

Legal Analysis Of Price Fixing Of Aircraft Tickets By Airlines Based On The Decision Of The Business Competition Supervisory Commission Number 15/Kppu-I/2019

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Abstract. *Every human being needs transportation to be able to move from one place to another, because transportation is something that every human needs, it is necessary to have regulations to protect consumers and business actors in industry and national efficiency. Meanwhile in Indonesia, the determination of upper and lower limits regarding the determination of airplane ticket prices (price fixing) has been regulated through the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 20 of 2019. Even though the tariff calculation formulation has been regulated, there is still a need for legal construction and adjustments to protect consumers and business actors in industry and national efficiency, implementing a contributive business climate through harmonization of healthy business competition, avoiding monopolistic practices and/or unhealthy business competition from business actors, so as to provide efficient results in carrying out business activities.*

Keywords: *Business Actors; Evaluation; Legal Construction; Price Fixing.*

1. Introduction

Indonesia has regulated the procedures for formulating the calculation of the upper limit tariff for economy class passengers for domestic scheduled commercial air transportation through the Minister of Transportation Regulation Number PM 20 of 2019. Although the tariff calculation formulation has been regulated, there is still a need for legal construction and adjustments to the Minister of Transportation Regulation Number PM 20 of 2019. This is in line with the KPPU recommendation in its decision number 15/KPPU-I/2019 page 1001 as follows:¹

1. *That the Ministry of Transportation should conduct an evaluation regarding the upper and lower limit tariff policies which can be reviewed annually so that the formulation used can protect consumers and business actors in the industry and national efficiency where the lower limit is slightly above the marginal cost of business actors and the upper limit is the reasonable profit limit and within the affordability limits of consumers' ability to pay;*
2. *That the Government immediately formulates policy steps to help aviation industry business actors overcome the corona virus pandemic in the form of regulations and economic packages, including facilitating the entry of new business actors into the aviation industry.*

With the KPPU's recommendation, legal construction or adjustments to Minister of Transportation Regulation Number PM 20 of 2019 are urgently needed to prevent price-fixing violations by Indonesian airlines. The legal construction is as follows:²

Legal values contain similarities, a law enforcer makes a legal understanding. The legal understanding is the legal principle that is the basis of the legal institution concerned.³ Construction in the Indonesian Dictionary has the meaning of the arrangement and relationship of words in a sentence or group. Construction is an activity to find the meaning contained in linguistic construction. Law is a collection of instructions for living in a society's order and should be obeyed by members of the society concerned. If the law is violated, sanctions can be imposed by the authorities or the party whose rights are violated.³

In Indonesia, business competition is increasingly fierce and competitive. Businesses are increasing their competitiveness as a primary requirement to win in this increasingly competitive market. Business competition is essential for the establishment of healthy and fair competition, while also preventing the emergence of unfair competition. One form of unfair business competition is price-fixing agreements. Price-fixing agreements are one strategy employed by business actors.

2. Research Methods

The method used in writing this thesis is normative juridical. The definition of the normative juridical research type is the type research that aims to provide a systematic exposition of the legal rules that govern a particular area of law.

This thesis research focuses on the study of the rules or norms contained in the applicable positive law. This research analyzes the relationship between one legal rule and another, explains the parts that are difficult to understand of a legal rule, and may even include predictions of the development of a particular legal rule in the future.⁴

3. Results and Discussion

3.1. Legal Reasoning Judge in the Decision of the Business Competition Supervisory Commission Number 15/KPPU-I/2019 Regarding the Determination of Airline Ticket Prices by Airlines in Indonesia

a. Legal Considerations

Legal considerations or legal reasoning are the legal basis for judges in carrying out their duties in deciding a case based on justice (*ex aequo et bono*) and legal certainty for the disputing parties, so that judges in their considerations must be careful, good and thorough. If the judge's considerations are not careful, good and thorough, then the judge's decision derived from the judge's considerations can be overturned by the High Court or the Supreme Court.⁵

The decision must be based on various considerations that are acceptable to the parties to the case and the wider community and must not deviate from existing legal norms.⁶ Rusli Muhammad stated that the judge's legal considerations are arguments or opinions or reasons used by the judge as legal considerations.

become the basis before deciding a case. Judges in making their legal considerations are based on the following two types:⁷

a. Legal considerations

⁴ Soerjono Soekanto, Sri Mamudja, 2001, *Normative Legal Research (A Brief Review)*, Rajawali Pers, Jakarta, pp. 13-14.

