

# Exception to Small Businessman by the Law No. 5 Year 1999 Concerning the Prohibition of Monopoly Practice and Unfair Business Competition Reviewed from the Islamic Economy Perspective

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**Abstract:** The Law of Republic Indonesia No. 5 year 1999 concerning the prohibition of monopoly practice and unfair competition excludes the small-scale businessmen of the enactment of such laws as a form of legal protection. There are pros and cons related to the exception to the small businessmen. The pros agree with the weakness of small-scale businessmen power and the deceit won't make a broad impact. And the cons disagree with the reason equality before the law and concerns about the use of policies by irresponsible individuals. Thus, this motivates the writer to perform analysis to discover the exception toward the small-scale businessmen as a form of legal protection that is necessarily needed or not in terms of the principles of Islamic economy. The purpose of this paper is to recommend the ideal legal concept for business competition law of Indonesia in accordance with Islamic law. This research is juriditidal normative research, used secondary data. Considering that a regulation must be in accordance with the legal values that is prevailing in the community, including the value of religious law, therefore the small-scale businessmen should not be excluded because it is contrary to Islamic economic principles that require every businessman to operate their business activities fairly.

## 1 INTRODUCTION

The Law of Republic Indonesia No. 5 year 1999<sup>1</sup> on the The prohibition of Monopoly Practice and Unfair Business Competition was made as a media to create a conducive business climate, therefore there is a guarantee that there will be equal business opportunities for large scale, medium scale and small scale businessmen based on economic democracy. According to the purpose of the enactment of The Law of Republic Indonesia No. 5 Year 1999 concerning the prohibition of Monopoly Practice and Unfair Business Competition, this matter is related to the reasons for the enactment of The Law of Republic Indonesia No. 5 Year 1999 which can be seen from the consideration of "considering" the Law, namely the existence of equal business opportunities for each business owner in a fair competition situation.

The small business owner is one of several criteria of businessmen in Indonesia beside medium businessmen and large businessmen. According to Article

1 point 2 The Law of Republic Indonesia No. 20 Year 2008<sup>2</sup> concerning the micro, small and medium enterprises, small business owner is a standalone prolific economic emprise, run by individual or business entity that is not owned, controlled, or become a part of either directly or indirectly from medium or large businesses that fulfill the criteria specified as the small business according to The Law of Republic Indonesia No. 20 Year 2008.

When referring to The Law of Republic Indonesia No. 20 of 2008 concerning the micro, small and medium enterprises, the concept of micro, small and medium enterprises have several meanings, which are: first, the business was established for the purpose of economic activity and non-profit activities; Second, the productive enterprise or generate profits or profits from the venture; third, the efforts of independent or stand-alone not part, branches, or affiliates of other businesses; Fourth, the business owned by an individual or a business entity (Komarudin, 2014).

<sup>1</sup>The Law of Republic Indonesia No. 5 Year 1999 concerning The Ban of Monopoly Practice and Unfair Business Competition

<sup>2</sup>The Law of Republic Indonesia No. 20 Year 2008 concerning The Micro, Small and Intermediate Enterprise, as the amendment of The Law No. 5 Year 1999 about Small Enterprise

The small business criteria according to article 6 paragraph (2) of The Law of Republic Indonesia No. 20 year 2008 is to have a net worth of more than Rp 50,000,000 (fifty million rupiah) up to at most Rp. 500.000.000 (five hundred million rupiah) not including land and buildings or places of business has annual sales of more than us \$300 million (three hundred million rupiah) up to at most 2.5 billion rupiah (two billion five hundred million rupiah). While for businesses that value of assets as well as turnover under the small business criteria, is a kind of micro enterprises.

