

Transformation of Political Configuration of Antitrust and Business Competition Law in Indonesia (Study in The New Order Era to The Era of Reform)

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Abstract: - This research aims to find out about the transformation in the political configuration of antitrust and business competition during the new order era and the influences it brought to the current political configuration in Indonesia. The methods used in this research is the doctrinal law or normative perspective. The data source in this research consists of document studies or literature studies with the analysis of deductible legal materials. From the results of this research, it is known that the changes of legal political configuration in the era of new order to the era of reform has a big influence in making the legal position of business competition become democratic responsive. The transformation in political configuration gives an impact to the legal product it yields due to reflection of the political configuration itself.

Keywords: Political Configuration, New Order, Reform, Business Competition.

I. INTRODUCTION

Antitrust and unfair business competition law is one of the most important laws in creating a seamless running business world, especially to crack down on the phenomenon of competition law violations that often occur in Indonesia. Violation of competition law is merely a form of nature dishonesty, greed and moral degradation in the economy world of a nation. Therefore, a healthy economic competition in some countries would be necessary to create a good environment for national development, as mandated by The 1945 Constitution of the Republic of Indonesia.¹

In Indonesia's history, antitrust practices and unfair competition have been around for a long time, precisely at the time of the Dutch East Indies in Indonesia. R Supomo in his book "The Political History of Customary Law of Age of VOC to The Year 1848", states that antitrust practices officially first began on March 20, 1602, when the Dutch government grant (octrooi) for the trade itself (monopoly) on VOC in Indonesia (East Indies) "²,

Soepemo statement is sufficient to prove that antitrust practices and unfair business competition in Indonesia has

been going in the first place, even before the independence of the Republic of Indonesia. Therefore, it takes a political configuration that can govern and create a responsive legal products to uphold the world of business competition. In the United States, the position of competition law (Antitrust Law) is a *Magna Carta* to the freedom of enterprise. Where economic freedom and free enterprise system is as important as the Bill of Rights that protects human rights.³ Up until now, the government has stepped up numerous activities to enhance Indonesia's economy by opening up competitive possibilities to anyone who wants to get their hands in the economic competition. Movements such as these are considered to bring fresh air for the business.

Since the days of the old order until now, Indonesia has undergone a period of transition in the economic field. The transition period causes the emergence of political configurations of economic law which certainly raises different outputs between each era. The World Bank acknowledges that implementing the law of competition in a country during the transition to a market economy and an open world trade system is an enormous task and should be closely implemented.⁴ And according to Maria Vagliasindi⁵, It is a very difficult task to implement the law of competition effectively and requires a level of knowledge and expertise to execute it. Structural conditions that occur in the early transition economies of protection to liberalization makes the implementation of competition law becomes a more challenging task than developed countries.⁶

Relating to the transition period in Indonesia as already mentioned above, the role of law in the political configuration of the world economy is highly required in creating a healthy competition from year to year. Since the

³Elanor M. Fox & Lawrence A. Sullivan, Case and Materials on Antitrust, (St. Paul Minn: West Publishing Company, 1989), p. 347.

⁴Ditha Wiradiputra, "Wisdom Commission's verdict on Temasek", *Bisnis Indonesia*, (11 December 2007).

⁵ Maria Vagliasindi is one of the program leader at the World Bank.

⁶ Maria Vagliasindi, "Competition Across Transition Economies: an Enterprise-level the analysis of The Main Policy and Structural Determinants." Working Paper No. 68, (London: European Bank, 2001), quoted from IneMinara S. Ruky, "Competition Policy Implementation through the Competition Law and Trade Liberalization", Doctoral Dissertation, (Universitas Indonesia: Graduate School of Economics, Universitas Indonesia, 2004) p.6.

¹The 1945 Constitution is the Constitution of the Republic of Indonesia. It has the highest legal authority in the country's system of government. It is the basis for all laws in Indonesia.

²R. Supomo, *The Political History of Customary Law of Age of VOC of The Year 1848*, (Jakarta: PradnyaParamitha, 1982), p. 9.

beginning of the transition period until now, there may be many political configurations that has tremendous influence with goverment policy retrieval, especially in antitrust and business competition law. Therefore, in this paper the authors are interested to examine more deeply about the role of antitrust and business competition in Indonesia during the political transition in the era of new order to the era of the reformation and the influence of the political configuration changes until now.

