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## Juridical Analysis of Prohibition of Monopoly and Unfair Business Competition in Wholesaler Procedures for Sales of Umrah Tickets by PT. Garuda Indonesia (Persero) Tbk

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### Abstract

The Business Competition Supervisory Commission (KPPU) decided that PT. Garuda Indonesia (Persero) Tbk. committing violations related to discrimination and making efforts to close access to distribution channels for direct sales of Umrah tickets to and from Jeddah and Medina through the Wholesaler Program. Where is PT. Garuda issued a policy regarding Middle East Asia (MEA) ticket sales that required Umrah Pilgrimage Organizers (PPIU) to purchase through the six designated wholesalers. The purpose of this research is to find out the legal consequences of the practice of prohibiting monopoly in the wholesaler procedure for selling Umrah tickets by PT. Garuda Indonesia (Persero) Tbk. This study uses a normative juridical research method using a statutory approach (Statutes Approach), namely Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition and a case approach (Case Approach), namely Decision Number 06/KPPU-L/ 2020 regarding Alleged Discriminatory Practices of PT Garuda Indonesia (Persero).

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## INTRODUCTION

Airplane tickets are an integral part of the Umrah pilgrimage. In selling tickets for the MEA route for umrah destinations, PT Garuda Indonesia (Persero) has significant market power, so it can be said to be in a monopoly position. Business actors occupying a monopoly position tend to take anti-competitive actions, such as monopolistic practices and market control, including discriminatory practices.<sup>1</sup>

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<sup>1</sup> AM Tri Anggraini, "Aspek Monopoli Atas Cabang Produksi yang Menguasai Hajat Hidup Orang Banyak Berdasarkan Hukum Persaingan Usaha", *Jurnal Hukum Prioris* 2, no. 4 (2010):197.

Business competition law requires the creation of national economic efficiency and the effectiveness and efficiency of business activities as contained in the objective of the establishment of Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. The effectiveness and efficiency of business activities are directed at creating healthy competition between business actors. Meanwhile, the efficiency of the national economy is directed at meeting the needs of the people's livelihood with indicators of increased social welfare.<sup>2</sup>

PT. Garuda Indonesia (Persero) Tbk. Is the first commercial airline in Indonesia under the auspices of the Ministry of State-Owned Enterprises (BUMN). Currently PT. Garuda Indonesia (Persero) Tbk operates as many as 169 aircraft flying 76 domestic and international routes with more than 600 flight frequencies every day.<sup>3</sup> In March 2019 PT Garuda Indonesia (Persero) issued GA Info which appointed a strategic business (wholesaler) in purchasing Middle east area (MEA) tickets which are Umrah routes only through 3 partners from GIAA namely, PT Smart Umrah (Kanomas Arci Wisata ), PT Maktour (Makasar Toraja Tour), PT NRA (Nur Rima Al-Waall Tour.<sup>4</sup> Furthermore PT. Garuda Indonesia (Persero) Tbk issued a letter of revision to the Letter (GA Info) concerning Information on MEA Route Ticket Sales Services which principally added PT. Wahana Mitra Usaha (Wahana) as a Strategic Business Partner (wholesaler).<sup>5</sup>

But in September 2019 PT. Garuda Indonesia (Persero) Tbk made another final revision of the issuance of the GA Info letter regarding the appointment of Strategic Business Partners in ticket sales for the MEA (Middle East Area) Route. GIAA's action of appointing 6 business actors as wholesalers without going through an open and transparent appointment process. This is not based on clear and measurable requirements and considerations.<sup>6</sup> Based on the evidence found by the Business Competition Supervisory Commission (KPPU) during the

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<sup>2</sup> Samawati Putu, "Perspektif Hukum Persaingan Usaha Terhadap Kebijakan Demonopolisasi Badan Usaha Milik Negara di Indonesia", *Simbur Cahaya* 25, no. 1 (2019): 1–15.