⁵ Mukti Arto, *Civil Case Practice in Religious Courts*, cetv Yogyakarta, Pustaka Pelajar, 2004, p. 140

⁶ Aditya Yuli Sulistyawan, Aldio Fahrezi Permana Atmaja, 2021, *The Importance of Legal Reasoning for Judges in Making Decisions in Court to Avoid "Onvoldoende Gemotiveerd"*, *Jurnal Ius Constituendum*, Volume 6 Number 2 October, p. 485.

⁷ Rusli Muhammad, 2007, *Contemporary Criminal Procedure Law*, Citra Aditya, Jakarta, p. 212.

Juridical considerations are the judge's considerations which base their decisions on formal provisions of laws and regulations and the juridical facts revealed in the trial.

b. Sociological Considerations

Sociological considerations are made by considering the background and causes of the case. Sociological considerations also take into account the harm to one party. Actions by one party that harm another party can negatively impact society, at the very least, constantly threatening the security and peace of society. Sociological aspects are useful for examining the impact experienced by society due to unlawful acts committed by one of the disputing parties.

This sociological legal consideration is very important for judges in granting or rejecting a case. Before issuing a decision, judges must pay careful attention and ensure that the decision they issue does not give rise to conflict.

New cases. A judge's job is not only to issue a verdict, but also to complete the case through to its implementation. Judges in civil cases are tasked with assisting the parties and striving to overcome all obstacles and constraints to achieve justice for the parties involved and the community.⁸

According to Rusli Muhammad, in practice, there is a tendency for judges to view the judicial system as merely a channel for laws filled with normative content. This indicates that judges rely solely on legal considerations and disregard sociological considerations.⁹

The judge's legal considerations, apart from being juridical and sociological, can also be considered philosophically, which is based on truth and justice. The judge must consider the aspect of justice, whether the judge has acted and acted as fairly as possible in deciding a case.⁸⁰ Based on the three ways in which the judge carries out legal considerations, the author focuses more on legal considerations from a juridical and sociological perspective, because according to the author, the judge's legal considerations philosophically in principle reflect justice which is difficult to achieve.

a benchmark is sought for the disputing parties, what is fair for one party, is not necessarily fair for the other party.

⁸ Sudikno Mertokusumo, 2002, *Indonesian Civil Procedure Law*, Liberty, Yogyakarta, p. 108.

⁹ Achmad Ali, 1999, *Unveiling the Veil of Law: A Philosophical and Sociological Study*, Gunung Agung, Jakarta, p. 200.

The KPPU has examined Case Number 15/KPPU-I/2019 concerning alleged violations of Article 5 and Article 11 of Law Number 5 of 1999 concerning Domestic Economy Class Passenger Scheduled Commercial Air Transportation Services committed by:

Table 2

REPORTED I	PT Garuda Indonesia (Persero), Tbk., which has its office address at the Garuda Indonesia Building, Jalan Kebon Sirih Number 44, Central Jakarta 10110, DKI Jakarta Province, Indonesia, and its mailing address is at the Garuda City Management Building, Soekarno-Hatta International Airport, Tangerang 15111, Banten Province, Indonesia
REPORTED 2	PT Citilink Indonesia, whose office address is at the Juanda JBC Ruko Complex, Block C1 Number 02, Jalan Raya Juanda, Sawotratap Village, Gedangan District, Sidoarjo 61254, East Java Province, and whose mailing address is at Management Support I Building, 1st Floor, Garuda City, Soekarno-Hatta International Airport, Tangerang 15111, Banten Province, Indonesia.
REPORTED III	PT Sriwijaya Air, which has its office address at Jalan Pangeran Jayakarta 68, Block C Number 15-16, Sawah

