policy.

A similar, but more recent and complex process of reexamination of federal antitrust policy and state and local regulation, has been initiated by a series of private antitrust cases calling into question the meaning and future vitality of Parker v. Broirn. This reexamination is more complex than the primary jurisdiction cases. In addition to establishing the appropriate scope of competition

and regulation under broad and vague legislative language presenting a potential clash of economic policy, courts must also consider federalism and the scope of federal judicial interference with state legislation and policy in the economic sphere.

A series of private cases under the federal antitrust laws over the past four years attacking the state action exemption demonstrate the complexity of balancing the conflicting policies involved while attempting to establish a knowable and workable legal standard to guide future adjudication and behavior. In Goldfarb v. Virginia State Bar," the claim that "state action". immunized a bar imposed minimum fee schedule from attack under the antitrust laws was rejected. The court stated the "threshold question" in "determining if an anticompetitive activity is state action of the type the Sherman Act was not meant to proscribe is whether the activity is required by the State acting as sovereign." Although the court found the Virginia legislation authorized the Supreme Court of Appeals of Virginia to regulate the practice of law, state action immunity was not available to either the county or State bar because the Virginia court rules governing law practice did not require the anticompetitive conduct in question (price fixing) of either the state or county Bars. Viewing the defendant's arguments as claims that state regulation "prompted" the issuance of minimum fee schedules, the court held "prompting" was insufficient to invoke the state action exemption: "Rather, anticompetitive activities must be compelled by direction of the State acting as a sovereign." The court added:

The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members. The State Bar, by providing that deviation from County Bar minimum fees may lead to disciplinary action, has voluntarily joined

in what is essentially a private anticompetitive activity, and in that posture cannot claim it is beyond the reach of the Sherman Act."

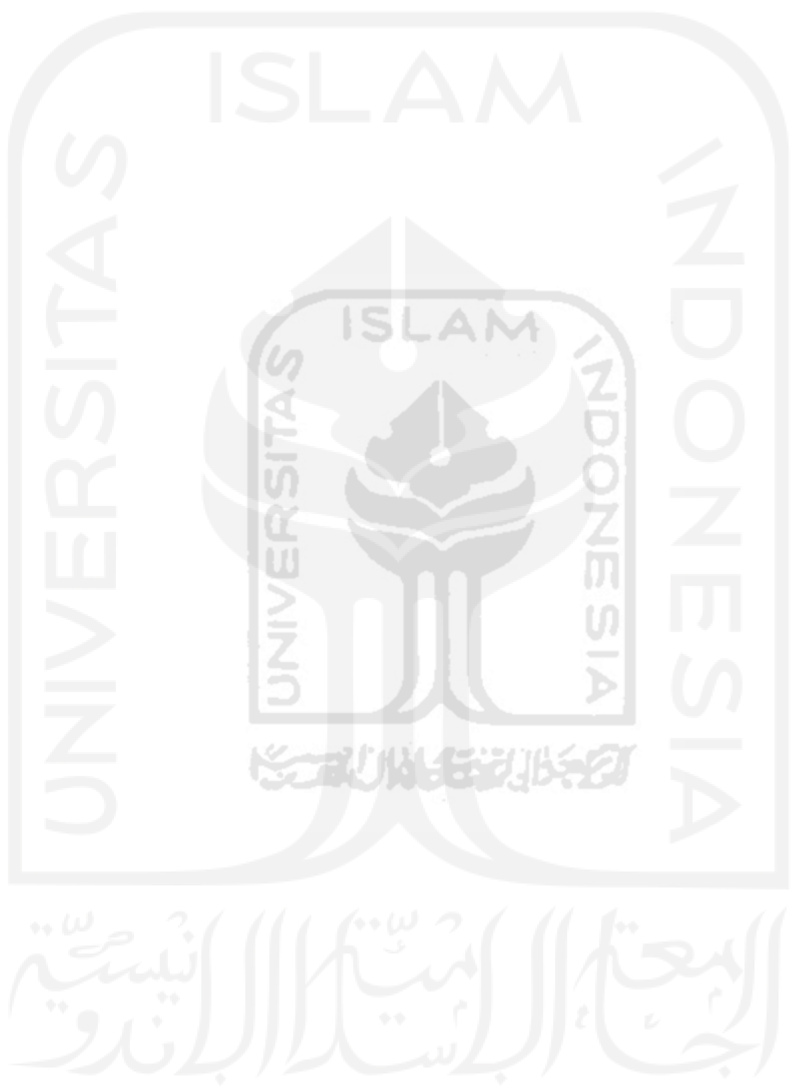
Goldfarb, while not purporting to depart from Parker v. Brow'n, clearly indicated a willingness to examine more closely both private conduct lurking in the vicinity of state regulation and whether "quasi state" regulatory agencies like a bar association with disciplinary authority may itself violate federal antitrust policy in the exercise of that authority.

The degree of state compulsion, the character of the act compelled, and the scope of state agency immunity when state action is a claimed defense to an otherwise unlawful restraint of trade were all explored but scarcely illuminated in Cantor v. Detroit Edison to. Detroit Edison's inclusion of the cost of providing its customers with "free" light bulbs in its filed tariffs with the Michigan Public Service Commission was attacked by a retailer of light bulbs under Sections 1 and 2 of the Sherman Act 32 and Section 3 of the Clayton Act.3 Six justices agreed that the state agency's general approval of Detroit Edison's overall tariff did not exempt the light bulb exchange program from antitrust attack. Beyond that general conclusion, consensus on why the program did not constitute exempted state action is difficult to find in the four opinions generated by the controversy.

