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Business Justice Principle in the Indonesian Airport Sector

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Abstract

Increasing competition in the aviation business has resulted in a shift in the trend of airport business management from monopoly to privatization. In contrast, practice in Indonesia shows that the airport sector is still centralized-monopolistic. PT. Angkasa Pura I (Persero) and PT. Angkasa Pura II (Persero) is a monopoly company that manages airport services and airport-related services at several airports in Indonesia. Based on the KPPU's decisions, the two companies, which should be excluded from the application of the Business Competition Law, were proven to have abused monopoly power by creating barriers to entry for other business actors. This research aims to analyze the application of the principles of justice in doing business in the airport sector in Indonesia. The principle of business justice is an essential concept in creating a fair, transparent and sustainable business environment. In the airport sector, the application of this principle includes aspects such as regulation, accessibility, healthy competition and protection of the rights of consumers and business actors. Implementation of the principles of business justice in the airport sector, including by improving regulations, increasing transparency and accountability, as well as strengthening supervision of business practices. In this way, it is hoped that the airport sector in Indonesia can develop more fairly and sustainably, providing maximum benefits for all stakeholders.

Keywords: Business Competition, Justice, Airports, Monopoly, Angkasa Pura.

Introduction

Airport services can be provided by airport business entities for airports that are operated commercially after obtaining permission from the Minister or airport management units for airports that are not yet commercially operated.

In contrast to airport services which must be provided by business entities that obtain permission from the Minister, services related to airports can be provided by individual Indonesian citizens and/or Indonesian legal entities.

In fact, there are many service sectors that can be commercialized in the airport industry, including both aeronautical and non-aeronautical services. On the other hand, through regulations in the airport sector, only certain companies can carry out these activities for many airports in Indonesia (PT Angkasa Pura I or PT Angkasa Pura II). Thus, airport services are actually operated in a monopoly manner in accordance with statutory regulatory orders. The general form of abuse of monopoly power by these two companies is discriminatory practices that create barriers to entry for other business actors in providing certain airport services.

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Apart from discriminatory practices, the position of PT Angkasa Pura I and II can cause an imbalance in bargaining power between PT Angkasa Pura I and II as holders of monopoly rights and entrepreneurs who want to carry out business activities at the airport. This is what happens when tenants at Soekarno Hatta Airport in Jakarta have to sign a Room Rental and Business Concession Agreement with PT Angkasa Pura II. The agreement requires tenants to use e-POS services and supporting devices and charges the service fees to tenants, while tenants cannot use other providers in providing e-POS services which are only provided by PT Telkom. Due to this action, the KPPU in Decision No.07/KPPU-I/2013 stated that PT Angkasa Pura II violated Article 15 paragraph (2) concerning tie-in agreements.

In KPPU Decision No.16/KPPU-L/2009, PT Angkasa Pura II was found guilty of violating Article 22 because it was proven to have committed vertical conspiracy with PT Spectra Jasindo as a tender participant. However, PT Angkasa Pura II is not considered a business actor, but rather a service user involved in a vertical conspiracy between tender participants and other parties, namely PT Spectra Jasindo which carried out post bidding for cleaning services at Soekarno Hatta airport. Thus, in fact the provision of services at airports, whether directly related to airport operations, or supporting services which are the domain of business actors who have been appointed by the government, has the consequence that the company cannot be separated from business competition law in its capacity both as a business actor and as an extension of government.

The development of airports in Indonesia continues to develop in line with the phenomenon of increasing air transportation every year, the development of Low Cost Carriers (LCC), the potential for business and economic growth around airports, the potential for tourism development in Indonesian territory, the existence of regional autonomy and open skies. policy in the framework of the ASEAN Economic Community 2015. In the end, it is hoped that healthy competition in airport business activities can become an opportunity that creates bright business prospects for the development of competition in the provision of airport services in Indonesia.

Discussion

Almost all aviation activities take place at the airport. Various laws and regulations in the aviation sector cannot be separated from airport management, such as operations, engineering, economics, smooth passenger traffic, aviation safety, aviation security, the environment, responsibility of airport administrators, insurance, facilitation, coordination, concessionaires, workshops, including airport operations. These activities cannot be separated from legal issues that must be handled by the airport management.