	Besar, Central Jakarta 10160, DKI Jakarta Province, Indonesia and has a mailing address at Sriwijaya Air Tower, Jalan Atang Sanjaya Number 21, Soekarno-Hatta Airport, Tangerang 15111, Banten Province, Indonesia
REPORTED IV	PT NAM Air, which has its office address at Jalan Gunung Sahari Raya Number 13, Block B/8-10, Pademangan Barat Village, Pademangan District, North Jakarta 14420, DKI Jakarta Province, Indonesia and its mailing address is at Sriwijaya Air Tower, Jalan Atang Sanjaya Number 21, Soekarno-Hatta Airport, Tangerang 15111, Banten Province, Indonesia
REPORTED V	PT Batik Air, which has its office address at Jalan AM Sangaji Number 19, RT 002 RW 006, Petojo Village, Gambir District, Central Jakarta, DKI Jakarta Province, Indonesia and its mailing address is at Lion Air Tower, Jalan Gajah Mada Number 7, Central Jakarta, DKI Jakarta Province, Indonesia
REPORTED VI	PT Lion Mentari, which has its office address at Jalan Gajah Mada Number 7, Gambir, Central Jakarta, DKI Jakarta Province, Indonesia and its mailing address at Lion Air Tower, Jalan Gajah Mada Number 7, Central Jakarta, DKI Jakarta Province, Indonesia

REPORTED PARTY VII	PT Wings Abadi, which has its office address at Jalan AM Sangaji Number 17, Gambir, Central Jakarta, DKI Jakarta Province and its mailing address at Lion Air Tower, Jalan Gajah Mada Number 7, Central Jakarta, DKI Jakarta Province, Indonesia.
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3.2. A Legal Analysis of the Ideal Legal Construction in Preventing Price Fixing in Air Transportation Tickets in Indonesia

Construction in the Indonesian Dictionary means the arrangement and relationship of words in a sentence or group.¹⁰ Construction is an activity to find the meaning contained in linguistic constructions.¹¹ Law is a collection of guidelines for living in a society and should be obeyed by the members of the society concerned. If the law is violated, sanctions can be imposed by the authorities or the party whose rights are violated.¹²

Legal construction is the activity of exploring, following, and understanding the legal values that exist in society.⁸⁴ Legal values contain similarities; a law enforcer creates a legal understanding. This understanding of law is the legal principle that forms the basis of the legal institution in question.

That based on KPPU Decision Number 15/KPPU-I/2019 Page 1001 has provided the following recommendations:

- 1. That the Ministry of Transportation should conduct an evaluation regarding the upper and lower limit tariff policies which can be reviewed annually so that the formulation used can protect consumers and business actors in the industry and national efficiency where the lower limit is slightly above the marginal cost of business actors and the upper limit is the reasonable profit limit and within the affordability limits of consumers' ability to pay;*
- 2. That the Government immediately formulates policy steps to help aviation industry business actors overcome the corona virus pandemic in the form of*

¹⁰ Sarwiji, 2008, Semantics Introduction to the Study of Meaning, Media Perkasa, Yogyakarta, p.63.

¹¹ Umar Said Sugiarto, 2013, Introduction to Indonesian Law, Sinar Grafika, Jakarta, p. 9.

¹² Dyah Savitri Febri Ramadhani, 2019, Legal Construction of Marriage Agreements in Indonesia, Thesis, Faculty of Law, Jember State University, p. 31.

regulations and economic packages, including facilitating the entry of new business actors into the aviation industry.