It can not be denied that the small business owner is one of the pillars of the economy that must get the opportunity, support, protection, and development of existence (Komarudin, 2014). Related to the protection against the small business owner, The Law of Republic Indonesia No. 5 of 1999 on the The prohibition of Monopoly Practice and Unfair Business Competition in Indonesia is one of the regulations that protect small businesses owners by banning all activities of businessmen that led to the economic concentration in the hands of businessmen or groups of businessmen with certain business, and prohibits all unfair competition (fraud). This is because the philosophy or background of the enactment of the law on the Prohibition of Monopoly Practice and Unfair Business Competition is to provide protection against small business owner by giving the guarantee of the existence of the equal business opportunity among every citizens of Indonesia. With the guarantee of the opportunity of equal business opportunity and ban all forms of monopoly practice and unfair business competition, then the threat of a major financier of strength will get rid of the small businessmen can be avoided.

Regarding to the protection against the small business owner, which according to the writer is interesting to be discussed further was the exception of small business owner from entry into force of the act as stated in Article 50-point H on The Law of Republic Indonesia No. 5 Year 1999 concerning the prohibition of Monopoly Practice and unfair business competition. This exception means that The Law of Republic Indonesia No. 5 Year 1999 concerning the prohibition of Monopoly Practice and unfair competition is not applicable to small businesses owner. Further, because of this exception, small business owner is not prohibited from doing any act or activity that is prohibited by law concerning the practice of monopoly and unfair business competition.

Exceptions to the principals of small businesses got a different response (pros and cons) from the observer of business and competition law and research that is conducted in Indonesia. According to A. Ju-

naidi, with the exception of this the Legislative appears to hope there is a chance for small business owner to develop themselves to not losing the business competition or at least get the same opportunities with medium and large businessmen<sup>3</sup>. Meanwhile, according to Mustafa Kamal Rokan, the reason of the grant of privilege in the form of exceptions to these small business owners due to the presumption that small entrepreneurs still need protection in order to develop, as well as for reasons of social the small entrepreneurs that the position is weak, so that votes will not likely make a monopoly (Rokan, 2010).

In line with that according to Ngurah Manik Sidharta and I Ketut Markeling, the reason for the existence of the privilege in the form of granting exceptions to these small businessmen due to the presumption that small entrepreneurs still need protection in order to develop, as well as social reasons that the weak position of small entrepreneurs, so that votes will not likely make a monopoly (Shidarta and Markeling, 2017). Similar with it anyway, and Darren says that in fact exceptions to the perpetrator of a small business is a form of protection provided by the Act No. 5 of 1999 th on the prohibition of Monopoly Practice and unfair competition against perpetrators of small businesses. He said further protection against the perpetrators of a small business that was supposed to be given, since they may not able to compete with medium and large businessmen (Hermansyah, 2008).

On the other hand, based on reports from Research on Business Actors Awareness on the Enforcement of the Competition Law and Awareness on the New Commission in several big cities in Indonesia, in general the respondent does not approve the exception of small business owner from The Law of Republic Indonesia No. 5 Year 1999 concerning the prohibition of Monopoly Practice and unfair competition. The basic foundation of the primary consideration is that this exclusion is contrary to the fundamental equation in the presence of the law (equality before the law). In addition, there is also concern that with this exception gave the small business owner can have the opportunity for doing monopoly and unfair business competition, while not obviously small business owner criteria so that it can result for misuse of status or positions owned by parties that take advantage by taking refuge in that position (Rokan, 2010). In the meantime, Susanti Adi Nugroho argues that the exception relating to the protection of small business principals by The Law of Republic Indonesia No. 5 Year 1999 concerning The prohibition of Monopoly Practice and

<sup>3</sup>Junaidi, A., KPPU Protecting Small Business Access, Jurnal Berkala Komisi Pengawas Persaingan Usaha. kppu.go.id

unfair competition is only temporary, and the enactment shall be reviewed consistently (Nugroho, 2012).