Airports and their surroundings must be free from all forms of obstructions to ensure flight safety. Therefore, in accordance with Article 28 of Law no. 15 of 1992 concerning Aviation regulates that anyone is prohibited from being at airports, building buildings, owning buildings or carrying out other activities in or around airports that endanger aviation safety. Any use of water, land or air in certain areas of airports must not cause interference with flight navigation signals or communication links between airport staff and aircraft, make it difficult for pilots to differentiate between airport lights and other lights, cause glare in pilots' eyes. who will use the airport, reduce visibility around the airport, attract birds or insects or in other ways that can endanger or interfere with aircraft landing or take-off or the movement of aircraft that will use the airport.

Realizing the vulnerability at airports, anyone is prohibited from being at the airport without

obtaining permission from the competent authority (airport authority). Therefore, to grant permits, each area within the airport is divided into public areas, restricted areas and prohibited areas. Public areas are open to anyone, while restricted areas are only open to passengers or goods senders or certain officers, for example check-in counters or warehouse areas for sending goods. Prohibited areas are only permitted by employees whose duties are in that area.

Thus, in principle, anything inside the airport is a barrier, either physically visible or invisible with the naked eye. Various objects including the use of radio frequencies at airports are also obstacles. Apart from that, it should also be noted that not everyone can be free at the airport. Therefore, it can be understood why in its management, airports are one of the sectors that are strictly regulated by the government (regulated industry) and have natural monopoly characteristics in addition to the element of controlling "the lives of many people" in the airport sector.

However, it needs to be underlined that this does not mean that the airport sector is simply free from aspects of business competition, because after all, airports function not only as places for carrying out government activities, but also include business activities.

The Australian Government in its report entitled *Price Regulation of Airport Services* stated that: "However, it is important to note that the essence of an airport's monopoly is spatial or locational in nature. A direct competitor may not emerge in the same city, but an airport in another city may provide some competition. The degree to which this type of competition could emerge can only be assessed by examining the demand characteristics of particular locations and airports".

Explicitly, the statement shows that although airports contain elements of monopoly, the essence of monopoly is limited to space and location. Competition between airports can occur even though in a region there is only one airport (for example in Indonesia, in one province there is generally only one airport), but actually airports in different regions can also be competitors. The competition model that emerges depends on the position of the airport and the type of airport itself.

In general, the greater the challenge of airport competition that arises from competition between airports, from the availability of alternative means of transportation or from the purchasing power of airlines, the greater the possibility that airports will pay more attention to the needs of their consumers, both airline consumers and passengers. Theoretically in any industry, including in the case of airports, competitive constraints can arise from three main sources:

1. Real competition, namely other airports or other players competing to attract passengers, airlines or other airport users;
2. Potential competition is the threat from new players or existing business actors who expand their capabilities or product ranges; And
3. Buyer power is airport users with strong negotiating power that can make them change airports.

Furthermore, there are certain characteristics of airports that influence and magnify the impact of business competition, namely fixed cost business, two-sided business, and geographically fixed.

1. **Fixed Cost Businesses**

Airports have high fixed costs. Airports are capital-intensive businesses that require a lot of

capital investment to finance new infrastructure and update existing facilities. Airports with high fixed costs and low marginal costs for adding additional passengers or changing airlines, means that the airport will aim to maximize returns from its fixed asset base by continuously trying to attract new airlines and more passengers. This means that the decision is marginal (marginal decision) airlines have a significant impact on airport profitability.

2. **Two-Sided Businesses**

Some parties state that airports are a public sector that serves the needs of aircraft, but for a long time airports have also considered passengers as an important offense and a separate source of income from aircraft. Airports are seen as platforms between airplanes and passengers, resulting in airport performance having two sides simultaneously. This shows that airports, airlines and passengers are connected by positive interdependencies. If passengers stay away, the airline will lose money and consider leaving the airport. If planes leave or reduce their route coverage or flying frequency, this will have an impact on airport revenues and retail revenues. These conditions have an impact on how airports compete. Positive synergies between airlines, retailers and passengers, combined with the fixed cost nature of airports, increase incentives for airport competition for flight and passenger traffic. This can make airports reduce their aeronautical charges to increase the number of passengers in order to increase turnover in "other sides of the business", for example in the retail sector.