<sup>3</sup> "Garuda Indonesia menjadi salah satu Badan Usaha Milik Negara (BUMN) pertama yang mengembangkan IT berbasis Cloud Computing", URL: <https://www.garudaindonesia.com/id/id/news-and-events/ga-jadi-salah-satu-bumn-first-developing-it-based-cloud-computing/>, diakses 25 January 2023 pukul 17:00 WIB

<sup>4</sup> Komisi Pengawas Persaingan Usaha Republik Indonesia, 2020, Putusan atas Perkara Nomor 06/KPPU-L/2020, Jakarta, 8

<sup>5</sup> Komisi Pengawas Persaingan Usaha Republik Indonesia, 2020, Putusan atas Perkara Nomor 06/KPPU-L/2020, Jakarta, 9.

<sup>6</sup> Komisi Pengawas Persaingan Usaha Republik Indonesia, 2020, Putusan atas Perkara Nomor 06/KPPU-L/2020, Jakarta, 10.

investigation process, it was found that there were allegations of market constraints related to the sale of tickets for the Jeddah and/or Medinah route experienced by the Umrah pilgrimage organizers allegedly carried out by PT. Garuda Indonesia (Persero) Tbk. Besides that, the inconsistency in the rationality of the appointment of wholesalers proves GIAA's discriminatory practices against at least 301 (three hundred and one) Umrah Pilgrimage Organizers (PPIU) which resulted in hampered Garuda Indonesia ticket access rights.

In the KPPU's decision, in essence, it stated that PT Garuda Indonesia (persero) Tbk was legally and convincingly proven to have violated Article 19 letter d of Law No.5/1999 and imposed a fine on PT Garuda Indonesia (persero) Tbk in the amount of Rp. 1,000,000,000.- (one billion rupiahs). Then PT Garuda Indonesia filed an Objection legal action through the Central Jakarta Commercial Court Number 03/Pdt.SusKPPU/2021/PN Niaga Jkt Pst. However, this objection was then decided on December 3, 2021 by refusing the objection request from PT Garuda Indonesia (Persero) Tbk and maintaining the KPPU's decision.

Wholesalers can be defined as intermediary companies that connect producers with retailers.<sup>7</sup> The company buys goods from manufacturers in large quantities and resells them to retailers. Generally, wholesalers do not deal directly with consumers. Selling to consumers is only a side activity and usually occurs at the initiative of consumers. Wholesalers play an important role in the distribution channels in the market. Some of the important roles that the author has summarized, namely carrying out activities of storing goods before they reach the hands of retailers and consumers, besides that they also convey whatever needs are needed by consumers to producers. Another important role of the wholesaler is to provide information regarding the quantity and quality of goods and prices of goods to its consumers. Apart from the goods distribution channel,

From the point of view of business competition law related to the wholesaler mechanism for selling umrah tickets MEA Route PT. Garuda Indonesia (Persero) Tbk. it is known that horizontal barriers have been created for bureaus and other agents to enter the Umrah flight market, due to the indirect aim of controlling the distribution of circulation of Garuda Indonesia airline Umrah flight tickets and creating unhealthy business competition.<sup>8</sup> Judging from the existence of a violation of the principle of business competition in the

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<sup>7</sup> Mumuh Mulyana, "Strategi Distribusi", *Journal of Marketing Management*: 53.

<sup>8</sup> Komisi Pengawas Persaingan Usaha Republik Indonesia, 2020, Putusan atas Perkara Nomor 06/KPPU-L/2020, Jakarta, 10.

indicator to declare the occurrence of unfair business competition according to Law no. 5 of 1999 is included in business competition which is carried out by inhibiting the occurrence of competition between business actors.