Indonesia as a country that does not adhere to socialist or a capitalist economic system, but have their own economic system, namely the economic system of Pancasila. The implementation of the economic system of Pancasila as the ideology of Indonesia cannot be detached from religious value. Mubyarto said that the economic activity of Pancasila economy is regulated in the Constitution 1945 need moral based on the deity, humanity, nationalism, and democracy in achieving economic justice (Simanjuntak, 2018).

Based on explanation above, the writer is interested to analyse the exceptions of small business owner by Indonesia's business competition law from the standpoint of the principles of Islamic economy. This is because Islamic law is a law that cannot be ignored in the establishment of national laws considering the majority of society Indonesia is Islam (Abdullah, 2017). In the other hands, As a country with Muslim majority population, the question between Islam and democracy is always on the table with mixed answers (Ikhwan, 2018). Moreover, the idea that the law it is the law to suit the prevailing values in the communities where the law is applied. Religious values should constitute the values into the grip of life of the community, so that the state's law should also accommodate the religious values to be described as the ideal of the law and in accordance with the conditions of the people .

## 2 RESEARCH METHOD

This paper is part of the research grant program Directorate of higher education Ministry of Research, technology and higher education of the Republic of Indonesia with a Doctoral Dissertation Research Scheme under the title "An analysis to the exception to the small business owner by The Law of Republic Indonesia No. 5 Year 1999 concerning the prohibition of Monopoly Practice and unfair competition". Therefore, this research is juridical normative research by qualitative analytic. Specification of the research is Descriptive Analytic with how to provide data about the human meticulous, circumstances or other symptoms with the aim of celebrating the hypothesis-hypothesis, in order to assist in the strengthening of the theories old or within the framework of drawing up new theories (Soekanto, 2008). The data that the author use is secondary data consisting of primary legal materials and secondary legal materials which include : a) The primary legal materials is the material that binds, consist of norms

and rules (Laws and regulations related to the fundamental issues that the author examined in this research) like Act no.5 1999 on Prohibition of monopolistic practice and unfair business competition. b) The secondary legal materials such as any other relevant literature.

## 3 DISCUSSION

### 3.1 Prohibition of the Monopoly Practices and Unfair Business Competition in Indonesia

Indonesia is a legal state with democracy system, the economic system in Indonesia is based on the family principles with the economic democracy principle. Related to that, The Law of Republic Indonesia No. 5 Year 1999 concerning The Ban of Monopoly Practice and Unfair Business Competition, emerges as one of the tools to create a conducive business climate, so that there will be a guarantee to create an equal business opportunity for large, medium and small enterprise owner based on economic democracy. The main purpose of the enactment of the law that ban the monopoly practice and unfair business competition is to maintain the public's interest and to increase the national economy efficiency as one of the efforts to increase the society's welfare which is consumer.

The Law of Republic Indonesia No. 5 Year 1999 concerning The Ban of Monopoly Practice and Unfair Business Competition has been legitimized on March 5th, 1999 and enacted effectively on March 5th, 2000. The Law of Republic Indonesia No. 5 Year 1999 is the source of law of business competition in Indonesia, although the regulation concerning the ban of monopoly practice and unfair business competition can be found on the other regulation that has been enacted before The Law of Republic Indonesia No. 5 Year 1999 was being legitimized. For example, the unfair trading practices can be charged under article 382 bis of Indonesian Penal Code. Likewise, the competitor that suffered a loss that is caused by the unfair business competition can be file a lawsuit under the Article 1365 of Indonesian's Civil Law. It is also expected from the industrial sector to avoid the monopoly practice and unfair business competition, as well as stated on The Law of Republic Indonesia No. 5 Year 1999 concerning the Industrial.

The laws that prohibit the practice of monopoly and competition are unhealthy businesses legal completeness needed in an economy that adhere to market mechanisms. The legislation is necessary to guaran-

tee the freedom to compete in the economy so that it can take place without a hitch, and on the other hand the laws can be signed and guarding so as not happening practices that do not healthy and unnatural (Nugroho, 2012).