So there is also the Antitrust Immunity Policy, which indeed there must be a special policy applied by the antitrust agency in the Direct Appointment to PT Bio Farma.[67] Antitrust is the government's policy to deal with monopoly. Antitrust laws aim to stop the abuse of market power by large corporations and, sometimes, to prevent mergers and acquisitions of companies that would create or strengthen monopolies. The use of antitrust immunity cannot go unnoticed. It must be used under the right conditions. Not all circumstances can be used as an excuse to relax Law no. 5 of 1999. KPPU must ensure that there is no other

alternative than this easing. Antitrust immunity is created to address national problems of an emergency nature or to accelerate the production of goods and/or

[67] Nicolo Banks, "Competition Policy During Pandemics: How to Urgently Produce Healthcare Goods and Services while Avoiding Economic Disaster", *Journal of Antitrust Enforcement*, Volume 9, Issue 3, November 2021, p413–435. https://doi.org/10.1093/jaenfo/jnab005



services that are urgently needed by the community. So, it can be concluded that its use can only be used in an emergency or urgent situation. However, the antitrust immunity policy needs to be guarded by three things so that the practice does not harm the community. First, business actors who are granted exemptions from the prohibition of monopolistic practices must be closely monitored by KPPU. Second, corporations involved in the Red and White vaccine industry must consist of state-owned enterprises, the private sector, and academics. So that the principle of healthy business competition is maintained and the price of the corona vaccine is affordable for all people. Finally, antitrust immunity is only temporary. When the corona vaccine is no longer a rare item, this rule must be repealed. With these three fences, the goal of creating a national vaccine industry is no longer just a hope. Efforts to restore the national economy can also run optimally.[68]

Therefore, the importance of Business Competition Policy is basically, competition policy is the main instrument to increase the efficiency of natural resource use and improve consumer welfare. Competition policy also plays a role in regulating market concentration so as not to interfere with competition and plays a role in increasing the flexibility of a country to survive in changing world economic conditions.[69]

Regarding the KPPU (Business Competition Supervisory Commission), KPPU is the right institution to resolve business competition issues that have a multifunctional role and expertise so that they are considered capable of resolving

[68]KPPU Relaksasi Penegakan Hukum Dukung Pemulihan Ekonomi Nasional https://www.hukumonline.com/berita/a/kppu-relaksasi-penegakan-hukum-dukung-pemulihan-ekonomi-nasional-lt5fac93916cef2

[69]Kebijakan Persaingan: Umpan Negara Memancing Investasi https://kppu.go.id/blog/2011/05/kebijakan-persaingan-umpan-negara-memancing-investasi/#:~:text=Pada%20dasarnya%2C%20kebijakan%20persaingan%20adalah,dalam%20meningkatkan%20fleksibilitas%20suatu%20negara

and accelerating the process of handling cases[70]. KPPU issued KPPU Regulation Number 3 of 2020 concerning Relaxation of Law Enforcement Against Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in Supporting the National Economic Recovery Program. It explains that the objective of the Relaxation of Competition Law Enforcement is to support the economic recovery program by protecting, maintaining, and increasing the economic capacity of business actors in running their business. So that this can also affect sustainable development and institutional reforms that need to be carried out.[71]

There are several forms of relaxation provided by KPPU, namely firstly relaxation of law enforcement on the implementation of the procurement of goods and/or services using the State Revenue Expenditure Budget or Regional Revenue Expenditure Budget. Second, relaxation of law enforcement on plans for agreements, activities and/or using a dominant position aimed at handling Covid-19 and/or increasing the economic capacity of business actors in running their business. The two relaxations are given if business actors meet various criteria determined by the KPPU. Relaxation of law enforcement on the procurement of goods and/or services is provided for procurement aimed at meeting medical needs and/or providing supporting facilities for handling Covid-19 (such as procurement of drugs, vaccines, construction of emergency hospitals, appointment of hotels/buildings for self-isolation, or procurement of medical needs/other supporting facilities for handling Covid-19); and in the context of distributing social assistance and government social networks to the community. In addition, relaxation of law enforcement on plans for agreements, activities and/or using

[70] Muhamad Sadi Is,op.cit.p.21
[71]*Journal of Antitrust Enforcement,* Volume 10, Issue 1, March 2022, p.1-31. https://doi.org/10.1093/jaenfo/jnac003

dominant positions is given by KPPU after business actors submit written requests to KPPU. Based on the request, KPPU will analyze the agreement plan, activities and/or use of the dominant position and make a decision on it no later than 14 (fourteen) days after the request is received by KPPU.[72]

It shows two point; first, that this is what is called as Antitrust Immunity, and second the KPPU Regulation Number 3 year 2020 does not only mention the criteria of the objectives of the regulations but also several forms of relaxation provided by KPPU. We might recognize that the Regulation that the Regulation of Appointment of PT Bio Farma in the Covid-19 Vaccine Assignment is included in the category of the KPPU Regulation.[73]

B. THE OCCURRENCE OF A VIOLATION OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF PT. BIO FARMA AS A STATE-OWNED ENTERPRISE IN VACCINE PROCUREMENT

As we know that with this pandemic, each country in the world definitely needs to improve the quality of health. The main thing is to comply with the Health protocol by being obliged to wear a mask, keep your distance and wash your hands. So that over time this cannot be left alone, with various ways to overcome it, one of which is the production of vaccines. So several countries in the world produce Covid-19 vaccines, as a prevention of very fast virus transmission. In this case, it relates to the world of competition because it produces vaccines through companies engaged in the pharmaceutical sector. However, in this vaccine business competition, it is carried out by conducting a monopoly. Definition of monopoly states in Article 1 number 1 of Law no. 5 of 1999. Monopoly is control over the production and or marketing of goods and or the use of certain services by one business actor or a group of business actors.