Monopoly practice which means the concentration of economic power, which means the concentration of economic power is real control over a relevant market by one or more business actors. This has been stated in Article 1 number 3 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, monopoly creates unfair business competition that harms the interests of society or consumers. The article in Law Number 5 of 1999 that is most appropriate is Article 19 letter c. The impact of the Wholesaler mechanism carried out by PT. Garuda Indonesia (Persero) Tbk. The sales of Umrah flight tickets are more of a negative impact on consumers, other Umrah travel agencies and agents, as well as PT. Garuda Indonesia (Persero) Tbk. itself.<sup>9</sup>

#### **LEGAL CONSEQUENCES OF WHOLESALER PRACTICES ON THE SALE OF UMRAH TICKETS BY PT. GARUDA INDONESIA (PERSERO) TBK**

In Indonesian, wholesaler means wholesaler, and wholesaler means wholesaler.<sup>10</sup> Black's Law Dictionary defines wholesale as "To sell by wholesale is to sell by large parcels, generally in original packages, and not by retail."<sup>11</sup> So, the definition of a wholesaler is a business in the distribution of goods where the wholesaler buys products in large quantities from business actors or providers of goods and services and then resells them in large quantities to consumers or retailers, generally in original packaging, and not in retail. Consumers in wholesalers can be said to be buyers, but not as users of goods and services, but as distributors.<sup>12</sup>

In March 2019, PT Garuda Indonesia (Persero) issued GA Info Number: 001/GA/NH/III/19 which principally states that PPUI has booked Garuda Indonesia tickets through wholesalers, namely 6 (six) wholesalers that have been determined by Garuda Management Indonesia, including: PT Smart Umroh, PT Maktour, PT NRA, PT Wahana Mitra Usaha, and PT Aero Globe Indonesia. The actions of PT Garuda Indonesia, specifically related

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<sup>9</sup> Kurnia Toha, "Urgensi Amendemen Undang-Undang Persaingan Usaha di Indonesia: Permasalahan dan Tantangan", *Jurnal Hukum dan Pembangunan* 1, no. 49 (2019): 76.

<sup>10</sup> Kementerian Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 1989).

<sup>11</sup> Henry Campbell Black, *Black's Law Dictionary*, (West Publishing Co. St. Paul Minn: Sixth Edition, 1991).

<sup>12</sup> Muhammad Sadi, *Hukum Persaingan Usaha di Indonesia (Sebagai Upaya Penguatan Komisi Pengawas Persaingan Usaha KPPU)*, (Malang: Setara Press, 2016), 50.

to efforts to close access to the distribution channel for direct sales of umrah tickets for the MEA Route through the Wholesaler Program, have resulted in and/or created market barriers for at least 301 PPIUs to gain access to Garuda Indonesia tickets.

One way to determine whether a wholesaler program is a discriminatory act or not is by observing the motives and impacts of the wholesaler program in question. There must be clear and justifiable motives or reasons in carrying out wholesaler policies, and have a pro-competition impact. Therefore, to analyze whether an act in the form of an agreement or activity indicates a violation of discriminatory practices or not, a rule of reason approach is used, which requires not only proving the elements of Article 19 letter d of Law Number 5 of 1999, but also having to analyze the motives and impact of the discriminatory practice.<sup>13</sup>

Garuda Indonesia appointed 6 PPIU wholesalers to enable the PPIUs to purchase tickets for the MEA Route (Jeddah-Madinah) directly through sales offices, ticket offices and/or Garuda Indonesia branch offices. Such actions constitute discrimination or evidence of different treatment. against other PPIUs who are not appointed as wholesalers, where other PPIUs cannot access tickets directly through Garuda Indonesia, but must buy through the appointed wholesaler PPIU. The wholesaler program is basically not something that is prohibited, but Garuda Indonesia's action which closed non-wholesaler PPIU access to purchase tickets directly was a form of discrimination, because it did not provide equal opportunities to business actors.