II. THE PROBLEM

1. How does antitrust law and business competition in Indonesia taking part during the political transition in the new order era to the era of reform?
2. Does the legal transformation of political configuration in the new order era to the reformation erahas a major impact on antitrust law and business competition in Indonesia?

III. RESEARCH METHODS

This research features a doctrinal law or as known as normative research with the prescriptive properties. The data source in this research consists of document studies or literature studies. The analysis methods used in this research is syllogisms method which based on a major premise or a general statement towards a minor premise or specific premise followed by the withdrawal of a conclusion.

IV. RESULT AND DISCUSSION

1. *The Role of Antitrust Law and Business Competition in Indonesia during The Political Transition in The New Order to The Era of Reform*

The term of new order is one of the important terms in Indonesian history. The new order regime was very distinctive under the leadership of President Soeharto after the downfall of President Soekarno in 1966. At the start of Soeharto's new order, policies quickly changed a rather rigorous course. It was emphasized that the new government was put on economic development.

Normatively, the new order is a political and economic order based on the Pancasila⁷, the 1945 Constitution, and has the details of idiil and operationyl in the MPRS⁸ of the IV

⁷Quoted from <http://www.indonezia.ro/republic.htm> on July 11, 2019 : Pancasila, pronounced Panchaseela, is the philosophical basis of the Indonesian state. Pancasila consists of two Sanskrit words, "panca" meaning five, and "sila" meaning principle. It comprises five inseparable and interrelated principles. They are: (1) Belief in the one and only God; (2) Just and civilized humanity; (3) The unity of Indonesia; (4) Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives; and (5) Social justice for the whole of the people of Indonesia.

⁸MPRS is The People's Consultative Assembly of The Republic of Indonesia. They were the legislative branch in Indonesia's political system. It is composed of the members of the People's Representative Council and the Regional Representative Council.

General Assembly⁹. A constitution is one of several components of the modern day state. It is a body of fundamental law that esthablishes a goverment within a state, structure, institutions, procedures, and regulates the relationship between them and the public and private domains.¹⁰

As revealed by Todung Mulya Lubis in his dissertation, "*the goverment responded cautiously; on the one hand, it expressed a willingness to obey the law and to observe your human rights, but on the other hand is requested the MPRS to establish guidelines in accordance with Pancasila and the 1945 Constitution. The goverment seemed ready to adopt some kind of human rights policy, despite the fact that many suspected the goverment's sincerity*". Furthermore, "*above all, economic development was the goverment's number one priority, and non-economic developments needed to be subordinated*".¹¹

In that period, military politics exceedingly influenced the management of governance. Their power was strongly used to maintain the state security and order. The military holds power to govern the country. The configuration of legal politics created during the new order was a political configuration with authoritarian traditions. As a political order, the new order was born of the changing social, political, and especially the economic fundamentals.

In the economic sector, there had been a major change in the new order era. The government hadstepped up a wide range of policies relating to the economy, which of them wasa food self-sufficiency program, known as "Swasembada Beras". The purpose of this program was to allow Indonesia to "stand up"¹² with their feet. Therefore, Indonesia could change its status from the state of the world's largest rice importer into the country's largest rice exporter in the world and attain self-sufficiency in the 1980's.¹³ The success of self-sufficiency in rice production at that time was one of Suharto's significant successes in the history of the Indonesian economy¹⁴ and this program was highly emphasized at that time.

⁹Ismaun, Overview of Basic Philosophy Pancasila the Republic of Indonesia (Bandung: CaryaRemadja, 1978), p. 29, quoted from AH Nasution, Decree-MPRS Constitutional Milestones New Order, (Jakarta: CV Pantjuran Tujuh, 1966), p. 22-23.

¹⁰Clive Napier, Africa's Constitutional Renaissance?: Stocktaking in the '90s, Africa Dialogue, (Monograph Series No. 1, 2000), in SatyaArinanto, PolitikHukum3, (Jakarta: Universitas Indonesia, 2018), p. 220.