[72] *Ibid*

[73] Jurnal Komisi Pengawas Persaingan Usaha, “Jurnal Persaingan Usaha”. Tahun 2009.

Several countries finally had to decide to do something that could be called Antitrust Immunity. In its application, Antitrust Immunity is made to address national issues that are emergency or accelerate the production of goods and/or services that are urgently needed by the community.

Apart from that, in reality regarding broader Antitrust Immunity, namely regarding the Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine, one of which is A Doctrinal Defense of Bidiing, which consists of:

1. The Trio of Pre-Blliirtg Implied Immunity Cases

   Prior to Billing, the Supreme Court had decided three cases involving assertions of implied antitrust immunity under the securities laws.[74] The first was Silver v. New York Stock Exchange." Silver involved a decision by the New York Stock Exchange to prohibit the use of direct telephone wire connections between exchange members and nonmember broker dealers. A non member brokerage that was unable to obtain price quotations quickly as a result of the rule alleged that the prohibition was a conspiracy in restraint of trade in violation of the Sherman Act." The Court first explained that the removal of the wires would normally constitute a per se violation of section i of the Act, since it functioned as a group boycott." However, the presence of a parallel regulatory scheme in the Securities Exchange Act of v34. and its policy of self- regulation by the national exchanges, meant that the antitrust laws could be applied only if they were reconcilable with the securities laws. Emphasizing the "'cardinal principle of construction that repeals by implication are not favored,"' the Court explained that "[r]epeal is to be

---

[74] *Jacob A . Kling "*Securities Regulation in the Shadow of the Antitrust Laws: The Case for

regarded as implied only if necessary to make the Securities Exchange Act work, and even then only to the minimum extent necessary."" At the time, the Exchange Act required exchanges to register with the SEC and to submit a copy of their rules, which were required to be "'just and adequate to insure fair dealing and to protect investors." Although the SEC had the power to disapprove of an exchange's rules, it did not have the authority to review particular instances of the Exchange's enforcement of those rules." Because the SEC lacked such jurisdiction, it was incapable of performing an "antitrust function" sufficient to displace the antitrust laws." Thus, the Court declined to read an implied repeal of the antitrust laws into the Exchange Act. But the Court emphasized the limited reach of its decision, commenting that "where there Commission jurisdiction and ensuing judicial review for scrutiny of a particular exchange ruling a different case would arise."

Just over a decade later, the Court was presented with such a case. Gordon v. New York Stock Exchange involved a challenge under sections i and 2 of the Sherman Act to the fixing of the brokerage commission rates charged by members of the New York Stock Exchange for smaller transactions. As recently amended, the Exchange Act contained a general prohibition against the fixing of commission rates by an exchange but also empowered the SEC to make exceptions permitting an exchange to fix commissions provided that the rates set were reasonable in relation to brokers costs and did not impose an unnecessary burden on competition. The SEC, moreover, had been continuously engaged in the process of reviewing the practice of rate fixing by exchanges. The Court held that the antitrust claims were impliedly precluded by the securities laws and declined

a Broad Implied Immunity Doctrine" The Yale Journal.P.914.

to issue an injunction prohibiting the Exchange from fixing commissions going forward. It distinguished Silrer on the ground that the Exchange Act gave the SEC explicit regulatory power to review exchange rules fixing brokers commission rates, and the SEC had engaged in such review during the preceding years. Given the SEC's clear jurisdiction to regulate the conduct at issue, the Court expressed concern that if the antitrust suit were permitted to proceed, then the exchanges and their members might be subject to conflicting standards. The likely cause of a conflict, the Court reasoned, was that, while the antitrust laws exclusive objective is to promote competition, the securities laws have multiple purposes, including "the economic health of the investors, the exchangcs, and the securities industry. Thus, even though the SEC's position at the time was that fixed commission rates should be abolished, the possibility of a conflict in the future was sufficient to imply a repeal of the antitrust laws.

The third Supreme Court decision addressing implied antitrust immunity in the securities context is United States v. National Ass'n of Securities Dealers, Inc. (NASD), decided the same day as Gordon. In NASD, the government and investors brought suit against zarious mutual funds and dealers under section i of the Sherman Act. The complaint alleged that the mutual funds, in an attempt to inhibit the development of a secondary market for the funds securities, had engaged in resale price maintenance by fixing the prices at which broker dealers could purchase or sell a fund's shares from or to investors. The complaint also alleged that the mutual funds had prohibited broiler dealers from selling shares to other dealers.