This condition is certainly felt to be unfavorable for other bureaus and agents, which requires PPIU to purchase through a wholesaler appointed by PT. Garuda Indonesia (Persero) Tbk which is also a competitor to other bureaus and agents in the Umrah worship flight market. The existence of this new policy has the effect that ticket purchase prices are much more expensive for PPIU. Therefore PERPUHI reported PT. Garuda Indonesia (Persero) Tbk to KPPU. However, on the other hand, according to Garuda Indonesia, the Umrah flight ticket distribution mechanism used is part of a strategy of simplification or simplification of the business model which in practice is more accountable, competitive and aligned with market

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<sup>13</sup> AM Tri Anggraini, "Pendekatan Per Se Illegal dan Rule of Reason dalam Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat", (Disertasi Program Doktor, Universitas Indonesia, Jakarta, 2003), 191-192

demand. So it is hoped that the airline's performance will be more competitive through more integrated sales of Umrah flight tickets.<sup>14</sup>

Legal consequences are the consequences given by law for a legal event or action of a legal subject.<sup>15</sup> Based on the Indonesian Dictionary, effect has the meaning of something that becomes the end or result of an event, condition, or condition that precedes it. According to Jazim Hamidi. The word legal impact / legal effect implies direct, strong, or explicit legal impact or effect.<sup>16</sup>In the legal science literature, three types of legal consequences are known, namely as follows:

- a) Legal consequences in the form of the emergence, change, or disappearance of a certain legal situation;
- b) Legal consequences in the form of the emergence, change, or disappearance of a certain legal relationship;
- c) Legal consequences in the form of sanctions, which are not desired by legal subjects (acts against the law).

Talking about legal consequences begins with the existence of legal relations, legal events, and legal objects. According to Soedjono Dirdjosisworo, in his book Introduction to Law, that is, legal consequences arise because of a legal relationship where in a legal relationship there are rights and obligations.<sup>17</sup> Events or incidents that can give rise to legal consequences between parties who have a legal relationship, these legal events exist in various aspects of law, both public and private law.<sup>18</sup>

The legal consequences arising from the policy of the wholesaler mechanism for selling umrah tickets MEA Route PT. Garuda Indonesia (Persero) Tbk. related parties, of course, to the negative impacts that arise. The related parties that are negatively affected are:

#### 1) Consumer

As a result of the law on the policy of the wholesaler mechanism for selling umrah tickets MEA Route PT. Garuda Indonesia (Persero) Tbk. to consumers related to immaterial losses

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<sup>14</sup> A. Santoso, "Garuda Indonesia Bantah Tuduhan Monopoli Tiket Umroh", 2019, April 5, Diakses September 14, 2021, dari Kumparan: <https://kumparan.com/bengawannews/garudaindonesia-bantah-tuduhan-monopoli-tiket-umrah-1qpgrruf0cd/> akses penuh pada 25 Januari , 2023 at 14.00 WIB

<sup>15</sup> Marwan Mas, *Pengantar Hukum*, (Bogor: Ghalia Indonesia, 2003), 39

<sup>16</sup> Azim Hamidi, *Revolusi Hukum Indonesia: Makna, Kedudukan, dan Implikasi Hukum Teks Proklamasi 17 Agustus 1945 dalam Sistem Ketatanegaraan Indonesia*, (Yogyakarta: Constitution Press & Citra Media, 2006), 200

<sup>17</sup> Soedjono Dirdjosisworo, *Pengantar Ilmu Hukum*, (Jakarta: PT. Raja Grafindo Tinggi, 2010), 131

<sup>18</sup> *Ibid.*, 130

for consumers, due to the process of purchasing Garuda Indonesia airline tickets which are tiered and of course will have an impact on the length of the departure process.

2) Other Umrah travel agents and bureaus

As a result of the law on the policy of the wholesaler mechanism for selling umrah tickets MEA Route PT. Garuda Indonesia (Persero) Tbk. to other travel agents and agencies due to bookkeeping, flight ticket reservation, flight ticket booking, date of departure, price offered and seat availability and others will be determined by the wholesaler who has been appointed by PT. Garuda Indonesia, this makes room for agents to move -Other agents are increasingly difficult and include small agents that will only develop.

