PATTIMURA Legal Journal

Volume 4 Issue 1, April 2025: p. 52-69
https://ojs3.unpatti.ac.id/index.php/pela//issue/view/1285

E-ISSN: 2830-2435
10.47268/pela.v4i1.18268

Application of the Principle *Rule of Reason* to the Determination of Airline Ticket Prices in Business Competition Practices

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Abstract

Introduction: *Business competition often drives companies to engage in unfair practices, including violations of the rule of reason principle, where market dominance is achieved through cartel-like behavior. This study focuses on analyzing how this principle applies to airline ticket pricing, particularly under Law Number 5 of 1999 concerning Monopoly Practices and Unfair Business Competition in Indonesia.*

Purposes of the Research: *This research aims to analyze the application of the rule of reason principle in airline ticket pricing and assess whether airlines' pricing practices comply with Law Number 5 of 1999, focusing on a case involving seven airlines accused of anti-competitive behavior.*

Methods of the Research: *This research uses normative legal research methods, relying on secondary data collected through literature studies. The analysis focuses on interpreting Law Number 5 of 1999, specifically Article 5, to determine whether airline pricing practices, including those of seven airlines under investigation, violate the rule of reason principle and constitute unfair competition.*

Results Main Findings of the Research: *This research demonstrates that a violation under the rule of reason principle demands rigorous evaluation of market effects. The case involving seven airlines uncovered a price-fixing scheme in breach of Article 5 of Law No. 5 of 1999. By restricting routes and low-cost ticket availability, the conduct significantly eroded consumer welfare and disrupted the integrity of competitive market structures.*

Keywords: Business Competition Law; Principle Rule of Reason; Airline Tickets.

Submitted: 2025-03-05	*Revised: 2025-04-27*	*Accepted: 2025-04-28*	*Published: 2025-04-29*

How To Cite: Maudy Miranda, Elisatris Gultom, and Deviana Yuanitasari. "Application of the Principle *Rule of Reason* to the Determination of Airline Ticket Prices in Business Competition Practices." *PATTIMURA Legal Journal* 4 no. 1 (2025): 52-69. https://doi.org/10.47268/pela.v4i1.18268

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INTRODUCTION

The current development of the business world has created very diverse competition dynamics, where business actors are trying to take advantage of existing opportunities. However, it is not uncommon for practices that are not in accordance with the provisions of the law in carrying out competition, which can ultimately lead to violations of the principles of healthy business competition.[1] Violations of the principles of fair business competition as in the

[1] Fachri, Faisal, dan Iwan Erar Joesoef. "Pertimbangan Komisi Pengawas Persaingan Usaha Terhadap Pelanggaran Persaingan Usaha Tidak Sehat Dilakukan Oleh Perusahaan Penerbangan BUMN (Studi Putusan No. 15/KPPU -I/2019)." *Zaaken: Journal of Civil and Business Law* 2, no. 1 (2021). https://doi.org/10.22437/zaaken.v2i1.11652

case of PT. Indocement Tunggal Initiative which violates the principle of fair competition, namely the abuse of its dominant position because this company has controlled almost 50% of the market and sells its cement products at very low prices.[2] Then the case of PT. Yamaha Indonesia Motor Manufacturing with PT Astra Honda Motor who violated the provisions related to pricing because they made an agreement to set the selling price for *110cc-125cc* automatic scooters.[3] As well as cases carried out by Grab and PT. Teknologi Pengangkutan Indonesia (hereinafter abbreviated as TPI). in this case, it violates Article 14, 15 paragraph (2), and Article 19 letter d of Law Number 5 of 1999 because it discriminates against drivers who are not compliant with TPI, this causes restrictions on competition.[4] The number of cases of violations of the principle of business competition is in line with data from the Business Competition Supervisory Commission found that in 2022 there were 297 cases of complaints related to violations of the principles of business competition[5], which then in 2023 has increased to 300 complaint cases to the Business Competition Supervisory Commission.[6]