2. The Decision in Billing

Billing was the first implied immunity case implicating the securities

laws that the Supreme Court decided in the more than thirty years after Gordon and NASD. It involved an antitrust suit challenging various alleged agreements among a number of investment banks regarding the underwriting of IPOs. The plaintiffs contended that the underwriters required investors to (i) purchase shares in the aftermarket following the IPO, a practice known as "laddering"; (2) Commit to purchase other "less attractive" securities from the underwriters, an arrangement generally referred to as "tying" in antitrust parlance; and (3) agree to purchase the issuer's shares in subsequent public offerings, which would generate additional commissions for the underwriters."

In assessing the defendants' implied immunity argument, the Court distilled from its precedents four factors relevant to the determination of whether the antitrust laws and the securities laws are "clearly incompatible" in a particular context: (i) whether the securities laws give the SEC authority to supervise the conduct at issue; (2) whether the SEC in fact exercises that authority; (3) the resulting risk that the antitrust laws and the securities laws might produce conflicting "guidance, requirements, duties, privileges, or standards of conduct"; and (4) whether the potential conflict affects practices that lie in the heartland of financial market activity that the securities laws seek to regulate."

Applying these factors to the activities at issue in the case, the Court concluded that factors one, two, and four were clearly satisfied. First, the SEC has jurisdiction over the sales practices of underwriters by virtue of its power to regulate communications between underwriters and their customers and to prohibit fraudulent, deceptive, or manipulative practices." The SEC, moreover, had exercised its authority to regulate IPO sales by promulgating regulations defining the permissible scope of underwriter sales efforts during

their marketing campaigns. As to the fourth factor, the Court emphasized that the IPO process "is central to the proper functioning of well-regulated capital markets" and "lies at the very heart of the securities marketing enterprise." Thus, the outcome of the case turned on the third factor whether an antitrust suit would be incompatible with the SEC's administration of the securities laws.

3. Billing Is Consistent with Precedent

Billing's implied immunity analysis generally comports with the precedents discussed above. As an initial matter, the four-factor test articulated in Billing places significant emphasis on the scope of the SEC's regulatory authority to approve or proscribe the conduct at issue. This is the principal factor that distinguishes Silver, in which the Court declined to imply immunity because the SEC lacked legal authority to veto specific exchange rules, from Gordon and NASD, in which the Court found immunity where the SEC had the power to approve or prohibit the activities at issue. Of Billing's four factors, factors one and two entail a direct inquiry into the scope of the SEC's regulatory authority and whether the SEC has exercised that authority. Factor four, which looks to whether the conduct at issue falls into the heartland of securities activity, is also a kind of proxy for the extent of SEC oversight.

In addition, Billing's holding that implied immunity does not require the SEC to have affirmatively approved a particular activity is consistent with both NASD and Gordon. In NASD, the Court found the antitrust and securities laws irreconcilable even though the SEC had not promulgated standards against which to evaluate the restrictions imposed by mutual funds with regard to the resale of their shares and had recently expressed disapproval of the vertical restraints at issue in the case, And Gordon implicitly recognized that even though the SEC, at the time, condemned

rate fixing among exchange members, the possibilities that the SEC might regulate in this area in the future and that courts might reach different results from those reached by the SEC created clear discord between the securities laws and the antitrust laws.

Although, as we also know, so that the procurement and distribution of the corona vaccine does not violate Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, the government and KPPU need to issue an antitrust immunity as a policy. Antitrust immunity is a government policy to deal with monopolies. These antitrust laws are aimed at stopping the abuse of market power by large corporations and, at times, to prevent mergers and acquisitions of companies that would create or strengthen monopolies. The use of antitrust immunity cannot be just like that. It must be used under the right conditions. Not all circumstances can be used as an excuse to relax Law No. 5 of 1999. Therefore, KPPU must be able to ensure that there is no other alternative other than this easing. KPPU itself is an independent institution, which in handling, deciding or conducting an investigation of a case cannot be influenced by any party, either the government or other parties who have a conflict of interest, even though in carrying out its authority and duties it is responsible to the president. KPPU is also a quasi-judicial institution that has executive authority related to business competition cases.[73]

It is not so easy to say that the existence of Antitrust Immunity means that there is no violation of Law Number 5 of 1999. Government has published Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the Corona Virus

[73] Hermansyah, Pokok-pokok Hukum Persaingan Usaha di Indonesia. Kencana Prenada Media Group, 2009.p.73.

Disease 2019 (Covid-19) Pandemic, and appoint PT. Bio Farma as a state-owned company, and also appoints or involves other companies such as PT. Kimia Farma Tbk and PT. Indonesia Farma Tbk and also foreign companies. So it can be said that the government in issuing Antitrust Immunity through direct appointment to PT. Bio Farma with the existence of Presidential Regulation Number 99 of 2020 which we know that there are several companies that have been given assignments but in this regulation only the assignment is focused on one company, namely PT. Bio Farma. This means that a violation can occur if PT. Bio Farma makes direct appointments (without tender) when carrying out vaccine procurement. The Government in making the Presidential Regulation only focuses on PT. Bio Farma for the Procurement of the Covid-19 Vaccine, even though it also involves other companies, means that this has harmed other companies that are also involved in the Procurement of the Covid-19 Vaccine due to imbalances and injustices in the world of business competition.