3. **Geographically Fixed**

Geographically, airports are fixed (not moving), meaning that some passengers who live near airports consider geographic proximity as a determining factor in choosing an airport. But as in any other market, competition for passengers will occur between those who have the most choices and as long as there are enough of them to protect those passengers with fewer choices. Every passenger does not need to have an equivalent choice for effective competition to occur. Moreover, geographical position will automatically lead to competitive behavior in relation to both passengers and airlines. Most airports cannot achieve the desired passenger scale just by attracting passengers who live near the airport. The airport needs to expand its reach (catchment area) by providing price incentives or low fees for passengers.

Basically, in the Considering section of Law no. 1 of 2009 concerning Aviation states that the role of the private sector, business competition and consumer protection are important aspects in the implementation of national aviation. This statement is further clarified in the principles and objectives of Law no. 1 of 2009 which includes the principles/principles of openness and anti-monopoly as well as the aim of operating flights that avoids unfair business competition practices. Compare this with the old Aviation Law (Law No. 15 of 1992) which did not include the principle of business competition at all. The addition of anti-monopoly aspects or pro-competition principles in the provisions of the new Aviation Law is an indication that the government has actually opened up opportunities for all capable parties to compete fairly in the aviation industry, including in the airport sector. However, the government's intention to open the airport services sector to the private sector was not accompanied by follow-up in the form of policies that became implementing regulations for the new Aviation Law. Government Regulation no. 70 of 2001 concerning Airports is an implementing regulation of Law no. 15 of 1992 concerning Aviation which incidentally is no longer valid since the issuance of Law no. 1 of 2009, but it is still in use. Furthermore, since the issuance of the new Aviation Law until now the government has not issued specific implementing regulations in the airport sector in the form of government regulations. Further provisions regarding airport business activities including the

determination of airport services are regulated in a Ministerial Regulation, while the types and management of airports are considered "quite clear" as regulated in Law no. 1 of 2009 concerning Aviation.

As a result, the management of the airport business sector in Indonesia, both aeronautical and non-aeronautical, is still not in accordance with the principles of business competition law, even though normatively the government has issued regulations that prioritize anti-monopoly or pro-competition principles. Based on investigations into cases of violations of Law no. 5 of 1999 which occurred in the airport sector in KPPU decisions, starting from Case Decision No. 18/KPPU-I/2009 concerning Sultan Hasanudin Airport Taxi Services, Case No.: 20/KPPU-I/2009 concerning taxi services at Juanda International Airport, Surabaya, and Case No. 07/KPPUI/2013 regarding Provision of Telecommunication Networks and Implementation of e-pos at Soekarno Hatta Airport, Law no. 1 of 2009 has come into force. 279 As explained in Chapter III of this thesis, violations occurred, one of which was triggered by ambiguous regulations relating to the delegation of authority given by the Government to airport management entrepreneurs, namely PT Angkasa Pura I and PT Angkasa Pura II and the behavior of other business actors who collaborate with the delegation recipients (PT AP I and PT AP II), thus causing abuse of monopoly power to occur in the relevant airport business environment. Thus, there needs to be a reconstruction or new breakthrough regarding the governance of airport business activities so that it is in accordance with the principles of business competition law in order to achieve the positive objectives of business competition, namely by clarifying the lines of authority or delegation of management of airport business activities and the separation of service management. airports with airport related services.

Conclusion

The airport sector in Indonesia is still the government's domain, the management of which is delegated to state-owned companies and government agencies because old laws still apply. To improve airport business governance regulations which still have a centralized-monopolistic nuance, Indonesia can combine the trend that has been and is ongoing in most countries in the world, namely airport privatization with the principles of economic democracy in accordance with the principles of Indonesian business competition law. Airport privatization is a realistic step to face the conditions of the Indonesian airport market, where based on cases of business competition law violations studied, it shows that more and more private business actors are able to compete in providing services at airports and the emergence of new policies aimed at airport operators. currently to be more creative and independent in developing their airport business. In other words, it is necessary to formulate an implementing regulation regarding the management of the airport sector that accommodates the role of non-government (private) business actors in managing the airport sector as well as government business actors so that both can compete fairly in providing good airport services for all users.

Suggestion

Business actors, both those who are given monopoly power by the state and those who carry out business activities in the airport sector, are expected to have good intentions to uphold business ethics and create a climate of healthy competition, because there is no point if the regulations are made in such a way but the implementers still commit deviations. deviations, taking into account the public interest and the interests of economic development.

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