With the ban of competition and antitrust practice efforts is not healthy, it can lead to the creation of a market that is not distorted, thereby creating more business opportunity for businessmen. This situation will force businessmen to be more innovative in producing and marketing the products or goods and or services to them. This means that indirectly bans the practice of monopoly and competition of unhealthy businesses will provide benefits to consumers in the form of higher quality products, competitive prices and better service (Usman, 2004).

### **3.2 The Potential of Small Businesses to Do Things Are Prohibited by Law No. 5 Year 1999**

Many who know The Law of Republic Indonesia No. 5 Year 1999 this as the law of "anti-monopoly". Whereas the The law No. 5 Year 1999 is the law on The prohibition of Monopoly Practice and unfair competition. By recognizing The Law of Republic Indonesia No. 5 Year 1999 as the law "antimonopoly" allows the existence of a difference of interpretation of the meaning of the related legislation. Monopoly Practice and unfair business competition are have different meaning, though have a relationship to each other.

According to Article 1 point 1 of The Law No. 5 Year 1999 on the prohibition of Monopoly Practice and unfair business competition, monopoly has the sense as a form of mastery over the production and/or marketing of goods and/or services by a particular offender effort or one group of businessmen. Thus, a monopoly according to The Law of Republic Indonesia No. 5 Year 1999 does not mean the condition that there is only one seller (a single seller), but a form of mastery of a market share of over 50% by one or a group of businessmen (Syafrialdi, 2018).

Meanwhile, according to the Article 1 point 2 of The Law of Republic Indonesia No. 5 Year 1999, the practice of monopoly has sense, i.e. the concentration of economic power by one or more perpetrators attempt that resulted in the acquisition of production and/or marketing of goods and/or specific services giving rise to unhealthy business competition and can be detrimental to the public interest. The concentration of economic power alone means a real mastery of a market concerned by one or more perpetrators effort so that it can determine the prices of goods

and/or services. Deeds of businessmen which can result in the occurrence of monopolistic practices such as these build oligopoly (article 4), Monopoly (article 17), Monopsoni (article 18), mastery of the market (article 19, 20, 21), abuse of dominant position (article 25), and others.

As for the unfair business competition as mentioned in article 1 point 6 of The Law No. 5 Year 1999, have sense i.e the rivalry between the perpetrator's efforts in running the production and/or marketing of goods and/or services done by dishonest or against the law or hinder competition efforts. Unfair Business competition is often referred to as fraudulent with competition (unfair competition). The works of businessmen that led to these unfair business competitions such as pricing agreements (article 5), Divisions of the agreement (article 9), Cartel (article 11), Conspiracy in determining the winners of tenders (article 22), etc.

Understanding the practice of monopoly, then surely this can only be done by big businessmen, but unfair business competition can be done or caused by activities of each trade both large and small. This is because every human being basically has free will and the possibility of doing wrong, as advanced by Montesquieu "... this is because on the one hand, the particular intelligent beings are of a finite nature, and consequently liable to error; and on the other, their nature requires them to be free agents" (Montesquieu, 1949). With the aim to get the highest possible profits with a capital of every detail, then the potential of each trade good-big or small-cheating in carrying out their business activities are the same.

### **3.3 The Islamic Principle of Business Competition**

Islamic law expressly prohibits the practice of monopoly, cartels, barrier to entry, selling loss, price discrimination and so on. History of economic thought of Islam also portrays the history of scrutiny of the practice of monopoly is one of the very important institutions were presented by the State authorities in order to maintain fairness in the trade market. Islamic history mention, after the formation of the State in Medina, Prophet Muhammad as head of government reforms and modification of the structure of the institution in what was formerly the revolutionary civilization traces of Polytheists. The Prophet immediately review the merchant, whether valid or not honest in doing deals or in running its business activities (Rokan, 2010).