The author agrees with the KPPU's recommendation to prevent price fixing violations committed by airlines.

in Indonesia. Thus, the author also proposes legal construction and adjustments to the Regulation of the Minister of Transportation No. PM 20 of 2019 concerning Procedures and Formulations for Calculating the Upper Limit Tariff for Economy Class Passengers for Domestic Scheduled Commercial Air Transportation in order to achieve legal ideals, justice, benefit, and certainty in the business world.

That the Author proposes the following legal construction:

1. Carrying out legal construction or adjustments in the Minister of Transportation Regulation No. PM 20 of 2019

Table:

No	Minister of Transportation Regulation No. PM 20 of 2019	Legal Construction / Adjustment
1	Article 23 paragraph 1: <i>The Director General will evaluate the tariff amounts that have been set with the following provisions:</i> a. <i>carried out periodically every 3 (three) months; and/or</i> b. <i>at any time in the event of a significant change that occurs affect continuity activityair transportation business entity.</i>	That in the Minister of Transportation Regulation No. PM Law No. 20 of 2019 does not specify the obligation for business actors (airlines) to report ticket prices to the Ministry of Transportation. Therefore, should have been added

					legal construction in Article 23 Article 1 regarding the obligations of the perpetrator
					efforts to report periodic changes to ticket pricing.
2	About	Plan	Work (RKAB)	AndBudget	That it is appropriate for the Ministry Transportationhas an important role in the preparation, reporting and submission of the RKAB for each airline in Indonesia.

3	About Administrative Sanctions	The form of administrative sanctions imposed on airlines that commit violations is not explained in detail/specifically. In this case, the author also proposes that the Minister of Transportation has the authority to reject or accept the proposed RKAB for violations of administrative sanctions. the.
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2. Facilitating the Entry of New Business Actors

Center of Reform on Economics (CORE) researcher Eliza Mardian assessed that aviation fuel (avtur) plays a significant role in determining airline ticket prices. Its contribution can reach half the ticket price. Currently, aviation fuel is managed solely by Pertamina, while production still relies on imported crude oil, the price of which fluctuates internationally. If the government were to open a multi-provider scheme, it could attract investment in areas where prices are still relatively high, supplying areas that are still relatively difficult for Pertamina to reach. This policy would benefit our aviation industry, and the state-owned enterprise (BUMN) Pertamina would be able to maintain healthy competition.¹³

With the existence of legal construction and adjustments, it is hoped that it can protect consumers and business actors in the industry and national efficiency, implement a contributive business climate through harmonization of healthy business competition, keep away monopolistic practices and or unhealthy

¹³ <https://www.alinea.id/bisnis/mahalnya-tiket-pesawat-monopoli-avtur-dan-kartel-price-b2kFH9Q7t>

business competition from business actors, so as to provide efficient results in carrying out business activities.

4. Conclusion

That the Legal Reasoning of the KPPU judges issued decision Number 15/KPPU-I/2019 in the following manner: Juridical considerations are the judge's considerations, basing their decision on formal statutory provisions and the legal facts revealed during the trial. Thus, it is proven that the Respondents have violated Articles 5 and 11 of Law Number 5 of 1999 concerning Scheduled Commercial Air Transportation Services for Domestic Economy Class Passengers. Article 5: "Business actors are prohibited from making agreements with competing business actors to determine the price of goods and/or services that must be paid by consumers or customers in the same relevant market." Article 11: "Business actors are prohibited from making agreements with competing business actors, which are intended to influence prices by regulating production and/or marketing of a product goods and/or services, which may result in monopolistic practices and/or unfair business competition." Sociological considerations are made by considering the background and causes of the case. Sociological considerations also take into account the harm to one party. Actions by one party that harm another party can negatively impact society, at the very least, constantly threatening the security and peace of society. Sociological aspects are useful for examining the impact experienced by society due to unlawful acts committed by one of the disputing parties. These sociological legal considerations are crucial for judges in granting or rejecting a case. Before rendering a decision, judges must carefully consider the context and ensure that their decisions do not create new cases. A judge's task is not only to issue a decision, but also to resolve the case and carry it out.

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Law on Aviation, Art. 1 number 15.

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