3) PT. Garuda Indonesia (Persero) Tbk

As a result of the law on the policy of the wholesaler mechanism for selling umrah tickets MEA Route PT. Garuda Indonesia (Persero) Tbk will have an impact on PT. Garuda Indonesia itself, due to the bad business competition climate in selling Umrah flight tickets created by PT. Garuda Indonesia (Persero) Tbk will have a negative impact in the future, such as being abandoned by Umrah travel agencies and agents who have been using the Garuda Indonesia airline for their Umrah flights and undermining the good collaborations with various Umrah travel agencies and trips that have existed previously.

By knowing the negative impact of the wholesaler mechanism carried out by PT. Garuda Indonesia (Persero) Tbk. With this, it is hoped that there will no longer be a wholesaler mechanism that will harm other parties, even though the wholesaler mechanism is a common thing to do in the business of selling airline tickets. However, attention must still be paid to and consider future consequences for business competition.

The legal consequences of violating Law no. 5 of 1999, namely subject to several administrative action sanctions, principal criminal sanctions, and additional criminal sanctions. Administrative Sanctions are sanctions that can be taken by the Business Competition Supervisory Commission against business actors who violate Law No. 5 of 1999. Administrative sanctions are regulated in Article 47 paragraph (2) which states as follows; The Commission has the authority to impose sanctions in the form of Administrative actions against business actors who violate the provisions of this Law, and Administrative Actions as referred to in paragraph (1) can be in the form of:

- 1) Determination of the cancellation of the agreement as referred to in Article 4 to Article 13, Article 15 and Article 16.

- 2) An order to a business actor to stop vertical integration as referred to in Article 14, the official explanation states that the termination of other vertical integration is carried out by canceling the agreement, transferring as a company to another business actor, or changing the form of the production chain, and/or
- 3) Orders to business actors to stop activities that are proven to cause monopolistic practices and/or harm the community
- 4) Orders to business actors to stop abuse of dominant position.
- 5) Determination of cancellation or merger or consolidation of business entities and acquisition of shares as referred to in Article 28
- 6) Determination of payment of compensation
- 7) Imposition of fines as low as IDR 1,000,000,000.00 (one billion rupiah) and as high as IDR. 25,000,000,000.00 (twenty five billion rupiah)

The main criminal sanctions are regulated in Article 48 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in the form of: first offender, Violation of the provisions of Article 4, Article 9 to Article 14, Article 16 to Article 19, Article 25, 6 (six months. The second offender, violation of the provisions of Article 5 to Article 8, Article 15, Article 20 to Article 24, and Article 26 of this Law is punishable by a fine of as low as Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 25,000,000,000.00 (twenty five billion rupiah), or imprisonment in lieu of a fine for a maximum of 5 (five) months. Third violators, violations of the provisions of Article 41 of this Law are subject to a fine of a minimum of IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 5,000,000,000.00 (five billion rupiah), or imprisonment in lieu of a fine for a maximum of 3 (three) months.

Referring to the provisions of Article 10 of the Criminal Code, additional punishments can be imposed on crimes as regulated in Article 48 in the form of: revocation of business licenses; or prohibit business actors who have been proven to have violated this Law from holding positions of directors or commissioners for at least 2 (two) years and a maximum of 5 (five) years; or cessation of certain activities or actions that cause losses to other parties.<sup>19</sup>

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<sup>19</sup> Mutiatul Hamdah, "Aspek Hukum Persaingan Usaha di Bidang Periklanan Menurut Hukum Positif di Indonesia", (Tesis, Fakultas Hukum Universitas Mataram, 2013), 67



In the case of PT Garuda Indonesia itself, the Commission for the Supervision of Business Competition has been found guilty through Decision Number: 06/KPPUL/2020. In the KPPU's decision, in essence, it stated that PT Garuda Indonesia (Persero) Tbk was legally and convincingly proven to have violated Article 19 letter d of Law No.5/1999. The legal implications of the KKPU decision No.06/KKPUL/2020 regarding violations of Article 19 letter d Law no. 5 of 1999 which was carried out by PT. Garuda Indonesia, namely the imposition of administrative sanctions in the KKPU decision which was read out in the session, namely the sanctions imposed on PT. Garuda Indonesia, namely in the form of fines to PT Garuda Indonesia (persero) Tbk in the amount of Rp. 1,000,000,000.- (one billion rupiah).