Economic activity as an integral part of muamalah, cannot be removed with moral urgency. Islam

is very reconciling morals with process between muamalah, i.e. with the attitude be honest, reliable, fair, ihsan, do virtue, friendship, and collaborate is taawun (Hamid, 2007).

In AlQuran explained that in humans should be economical to realize the command of Allah SWT in order that his life as a people who need each other and each other's live, working each other mutual and amicable, not turn off each other to win. Further Mustaq Ahmad says Quran gives consideration about distribution of wealth as one of the most important in establishing and creating a healthy economy. Which is a requirement for the implementation of business activity (Salam and Saib, 2004).

Moral for Muslims play a role of great importance and has always been a life stance that guidelines derived from the teachings of the Quran, the Hadith, the Prophet or Ijtihad, i.e. using common sense in developing applied the teachings of Islam in the lives of everyday. The purpose of the on that man can do with his best in the run economic so that human activity that does not deviate from the rule of Islam. The structural social economy has weathered to a healthy and orderly manner, must be in line with the interests of moral, if material needs walk itself and the human relationship is measured by the size of the material just like the capitalist economic structure, it will be broken a good economic system and will change human nature of moraliy the noble nature hernia very low and posed the lusts (Salam and Saib, 2004).

While Islamic economics emphasize justice, welfare and honesty. Hasmerits of the Islamic economic system that should be the way for Muslims to give well-being and becoming a necessity. The economic sharia is Islamic economics in the U.S. use a way for Muslims to complete their economic needs. It is Refers to the meaning of the word sharia which means wide way. As a fair economy and provide for the public welfare, it is feasible to make our way through the U.S. economy sets Islamic principles (Supriyadi, 2014).

In Alquran explained that in humans should be economical to realize the command of Allah SWT in order that his life as a person who need each other and each other's lives, working each other mutually and amicable. Instead of turning off each other to win on its own. Further Mustaq Ahmad, as quoted Fachri Baits says Al Quran gives consideration about distribution of wealth as one of the most important in establishing and creating a healthy economy, which is a requirement for the implementation of the business activity (Salam and Saib, 2004).

Islam recognizes all human economic activities that are lawful as commerce, trade, business partners

of cooperation, joint stock company, the economic activities and operations are halal<sup>4</sup>. But Islam stipulates rules on commercial activities that are intended to ensure that all of it is done by honest, sincere and helpful. The Prophet said: "the prophets is a sincere and honest merchant, so are the people who are loyal and Martyrs"<sup>5</sup>.

### **3.4 Exceptions to the Principals of Small Businesses by the Law No. 5 Year 1999 on the Prohibition of Monopoly Practice and Unfair Business Competition Reviewed the Economic Principles of Islam**

In one paragraph that is very important, the Alquran acknowledges the objective character and universality of justice are equated with good deeds (moral virtues-the virtues), which address the community – people of different religions and warns humanity to "performing good deeds": "to every faithful among you (religious people) we provide rules and path (behavior). When God willed, you undoubtedly made her one person (based on the rules and the way it is), but, (he does not do so). God wanted to test you against granting to you. Therefore, what he (i.e., compete with samalain) in doing good. Because Allaah you will all return, and he will tell you (the truth) about what you cannot agree that<sup>6</sup>.

In Islamic Economics, business and ethics should not be seen as mutually opposed, for the business which is the symbol of worldly affairs is also considered an integral part of the incidental investment hereafter. This means that if the business orientation and investment efforts hereafter European as worship and is the totality of compliance to the Lord, then the business itself must be in line with the moral norms based on the faith to the afterlife. The businessmen demanded be no contradiction between the intentionally sayings and deeds in his business. They demanded exactly the promise, on time, recognizes the weaknesses and shortcomings, always improve the quality of goods or services on an ongoing basis and should not cheat and lie. The business person prosecuted has the awareness about the ethics of moral, because both are needing that must-have. Businessmen who are careless and do not keep your ethics won't sell them well so that it can threaten the social relations and harming consumers, even himself (Widodo et al.,

<sup>4</sup>the Holy Quran, Al-Baqara verse 275

<sup>5</sup>Hadith narrated by Tarmidzi

<sup>6</sup>the Holy Quran, Surah Al-Maidah Verse 48

2016).