¹¹TodungMulyaLubis, In Search of the Human Rights Legal-Political dilemmas of Indonesia's New Order, in SatyaArinanto, Politics, Law 2, (Jakarta: Universitas Indonesia, 2018), p. 211.

¹²The meaning of "Stand Up" is able to become an independent country.

¹³KhairunnisaRangkuti, "Self-sufficiency Feeling Under the New Order: A Perspective from the side of the State Enforcement", Kompasiana.com, accessed <https://www.kompasiana.com/nisarangkuti/5500ae248133116619fa7b90/swa-sembada-beras-pada-masa-ordebaru-sebuah-perspektif-dari-sisienforcementnegara> on November 9, 2018.

¹⁴At that time, World Food Organization called Food and Agriculture Organization of The United Nations even gave a special awad to the Indonesian goverment because of this program.

Moreover, it could be stated during in the new order era, Soeharto was on the pinnacle of his power. Similar to the political parties and civil service, they were only to implement Suharto's policy. The fundamental changes reinforce the transition line of democracy that is guided into the new order. Various viewpoints are presented to see the decisive a transition.¹⁵ The new order ruler seemed to straighten the history of the nation's journey by the name of Pancasila and the 1945 Constitution.

The authoritarian order was leading the political of antitrust law and business competition became volatile. The political configuration created by the authoritarian system in the new order era were only benefitting certain parties within the government and misuses power of authority was widely perceived by the society. It has an impact on antitrust law and business competition which is not functioning properly. For example, there are tariff barriers such as taxation or levies and non-tariff barriers in the form of trade trade system like granting a monopoly or monopsony, setting a reserve price or a maximum quota of export of goods from a local, regional, market allocation, monopoly by state / areas¹⁶ or the large of companies number that can not be "touched" by the law despite its presence is very detrimental to the economy of the era.

Political configuration in the reign of the new order can be described as both the state and the state system. State refers to the institutional aspects, while the state system to a network system built by the government, namely the executive, the military, parliament and bureaucracy. To strengthen state control of society, the new order regime using various attributes of ideology:

1. Pancasila as state philosophy;
2. ABRI¹⁷ dual function;
3. The concept of culturally diverse and *nusantara's* insight;
4. The concept of democracy led by the wisdom and the wisdom that align with the state ideology integralistic organic or organic corporatist state.¹⁸

In the course of the political dynamics history in Indonesia, there has been a trade-pull ties between the democratic political configuration and authoritarian political configuration. The democracy and authoritarianism appears

alternately with linear tendencies in each period of authoritarian configuration.¹⁹

On the basis of power that strongly imposed from the government and the political configuration established to benefit related parties, arise various policies in both the central government and the areas that were anti-competitive. If the political configuration is seen at that time, arguably, the laws of business competition in Indonesia had not been born yet because the government impress authoritarian to impose political aspects in any field of the state, including economics.

However, after 32 years of Soeharto's Regime, in May 1998, authoritarian rule has ended as his bloated new order regime collapsed amid the economic and political chaos. These event are usually referred as the reformation era. The military playing more limited role than it was in the past. Indonesia has shifted their politically configuration from dominated authoritarian state to being the civilian democracy and the role of antitrust laws and business competition in Indonesia are starting to see light at the end of the tunnel. It is marked on the issuance of The Act Number 5 of 1999 about The Monopoly and Unfair Business Competition Practice Prohibition. The existence of the law is a "fresh air" for the Indonesian people, especially for the business actors who have suffered unfairness in the new order era.

2. Legal Transformation of Political Configuration in The New Order Era to The Era of Reform Towards a Major Impact on Antitrust Law and Business Competition in Indonesia

The 1998 was momentum year for Indonesia. It can be regarded as a turning point of Indonesia to reform the law due to dissatisfaction with the new order regime. The reformers intended to change the political configuration in the governance of Indonesia, including the economic field, especially for the law of antitrust and competition. The society seemed to be weary with the political drama's which created by the new order elites that tears every social aspect. At that time, the law was made in order to ease the interests of the ruler. Though the law should be able to reflect the public interests.