Furthermore, does PT Bio Farma have immunity from antitrust obligations for anti-competitive losses arising from the exercise of assignment rights? It depends on the question of what justifies antitrust immunity is not the means chose 'but a disinterested and accountable decision-making process for choosing those means. As long as neither the government nor its officials have a financial interest in the governmental action, so antitrust immunity should apply to PT Bio Farma.[74] With the existence of Antitrust Immunity, it is actually still open for business, as long as the Government and decision makers do not get financial benefits.[75] Antitrust Immunity is an exception to the prohibition of

[74] Einer Elhauge, "Making Sense of Antitrust Petitioning Immunity," *80 California Law Review.* 1177, 1178 (1992), p. 1202

[75] Makan Delrahim, "Tackling the COVID-19 challenge—a view from the DOJ", *Journal of Antitrust Enforcement*, Volume 8, Issue 2, July 2020, p.244–246. https://doi.org/10.1093/jaenfo/jnaa032

monopolistic practices for business actors with certain criteria. In general, antitrust immunity is created to address national problems of an emergency nature or to accelerate the production of goods and/or services that are urgently needed by the community. One of the requirements is based on the provisions of applicable laws and regulations to tackle national problems. Presidential Regulation Number 99 of 2020 is included in Antitrust Immunity, the basis of whose birth can be linked to Article 50 letter A and Article 51 of Law Number 5 of 1999. So that the President in issuing Presidential Regulation Number 99 of 2020 concerning PT Bio Farma as a State Owned Enterprise Countries designated for Vaccine Procurement have complied with Antitrust Immunity requirements.

CHAPTER IV

CLOSING

A. Conclusion

1. Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Eradicating the Corona Virus Disease 2019 (Covid-19) Pandemic is a new regulation made by the Government during a pandemic, especially when there is a vaccine, and to start vaccination activities in Indonesia. The COVID-19 pandemic has profoundly affected the way we live, disrupted our daily routines, and changed the way we work, interact and consume. These changes are necessary to contain the spread of the virus, but the economic impact they will have is far-reaching and painful. However, the existence of Antitrust Immunity still opens up business opportunities, one of which is the Presidential Regulation in its Regulations to appoint BUMN Companies in Vaccine Assignment. Thus, this situation is clearly related to Antitrust Immunity, Antitrust Immunity is an exception to the prohibition of monopolistic practices for business actors with certain criteria. In general, antitrust immunity is created to address national problems of an emergency nature or to accelerate the production of goods and/or services that are urgently needed by the community. Regarding Antitrust Immunity, Presidential Regulation Number 99 of 2020 is included in Antitrust Immunity. the most important thing is the conditions that must be met in order to be able to issue a regulation as Antitrust Immunity, the conditions are to meet Article 50 letter A and Article 51 regulated in Law Number 5 of 1999. So that the President in issuing Presidential Regulation Number 99 of 2020 concerning PT Bio Farma as a State-Owned Enterprise appointed for Vaccine Procurement has complied with the requirements of Antitrust Immunity. Also related to the KPPU (Business

Competition Supervisory Commission), KPPU issued KPPU Regulation Number 3 of 2020 concerning Relaxation of Law Enforcement Against Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in the Framework of Supporting the National Economic Recovery Program.

2. Assignment of PT. Bio Farma as a BUMN actually also involves other companies such as PT. Kimia Farma Tbk and PT. Indonesia Farma Tbk and also foreign companies. This assignment is based on Presidential Regulation Number 99 of 2020. Although several companies have also been given assignments, in this regulation the assignment is only focused on one company, namely PT. Biopharma. While the Government in making Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Eradicating the 2019 Corona Virus Disease (Covid-19) Pandemic to appoint PT. Bio Farma in the Vaccine Assignment, when viewed from the government's business competition, means that it only benefits one company so that it is detrimental to other companies operating in the health sector, especially in the vaccine sector. In this case it can be seen that the violation occurs if PT. Bio Farma makes direct appointments (without tenders) when carrying out vaccine procurement, in addition, antitrust violations occur when regulations are made based on the motive of financial gain that will be received by policy makers or the government.

B. Recommendation

1. During the Pandemic period, the Government issued regulations regarding the assignment of the Covid-19 vaccine and also for holding a vaccination program whose purpose was given by the government to the community. so from these activities the government in its regulations appoints state-owned companies, and

subsidiaries of state-owned enterprises as well as companies from abroad, but the most important thing is state-owned companies, namely PT. Bio Farma. We need to know that the main thing in the analysis of business competition law, the author finds a violation in Presidential Regulation No. 99 of 2020, namely that the presidential regulation violates Article 50 letter B of Law No. 5 of 1999 although the Presidential Regulation has also complied with the regulations contained in Law no. 5 of 1999, because the contents of Presidential Regulation Number 99 of 2020 dominate to appoint and prioritize PT. Bio Farma is in the Vaccine Assignment so that here it will clearly cause harm to other companies which are also mentioned in the Presidential Regulation. So it is highly highlighted that there is a discrepancy between the Principles of Business Competition Law and Presidential Regulation Number 99 of 2020, firstly it is not in accordance with the Principles of Justice in the Principles of Business Competition Law, the second is not in accordance with the Indonesian Economic Democracy Principles, namely from this principle that the government must also pay attention to the balance between the interests of business actors and the public interest. Therefore, the authors hope that in the future the Government in making regulations, especially in appointing companies, must be much more concerned with and consider all aspects that have been stipulated by law so that they are not only concerned with what is more profitable for one company in appointing a state-owned company. Then for the KPPU (Business Competition Supervisory Commission) as an independent institution that was formed to oversee the implementation of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. KPPU is responsible to the President. The KPPU should play a very important role here in coordinating with the

President, if the President is to make Regulations relating to Competition. so that the role of KPPU should be to provide input to the government before the government determines its policies in the Presidential Regulation Number 99 of 2020.