### **JURIDICAL ANALYSIS OF DECISIONS OF THE BUSINESS COMPETITION SUPERVISORY COMMISSION CASE NUMBER: 6/KPPU-L/2020**

In the case of the wholesaler mechanism carried out by PT. Garuda Indonesia (Persero) Tbk. by appointing 6 (six) wholesalers to sell Umrah prayer flight tickets, the authors see that basically the appointment of the 6 (six) wholesalers uses a distribution system in its distribution. But still using the wholesaler or consortium concept of strategic business partners, whereas in practice, the position of business partners does not have certainty in a direct or tiered sales system. Business partners have multiple positions in a direct or tiered sales system. Business partners can be classified into independent entrepreneur groups such as distributors and company representatives such as agents.<sup>20</sup>

When viewed from the tiered sales system carried out by PT. Garuda Indonesia (Persero) Tbk. Rely on the wholesaler or consortium of strategic business partners in distributing goods from producers to consumers and in this case the relationship between them is based on a memorandum of understanding or MoU with the wholesaler concept. However, the way a wholesaler or strategic business partner consortium sells these products is similar to a distribution system where the wholesaler or strategic business partner acts as a distributor.

It has been explained previously that the wholesaler mechanism for selling flight tickets is common for each airline to do in marketing its products, but of course there are rules in implementing the wholesaler mechanism. For example, several international airlines such as

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<sup>20</sup> Maesa, *Multi Level Marketing (MLM) dalam Perspektif Persaingan Usaha*, (Yogyakarta: Fakultas Hukum, Universitas Islam Indonesia, 2014), .45

Turkish Airlines, Emirates Airlines, Saudi Arabian Airlines, and other airlines use the wholesaler model, but there is a percentage, for example, of 30% which can still be accessed directly on the free market by bureaus and other agents, unlike the new policies made by airlines. Garuda Indonesia, where 100% of ticket sales are given to the specified wholesaler. The policy carried out by PT.

KPPU's decision Number 06/KPPU-L/2020 was a case that was decided based on a report from a business actor who was harmed in March 2019, which then carried out an investigation process, and decided on Thursday, July 8 2021. The decision from the Commission Council was guilty of the practice discrimination violation of Article 19 letter d Law Number 5 of 1999. Therefore, PT Garuda Indonesia is subject to a fine of Rp. 1,000,000,000.00 (one billion rupiah) based on Article 6 paragraph (2) letter g PP Number 44 of the Year 2021 which reads, "imposition of a fine of at least IDR 1,000,000,000.00 (one billion rupiah), taking into account the provisions regarding the amount of the fine as stipulated in this Government Regulation."<sup>21</sup>

Against the KPPU Decision Number 06/KPPU-L/2020 PT.Garuda Indonesia submitted an objection legal action through the Central Jakarta Commercial Court on July 29 2021 with the Case Register Number 03/Pdt.Sus-KPPU/2021/PN Niaga Jkt Pst. This objection was then decided on December 3, 2021 by ruling Rejecting the Objection Request from GIAA and defending the KPPU Decision Putusa Number 06/KPPU-L/2020. Based on this decision, PT.Garuda Indonesia did not accept the decision of the Central Jakarta Commercial Court, so it filed an Cassation on January 3, 2022. Then it was decided by the Supreme Court on March 9, 2022 with a decision REFUSED of the Cassation Application.