The downfall of President Soeharto from the government was a success for reformers who seeking a democracy. It is because in the new order era, the democracy was the odds to achieve. Parliamentary system was synonymous with authoritarianism and repressive things. They emphasized the society in decision selected by the government. After that period, it was the rising point that the reformation era made the state as a country full of democracy.

The surge of reformation led the political configuration who created by the elite of the new order seemed to wear off and

¹⁵SatrioDwicahyo, "Review: Economic Growth in the Era of New Order", Journal Pages of History, Vol. 10, No. 2, October 2003, p. 178.

¹⁶Faisal Basri and Dendi Ramdani, "Competition Policy in the Era of Autonomy", Hukumonline.com, accessed through <https://www.hukumonline.com/berita/baca/hol2735/kebijakan-persaingan-di-era-otonomi-> on November 9 2018.

¹⁷ABRI (Angkatan Bersenjata Republik Indonesia) is Indonesian National Armed Force. Currently referred to Tentara Nasional Indonesia ("TNI").

¹⁸Michael van Langenberg, "The new order of state: language, ideology, hegemony" in Arief Budiman, state and civil society in Indonesia, (Glen Waverllen, Australia: Aristoc, 1990), p. 122

¹⁹Moh. Mahfud MD, "Country Strong Emergence of the New Order, Theoretical Studies and Constitutional Development Role of State in Indonesia", Thesis S-2 political science (Postgraduate School of Universitas Gajah Mada, 1989), p. 169.

turned into a new political configuration. It made the law as something that is no longer repressive but more responsive, especially for the antitrust law and business competitions which marked on The Act Number 5 of 1999 about The Monopoly and Unfair Business Competition Practice Prohibition. This law was born for the government to create healthy competition among businesses in the market. Because in the new order era, the governments took stand to the political elite rather than the society itself.

In one considerations of the issuance of this law said that, "Democracy in the economic field calls in equal opportunity for every citizen to participate in the process of producing and marketing of goods and/or the services, in a healthy business environment, effective, and efficient, encouraging economic growth and the operation of fair market economy".²⁰ In that statement, it is known that competition law was invented because of the lack of democracy in the era of reform. Therefore, formally the political configuration in the era of reform have big influence on the creation of a responsive legal product.

If seen from the perspective of the legal establishment, competition law can be called responsive because aspirations of the people, especially entrepreneurs and consumers, can be accommodated in any economy needs. Where this legal product approaching the relative sense reflection of justice and meet the hopes and expectations of the people. The effects of democracy were still felt in the aftermath of the new order. While it compared with the new order era, the process of enactment of legislation in particular business competition only benefits to a few people because of the arrangements done on the basis of the repressive authoritarian, thus resulting legal product that is conservative or orthodox.

Political configuration to the new order era made the paradigm that the government tends to minimize the participation of groups in society. If there is any involving elements of society most likely politically motivated., for example to anticipate the protests who filed by the public against government policies. So that the resulting legal product in the new order era more orthodox and the authoritarian political configuration because of the participant society is minimal and predominantly controlled by the political elite at the time.

The transition in the political configuration in the new order era into the era of reform provides significantly effect of making the position of competition law within the legal political framework that is democratic-responsiveness. It is particularly important whether for small businesses enterprises or the medium one. This transition gave a good value, so they can compete fairly with other large-scale of enterprises. Some legal politics that adverse economic country were eliminated by itself because of the transition, including the "untouched" political elites in the new order era.

²⁰ See the points consideration in Act No. 5 of 1999 about The Monopoly and Unfair Business Competition Practice Prohibition

In essence, the transition of political configuration from the new era to the reformation era gives a great influence in the field of economy, especially in competition law. Indonesia becomes democratic and responsive to the needs of the economy and the political configuration is more compatible than ever for the people.

In other words, the difference in the political configuration giving an influence to the legal product which produced in a regime. There are relationship between politics configuration and the legal characteristics lead to the conclusion that any legal products is a reflection of the political configuration that it produced. The legal character product is determined by the evolving political views amongst the people. The more democratic a regime, the more responsive and aspirational legal products produced and vice versa.