2. The link between Presidential Regulation No. 99 of 2020 and Antitrust Immunity, turns out to be a series because Presidential Regulation No. 99 of 2020 includes Antitrust Immunity. Although Presidential Regulation Number 99 of 2020 is included in Antitrust Immunity, this regulation has also fulfilled the requirements of Article 50 letter A and Article 51 stipulated in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. However, the government still violates Article 50 letter B. In the author's analysis, it is through business competition law, because the use of antitrust immunity itself cannot just happen. It must be used under the right conditions. Not all circumstances can be used as an excuse to relax Law no. 5 of 1999. KPPU must be able to ensure that no other alternative is available other than this easing. Antitrust Immunity is created to address national emergency issues or to accelerate the production of goods and/or services that are urgently needed by the community. Therefore, what should have been done by the Government before stipulating the regulation to be ratified, it should be investigated and considered again in making regulations, whether or not there is a violation of the Articles contained in Law no. 5 of 1999 as the main regulation regarding its relation to competition. In relation to this, the KPPU (Business Competition Supervisory Commission) issued KPPU Regulation Number 3 of 2020 concerning Relaxation of Law Enforcement on Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in

Support of the National Economic Recovery Program. It was explained that the objective of Relaxation of Competition Law Enforcement was to support the economic recovery program by protecting, maintaining, and improving the economic capacity of business actors in running their business. So that in the author's analysis, the role of KPPU should be in its regulations that have been made concerning Relaxation of Law Enforcement of Monopolistic Practices and Unfair Business Competition and Supervision of Partnership Implementation in the Framework of Supporting the National Economic Recovery Program. also included as Antitrust Immunity because in order to comply with the objectives of the Business Competition Law to create fair competition and not cause harm to other parties or companies other than PT. Bio Farma, which was also involved in the Covid-19 Vaccine Assignment in Presidential Regulation Number 99 of 2020.

BIBLIOGRAPHY

Book

Asshiddiqie, Jimly. 1994. *Gagasan Kedaulatan Rakyat Dalam Konstitusi dan Pelaksanaan di Indonesia*, Jakarta : Ichtiar Baru Van Hoeve.

Hermansyah. 2009. *Pokok-Pokok Hukum Persaingan Usaha di Indonesia*, Jakarta : Kencana.

Ibrahim, Johnny. 2009. *Hukum Persaingan Usaha Filosofi, Teori dan Implikasi Penerapannya di Indonesia,* Malang : Bayumedia Publishing.

Ikwansyah, Isis. Man S. Sastrawidjaja dan Rahmi Yuniarti. 2019. *Hukum Perusahaan Analisis Privatisasi BUMN dalam Hukum Persaingan Usaha tidak Sehat*, Cetakan Pertama. Bandung : PT. Refika Aditama.

Posner, Richard A. 2001. *Anti Trust Law*, Cet.2. Chicago: The University of Chicago Press.

Puspa Ningrum, Galuh.2013. *Hukum Persaingan Usaha Perjanjian dan Kegiatan yang Dilarang dalam Hukum Persaingan Usaha di Indonesia*, Yogyakarta : Aswaja Pressindo.

Rudhy Prasetya, 1995. *Kedudukan Mandiri Perseroan Terbatas: Disertasi dengan Ulasan menurut Undang-Undang Nomor 1 Tahun 1995*, Bandung : Citra Aditya Bakti.

Sadi Is, Muhamad. 2016. *Hukum Persaingan Usaha di Indonesia Sebagai Upaya Penguatan Lembaga Komisi Pengawas Persaingan Usaha*, Malang : Setara Pers.

Simanjuntak, Agustinus. 2020 . *Hukum Bisnis- Sebuah Pemahaman Integratif antara Hukum dan Praktik Bisnis*, Depok : Rajawali Pers.

Siswanto, Arie.2002. *Hukum Persaingan Usaha*, Cetakan Pertama, Jakarta : Ghalia.

Soekanto, Soerjono dan Sri Mamudji. 2001, *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, Jakarta : RajaGrafindo Persada.

Susanti Adi Nugroho. 2012, *Hukum Persaingan Usaha di Indonesia Dalam Teori dan Praktik serta Penerapan Hukumnya,* Jakarta : Kencana.

Journal

Akyuwen, R.J, "Kriteria Badan Usaha Milik Negara Yang Diberikan Hak Monopoli Dalam Perspektif Hukum Persaingan Usaha". 2016.

Artikel Analis Bank Indonesia Sumatera Utara : Adhi Nughroho, "Pandemi dan Antitrust Immunity", Tahun 2020.

Chrinstine A. Varney, "Remarks as Prepared for the American Antitrust Institute's 11th Annual Conference: Public and Private: Are the Boundaries in Transition?" Journal of Antitrust Immunities, 2010.