The Supreme Court (MA) rejected the cassation of PT Garuda Indonesia (Persero) Tbk. The Supreme Court decision at the same time confirmed the KPPU's decision on the discriminatory practice case for the state-owned airline in relation to the selection of sales partners for Umrah tickets to and from Jeddah and Medina. With the Supreme Court decision, Garuda Indonesia is obliged to implement the decision. In particular, the payment of a fine of IDR 1 billion to the state treasury no later than 30 (thirty) days. If the payment of the fine is late, Garuda Indonesia may be subject to a late fine of 2 percent per month of the value of the

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<sup>21</sup> Pasal 6 ayat (2) huruf g Peraturan Pemerintah Nomor 44 Tahun 2021 tentang Pelaksanaan Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat

fine.<sup>22</sup> The imposition of administrative sanctions in the form of fines takes into account several factors, such as mitigating factors and aggravating factors as stipulated in Article 15 and Article 16 PP Number 44 of 2021.

In terms of the status of PT Garuda Indonesia (Persero) as a BUMN which is used as an aggravating factor, according to the author it is not appropriate. The status of PT Garuda Indonesia (Persero) as a BUMN cannot be used as an excuse to lighten or burden the imposition of sanctions. Law 5/1999 applies to all business actors, not only the private sector, but also BUMN. Likewise, PP 44/2021 applies to all business actors and there is no burden on BUMN, so that the factors that can be aggravating in the amount of sanctions that can be imposed by the KPPU apply equally to business actors, both private and BUMN.

According to the author, in addition to several things that were determined by the Commission Council as mitigating factors for Garuda Indonesia, there are other mitigating factors, namely Business Actors voluntarily stopping anti-competitive behavior since the case arose. It is known that since the case was filed through a report by another business actor who felt aggrieved in March 2019, Garuda Indonesia has issued GA Info which contains a notification of the opening of a sales channel indicating that open sales are being resumed through all of Garuda Indonesia's sales channels. The GA Info indicates that the anti-competitive behavior in the form of limiting the sale of airline tickets on the MEA route to at least 301 PPIUs has been stopped. At the Commission Council Session on Thursday,

In the case of the wholesaler mechanism carried out by PT. Garuda Indonesia, the author sees that there are several articles in Law Number 5 of 1999 which according to the author can be imposed on PT. Garuda Indonesia (Persero) Tbk. against competition law violations that have been committed, namely Article 17 concerning monopoly, Article 18 concerning monopsony, Article 19 letter and c concerning market control by limiting circulation and Article 19 letter d concerning market control by discriminatory practices. However, if we look at the substance of Article 17 and Article 18 of Law Number 5 of 1999, it shows that if the activities carried out by business actors are not necessarily aimed at controlling the market, it could be only for their personal interests (self-interest) rather than the desire to control the market. Articles 17 and 18 also mention in detail regarding ownership of certain

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<sup>22</sup> <https://www.cnnindonesia.com/economy/20220321104947-92-774092/ma-tolak-kasasigaruda-indonesia-wajib-pay-denda-rp1-miliar>. Diakses pada 25 Januari 2023 at 12.00 WIB

market share limits. Meanwhile, in Article 19 letter c and Article 19 letter d, the goal is to dominate the relevant market, in the sense that the main impact of their activities will be felt by competing business actors in the relevant market on such control, and there are no requirements for ownership of certain market share limits.

If we look back at the case of the wholesaler mechanism carried out by PT. Garuda Indonesia (Persero) Tbk., then the imposition of Article 17 and Article 18 is inappropriate. Because it is very clear that PT. Garuda Indonesia (Persero) Tbk. has the aim of dominating the Umrah prayer flight ticket market by making direct appointments only to the five wholesalers to market their Umrah prayer flight tickets. Where one of the appointed wholesalers is also a subsidiary of PT. Garuda Indonesia (Persero) Tbk., which means that all major control of Umrah prayer flight tickets rests with PT. Garuda Indonesia (Persero) Tbk and there is no open opportunity for other PPIUs to contribute to becoming one of the wholesalers.