Post downfall of the new order era in 1998, the democracy being into a fundamental things after the reformation era. Currently, the political configuration of the competition law in Indonesia is democratic with a responsive legal product. As described above, in the legal political framework, the transition of responsive political configuration is highly dependent on the political will and active participation of the representatives of the people. For example, in order to realize the practice of healthy competition after the enactment of the law on competition, formed a special committee to handle such related issues called the Business Competition Supervisory Commission ("KPPU").²¹

Currently, Indonesia embraced democratic regime where all people can aspire to conform their choices without having to be pressed by a certain position. In contrast with the new order, the power of the people in such a manner set by the government. The Act Number 5 of 1999 about The Monopoly and Unfair Business Competition Practice Prohibition born from the democratic political configuration and responsive legal character. So in terms of the perspective of legal materials, the political law of government are autonomous and responsive or populist. These regulations still reflecting the society expectations and a sense of justice.

V. CONCLUSIONS

1. In the new order era, it is very apparent that military politics greatly influenced the management of governance. They hold power to govern the country and the legal configuration that they created was a political configuration with authoritarian traditions. As a political order, the new order was born of the changing social, political, and especially the economic fundamentals. The government has stepped up a wide range of policies relating to the economy especially in the antitrust and business

²¹ KPPU (Komisi Pengawas Persaingan Usaha). KPPU is the independent institution who supervise and cracking down the violators in Indonesia business world. They directly responsible to the President.

competition. They leading the political of antitrust law and business competition became volatile. The political configuration created by the authoritarian system in the new order era only give benefits to certain parties within the government and misuses power of authority was widely perceived by the society. It had an impact on antitrust law and business competition which was not functioning properly. In the course of the political dynamics history in Indonesia, there has been a trade-pull ties between the democratic political configuration and authoritarian political configuration. The democracy and authoritarianism appears alternately with linear tendencies in each period of authoritarian configuration. It can be said that the laws of business competition in Indonesia have not been born because the government impress authoritarian to impose political aspects in any field of the state, including economics. However, after 32 years of Soeharto's Regime, in May 1998, authoritarian rule has ended. The military playing more limited role than in the past. They shifted their political configuration from dominated authoritarian state to being the civilian democracy and the role of antitrust laws and business competition are starting to look up for Indonesia. It is marked on the issuance of The Act Number 5 of 1999 about The Monopoly and Unfair Business Competition Practice Prohibition. The birth of the law of business competition in the era of reform can be referred as a "fresh air" for the Indonesian people, especially for the business actors who have suffered unfairness in the new order era.

2. The transition of political configuration in the new order era into the era of reform provides significant effect of making the position of competition law within the legal political framework that is democratic-responsiveness. The transition of responsive political configuration is highly dependent on the political will and active participation of the representatives of the people because the characteristics of the legal product is determined by the evolving political views amongst the people. It is particularly important for both small businesses enterprises or the medium one. This transition brings good value, so they can compete fairly with other large-scale of enterprises. Indonesia become democratic and responsive to the needs of the economy and the political configuration meet the needs of society nowadays. In essence, the transition of political configuration from the new era to the era of reform brings a great influence in the field of economy, especially in competition law. Some legal politics that adverse economic country were eliminated by itself because of the transition, including the "untouched" political elites in the new order era. Democracy changes everything and they made the political configuration of the competition

law in Indonesia became more responsive as a legal product.

VI. SUGGESTION

1. Active participation is crucial to enforce competition laws in the current business condition. Not only from the government but also from the people itself, especially from the business actors. Because the participation will create an active synergy to prevent and overcome the behavior antitrust and unfair business competition that is detrimental to the country. Moreover, democracy must also be highly respected by every citizen so that they can respect each other and create a fairness for the whole nation including competition in business world.
2. The government is expected to be better in accommodating the interests of the community in any decision-making process for the policies to be applied. So it provides benefits for the society in general, rather than certain parties, and keeping away nepotism at all costs in decision making, since nepotism will be very detrimental to the state. Thus, the community involvement in the decision making process becomes very important to be implemented in this democracy era, because everyone has the right to gain the equality and justice in the nation, especially in Indonesia

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