Dyah Ochtorina Susanti, "Antitrust Law : Salah Satu Bentuk Kontrol Dalam Upaya Menciptakan Dunia Usaha Yang Sehat dan Beradap (Perbandingan Lahirnya Antitrust Law di Amerika dan Indonesia)". 2009.

Einer Elhauge, "Making Sense of Antitrust Petitioning Immunity," 80 California Law Review. 1177, 1178 (1992).

Ibrahim R., "Landasan Filosofis dan Yuridis Keberadaan BUMN: Sebuah Tinjauan", Jurnal Hukum Bisnis, Vol. 26, No. 1, Tahun 2007.

Iis Susanto.et.al.," Persaingan Usaha Tidak Sehat di Indonesia Menurut Hukum Ekonomi Islam dan Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Monopoli dan Persaingan Usaha Tidak Sehat".Vol.3 No.2,Tahun 2019.

Ivindo Brena Tarigan "Kajian Perbandingan Tentang Komisi Pengawas Persaingan Usaha Di Indonesia Dibandingkan Dengan Komisi Pengawas Persaingan Usaha Negara Jepang", Jurnal Ilmu Hukum, Tahun 2019.

*Jacob A . Kling "*Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine" The Yale Journal

Jean-Hubert Moitry, "Competition Law in Japan," 32 World Competition, Law and Economic Review Tahun 1988.

Jhon J. Flynn "Trends In Federal Antitrust Doctrine Suggesting Future Directions For State Antitrust Enforcement" *The Journal Corporation Law*

Jurnal Komisi Pengawas Persaingan Usaha, "Jurnal Persaingan Usaha". 2009.

Journal of Antitrust Enforcement, "Journal of Antitrust Enforcement", Volume 10, Issue 1, March 2022.

Makan Delrahim, "Tackling the COVID-19 challenge—a view from the DOJ", Journal of Antitrust Enforcement, Volume 8, Issue 2, 2020.

Nicolo Banks, "Competition Policy During Pandemics: How to Urgently Produce

Healthcare Goods and Services while Avoiding Economic Disaster", Journal of Antitrust Enforcement, Volume 9, Issue 3, 2021.

Rai Mantili, et.al., "Problematika Penegakan Hukum Persaingan Usaha Di Indonesia Dalam Rangka Menciptakan Kepastian Hukum", Volume 3-No 1-Tahun 2016.

Sheila Namira Marchellia, "Pengunaan Antitrust Immunity dan Kartel di masa Pandemi", Vol. 1 No. 1 Tahun 2021.

Tjip Ismail, "Peranan BUMN Dalam Penerimaan Pendapat Negara: Tinjauan dari Perspektif Pajak", Jurnal Hukum Bisnis, Vol. 26, No. 1, Tahun 2007.

Laws and Regulations

Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Competition.

The Civil Code.

The Constitution of the Republic of Indonesia Indonesia in 1945.

The Trade Practice Act 1974

Presidential Regulation No. 99 of 2020 concerning Vaccine Procurement and Vaccine Implementation in the Context of Combating the Corona Virus Disease 2019 (Covid-19) Pandemic.

Print Media/Internet

Andi Fahmi Lubis, et.al., "Hukum Persaingan Usaha Buku Teks",

https://www.kppu.go.id/docs/buku/FinalTextbookHukumPersainganUsahaKPPU2ndEd_

Up20180104.pdf

Antitrust Immunity https://analisis.kontan.co.id/news/pandemi-dan-antitrust-immunity

ArticlebyWilliamMarkham, San Diego Attorney.2021. https://www.markhamlawfirm.com/antitrust-exemptions-and-immunities-by-william-markham-2021/

Artikel Dasar Hukum dan Pengertian Badan Usaha Milik Negara (BUMN) https://bantuanhukum-sbm.com/artikel-dasar-hukum-dan-pengertian-badan-usaha-milik-negara-bumn

Global Harmonization of National Antitrust/Competition Law, International Contract Advisor, Volume II. No. 2. http://www.Ijextra.com/practice/internat/GLOBAL.html.05/09/97

Hukum Anti Monopoli dan Persaingan Usaha Tidak Sehat https://ejournal.unuja.ac.id/index.php/keadaban/article/download/2859/1050

KamusEkonomi:ApaArtiAntitrust https://ekonomi.bisnis.com/read/20130820/9/157641/kamus-ekonomi-apa-arti-antitrust#:~:text=00%3A03%20WIB,Bisnis.com%2C%20JAKARTA%20%2D%20Antitrust%20merupakan%20kebijakan%20pemerintah%20untuk%20menangani,akan%20menciptakan%20atau%20memperkuat%20monopoli.