Then the suitability of the imposition of Article 19 letter c and Article d on the case will be seen. For Article 19 letter c it can be seen from the elements contained in the substance of the article, namely:

- a) Elements of business actors;
- b) The element performs one or several activities;
- c) Elements perform alone or together;
- d) Elements of other business actors; e) Elements of monopolistic practices and unfair business competition;
- e) circulation limiting elements;
- f) Elements of goods and or services; and
- g) Relevant market elements.

So if analyzed by looking at these elements there is one element that is not fulfilled in the case that occurred, namely the element of limiting circulation. Due to PT. Garuda Indonesia (Persero) Tbk. does not limit the circulation of Umrah prayer flight tickets, but rather direct appointment only to the five selected wholesalers and is not open to other PPIUs.

Then it will be seen again the suitability of the imposition of Article 19 letter d, because Article 19 letter c cannot be fulfilled one of the elements. Following are the elements of Article 19 letter d, namely:

- a) Elements of business actors;
- b) The element performs one or several activities;

- c) Elements perform alone or together;
- d) Elements of other business actors;
- e) Elements of monopolistic practices and unfair business competition;
- f) Elements of discriminatory practices; and g) Elements of certain business actors.

It can be seen from the elaboration of the elements above, if the case of the wholesaler mechanism has fulfilled all the elements in Article 19 letter d. This is reinforced by Article 19 letter d, namely: "Business actors are prohibited from carrying out one or several activities, either alone or together with other business actors which may result in monopolistic practices and or unfair business competition in the form of: d. Perform discriminatory practices against certain business actors."

From the wording of Article 19 letter d, if it is applied to the Garuda Indonesia case, it is clear that the direct appointment of the wholesaler without going through an appointment process that is not carried out in an open and transparent manner, and is not based on clear and measurable requirements and considerations violates the provisions existing in business competition law. This can be seen from the fact that PPIU did not provide other opportunities to participate in becoming a wholesaler for the sale of Umrah prayer flight tickets. In addition, other PPIUs are not given the same rights to gain access in terms of bookkeeping and purchasing tickets for Garuda Indonesia's Middle East Area (MEA) route for Umrah pilgrimage flights, like the five appointed wholesalers.

Theoretically, discriminatory acts can only be carried out by business actors or groups of business actors who have market power, while this market power can facilitate business actors to exercise market control over other business actors. Meanwhile, market domination from an economic point of view carried out through several forms of action can have a positive effect in the form of achieving efficiency, ensuring the supply of raw materials or products to achieve economies of scale or economic scope. Thus there is a justification basis for certain market control actions, it is necessary to study the aims and objectives as well as the consequences of certain activities which are considered to be detrimental to market control. 111 However, according to the writer's opinion, PT. Garuda Indonesia (Persero) Tbk.

## **CONCLUSION**

MEA Route Umrah ticket sales wholesaler mechanism policy of PT. Garuda Indonesia (Persero) Tbk has legal consequences for related parties including Consumers, Bureaus and

other Umrah Agents as well as PT. Garuda Indonesia itself. The legal consequences of violating Law no. 5 of 1999, namely subject to several administrative action sanctions, principal criminal sanctions, and additional criminal sanctions. The legal implications of the KKPU decision No.06/KKPU-L/2020 regarding violations of Article 19 letter d Law no. 5 of 1999 which was carried out by PT. Garuda Indonesia, namely the imposition of administrative sanctions in the KKPU decision which was read out in the session, namely the sanctions imposed on PT. Garuda Indonesia, namely in the form of fines to PT Garuda Indonesia (persero) Tbk in the amount of Rp. 1,000,000,000.- (one billion rupiah).

KPPU has complied in determining the elements of the article as well as indications of discriminatory practices. Likewise, the verdict handed down regarding administrative fines to stop discriminatory practices and the imposition of fines was also in accordance with Government Regulation Number 44 of 2021.

## **ADDITIONAL SECTIONS**

I realize that this paper is still far from perfection, therefore all input and criticism from the author will be received and thanked. Finally, I hope this paper can provide benefits to the world of education and parties related to this research. Thank you all for your attention and help.

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