When referring to business competition according to Islam where Islam sets the rules on commercial activities that are intended to ensure that all of it is done by honest, sincere and fruitful, then the existence of exceptions to the enactment business competition laws in Indonesia in particular exceptions to the small businessmen, according to the author it is not efficient in accordance with the principles of Islamic economists. Islam does not regard honesty in performing the activities sought only from the side of certain trade alone, but every performer's business both large and small must run its business activities honestly.

Unfair business competition prohibited by statute is a competition not honest nor a competition conducted by fraudulent means. So, the slightest fraud committed by the perpetrators of the attempt was a mistake that is contrary to the principles of Islamic economy. When small businesses do the perpetrators of fraudulent activities in running the competition, it will not be serious impact on a modal great trade, but will harm small business principals, fellow micro, what will consumer harm.

Exceptions to these small businessmen result area operation Hawk Act number 5 Year 1999 less than 2% of all businessmen in Indonesia. This is because the number of perpetrators of the small business that does not include no more than 2% (Is, 2016). This illustrates that 98% of businessmen in Indonesia are the small businesses. With this figure, then it can be imagined to be the moral impact of the trade that will be incurred due to an exception by law that ultimately 98% of businessmen in Indonesia were not carrying Islamic principles in the conduct of its business activities. Obviously this far removed from the lofty economic goals of Pancasila.

The implementation of the economic system of Pancasila as the ideology of Indonesia could not be released from Islamic values. Mubyarto said that the economic activity of Pancasila economy is regulated in the Constitution 1945 need moral based on the deity, humanity, nationalism, and democracy in achieving economic justice (Mubyarto, 1987). This means that the principle of honesty in performing business activities must be really accommodating in such a way in a business competition law in the country.

The system of quality of family and economic populist was actually a legal system which does not merely rely on the rule of law, but rather paid attention on the rule of morals and the rule of justice. The legal system is then seamlessly reciprocity in the economic system of Pancasila. With the revolutionary approach expected attainment of Vision 2030 Indone-

sia is based on and guided by a legal system which accommodate the norms of life in the community i.e., customary law and Islamic law (Manan, 2014).

We should not forget that the main purpose of the law is order and justice and the means of renewal in society (Lili, 2007). Al-Arab in the dictionary it states that: "a thing that exists in the mind in a State of honest is justice, any dishonest or not straight or not worthy is regarded as unfair". Ideas about right and wrong implicit in the term *adl* because the term is often used in a broad sense including the values and religion (Santoso, 2012). According to Islamic system any legal straight and in accordance with the law of God has been just, this is the nature of religious concepts. In the Islamic view on the balance of the world that is governed by the Ordinance of God, justice is a virtue where God provides the law he passes through the Holy Quran. The principles of parity, middle ages, States that bring the beauty of nature and kindness to humans. According to Muslim doctrine, Justice represents both the basic purpose and the ultimate goal of all divine revelation. He expresses in the levels: The Justice of God to his creation and justice of man among his fellow man (Santoso, 2012).

## 4 CONCLUSIONS

Islam strongly upholds honesty, sincerity and moral perpetrator of effort in conducting its economic activities. Every business activity way hinders the unfair business competition is contrary to the principles of Islam. Not honest in doing business activities such as doing unfair business competition can be performed by each businessman both large and small businessmen. Therefore, it is wise to The Law of Republic Indonesia No. 5 Year 1999 on the prohibition of Monopoly Practice and unfair business competition business in Indonesia does not provide exceptions to small business owner. Protecting small business offender does not mean letting it run the business activities in ways that are contrary to Islamic values, it would be detrimental to society as a consumer.

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