*KamusEkonomiArtiAntitrust*https://ekonomi.bisnis.com/read/20130820/9/157641/kamus-ekonomi-apa-arti-antitrust

Kebijakan Persaingan : Umpan Negara Memancing Investasi https://kppu.go.id/blog/2011/05/kebijakan-persaingan-umpan-negara-memancing-investasi/#:~:text=Pada%20dasarnya%2C%20kebijakan%20persaingan%20adalah,dalam%20meningkatkan%20fleksibilitas%20suatu%20negara

KPPU Relaksasi Penegakan Hukum Dukung Pemulihan Ekonomi Nasional https://www.hukumonline.com/berita/a/kppu-relaksasi-penegakan-hukum-dukung-pemulihan-ekonomi-nasional-lt5fac93916cef2

Kurnia Togar P Tanjung. (2020) Penegakan Hukum Persaingan Usaha di Era Pandemi. [Online]. Available: https://katadata. co.id/redaksi/indepth/5ee720073c882/ penegakan-hukum-persaingan-usaha-di- era-pandemi

Legal Aspects Of Business Competition In The Procurement Of Covid-19 Vaccine By Bio Farma LTD. http://www.jurnal.unsyiah.ac.id/kanun/article/view/20416

Mekanisme Penunjukan Langsung Pada Pembangunan Infrastruktur Ketenagalistrikan DalamPerspektifHukumPersainganUsaha http://etd.repository.ugm.ac.id/home/detail_pencarian/112702

New Numbering of EC Treaty Article, The European Commision, Directorate General IV http://www.europa.eu.int/comm/dg04/amsterdamtreatyart.12.html.6/15/00

Pengertian Hukum Menurut Para Ahli dan Penggolongannya https://www.detik.com/edu/detikpedia/d-5798560/pengertian-hukum-menurut-para-ahli-danpenggolongannya#:~:text=Soeroso%20berpendapat%2C%20pengertian%20hukum%20adalah,bagi%20siapa%20pun%20yang%20melanggar

Penugasan Badan Usaha Milik Negara Dalam Pengusahaan Jalan Tol: Studi Penugasan PT. Hutama Karya (Persero) Dalam Pengusahaan Jalan Tol Di Sumatera

Penugasan Pemerintah pada Badan Usaha Milik Negara Sektor Ketenagalistrikan DalamPerspektifHukumKorporasi http://jurnal.unpad.ac.id/pjih/article/view/13927

Penunjukan Langsung Badan Usaha Milik Negara (BUMN) Dalam Kaitannya Dengan Persaingan Usaha Pengadaan Barang dan Jasa (Studi Pada PT.SemenBaturaja(Persero)Tbk) https://repository.unsri.ac.id/55355/2/RAMA_74102_02022681923049_0028077301_01_front_ref.pdf

Peran KPPU di tengah Pandemi Covid-19 https://kppu.go.id/blog/2020/06/peran-kppu-di-tengah-pandemi-covid-19/

Peraturan Menteri BUMN Tentang Pedoman umum Pelaksanaan Pengadaan Barang dan Jasa Badan Usaha Milik Negara https://jdih.bumn.go.id/lihat/PER-08/MBU/12/2019

Program Relaksasi Penegakan Hukum Persaingan Usaha Di Masa Pandemi dan Pemulihan Ekonomi Jawa Barat https://kppu.go.id/wp-content/uploads/2021/08/Materi-Sosialisasi-Perkom-Relaksasi-Kanwil-III.pdf

Riwayat Singkat Perusahaan Bio Farma Sebagai salah satu BUMN, https://www.biofarma.co.id/media/image/originals/uploads/2019/09/Riwayat-Singkat-Perusahaan.pdf

Seong Min Yoo, (Fellow, Korean Development Institute), Substantive Provisions of Korea's Competition Law. http://www.oecd.org/daf/clp/nonemberactivities/dname16.htm.10/1/00

Tentang BUMN https://berkas.dpr.go.id/puskajianggaran/kamus/file/kamus-240.pdf

Tidak Semua BUMN Dikecualikan dari UU Anti Monopoli https://www.hukumonline.com/berita/a/tidak-semua-bumn-dikecualikan-dari-uu-anti-monopoli-hol5241

U.S. Antitrust Law and Contract New Rules and Guidelines, A Synopsis of U.S. Antitrust Law and the International Application-dalam: International Contract Advisor Volume II No. 2. Diakses dari: http://Ijextra.com./practice/internat/USARhtml.05/10/97

UU No. 5 Tahun 1999 https://www.kppu.go.id/docs/UU/UU_No.5.pdf

FAKULTAS HUKUM
Gedung Fakultas Hukum
Universitas Islam Indonesia
Jl. Kaliurang km 14,5 Yogyakarta 55584
T. (0274) 7070222
E. fh@uii.ac.id
W. law.uii.ac.id

SURAT KETERANGAN BEBAS PLAGIASI

No. : 003/Perpus-S1/20/H/I/2023

Bismillaahhirrahmaanirrahaim

Yang bertanda tangan di bawah ini:

Nama	: **Joko Santosa, A.Md.**
NIK	**961002136**
Jabatan	: **Staf Perpustakaan Referensi Fakultas Hukum UII**

Dengan ini menerangkan bahwa :

Nama	: Shela Intan Sari
No Mahasiswa	18410713
Fakultas/Prodi	: Hukum
Judul karya ilmiah	: THE SUITABILITY OF ANTITRUST IMMUNITY IN THE ASSIGNMENT OF THE PROCUREMENT OF THE COVID-19 VACCINE BY PT. BIO FARMA (PERSERO)

Karya ilmiah yang bersangkutan di atas telah melalui proses uji deteksi plagiasi dengan hasil **17**.%

Demikian surat keterangan ini dibuat agar dapat dipergunakan sebagaimana mestinya.

Yogyakarta, 12 Januari 2023 M
19 Jumadil Akhir 1444 H

Perpustakaan Referensi FH UII

Joko Santosa, A.Md.