In general, business competition refers to activities that occur among business actors in the market, where they compete to achieve a dominant position or gain profit by attracting the attention of consumers.[7] The goal is to gain a larger market share, which in turn can increase people's purchasing power for the products or services they offer. This competition is a challenge for every business actor to continue to innovate and maintain quality to remain relevant in an increasingly competitive market.[8] Healthy business competition will have a positive impact on business actors, because it can provide motivation to continue to improve productivity, efficiency, innovation and the quality of the products produced, in addition to

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[2] Imron, Makmun. "Tinjauan Normatif Posisi Dominan Dalam Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat Pada Studi Putusan Perkara: 03/KOMISI PENGAWAS PERSAINGAN USAHA-L/2020." *Jurnal Cakrawala Ilmiah* 3, no. 5 (2024): 1413–26. https://bajangjournal.com/index.php/JCI/article/view/7245

[3] Jawani, Lunita. "Prinsip Rule Of Reason Terhadap Praktik Dugaan Kartel Di Indonesia." *Jurnal Lex Renaissance* 7, no. 1 (2022): 31–40. https://doi.org/10.20885/jlr.vol7.iss1.art3

[4] Agustina, Enno Selya, Relys Sandi Ariani, dan Nada Hasnadewi. "Analisis Upaya Penegakan Hukum Terhadap Tindakan Kemitraan Dalam Perspektif Persaingan Usaha Tidak Sehat." *Jurnal Studia Legalia* 4, no. 01 (2023): 13–20. https://doi.org/ 10.61084/jsl.v4i01.61

[5] Komisi Pengawas Persaingan Usaha Republik Indonesia. "Laporan Tahun 2022," 2022. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://Komisi Pengawas Persaingan Usaha.go.id/wp-content/uploads/2023/08/Laporan-Tahunan-KPPU -2022.pdf.

[6] Komisi Pengawas Persaingan Usaha Republik Indonesia. "Laporan Tahun 2023," 2023. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://Komisi Pengawas Persaingan Usaha.go.id/wp-content/uploads/2024/05/Laporan-Tahunan-2023.pdf.

[7] Kuncoro, Mudrajad. *Strategi Bagaimana Meraih Keunggulan Kompetitif*. (Jakarta: Erlangga, 2005).

[8] *Ibid*

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E-ISSN: 2830-2435
Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

having a positive impact on business actors, also has a good impact on consumers, namely improving product quality, reducing prices, and the many choices given to consumers.[9]

Law Number 5 of 1999 concerning Monopoly Practices and Unfair Business Competition (hereinafter referred to as "Law Number 5 of 1999") explains that activities that lead to market dominance can be categorized as violations of the principles of fair business competition. Based on the considerations in the formation of this law highlighting the prohibition of monopoly practices and unfair business competition, it is emphasized that in a democratic economic system, every business actor has equal rights and opportunities to operate in the market, both in terms of the production of goods and in terms of marketing the product.[10] These principles are designed to create a climate of fair and balanced competition, which in turn will encourage stable and sustainable economic growth. Through natural and healthy competition between business actors, innovation and efficiency can be realized, thereby providing benefits to the economy as a whole.[11] One of the main objectives of this law is to maintain a healthy and conducive market, where business actors can compete transparently and fairly, as well as provide protection to consumers, and prevent the practice of monopolies, cartels and others.[12]

Basically, Law Number 5 of 1999 is designed to create a healthy competition climate and to protect the interests of the wider community. In the application of this regulation, there are two main approaches used to assess whether an action can be considered a violation of competition law. The first approach is "*per se illegal*" which considers some business practices to be infringing without considering the effects or purpose of those practices. This approach applies to practices that are clearly and directly contrary to the principles of fair competition, such as cartels and monopolies that are detrimental to the market. The second approach is a more complex "*rule of reason*" and takes into account the economic context of the business practice, in this approach, an act is considered unlawful only if it is proven to have a substantial impact in

[9] Artharini, Nadia Feby. "Perlindungan Bagi Umkm Terhadap Persaingan Usaha Tidak Sehat." *Dharmasisya: Jurnal Program Magister Hukum FHUI* 2, no. 3 (2023): 27. https://scholarhub.ui.ac.id/dharmasisya/vol2/iss3/27.

[10] Usman, Rachmadi. *Hukum Persaingan Usaha Di Indonesia*. (Jakarta: Gramedia Pustaka Utama, 2004).

[11] *Ibid*

[12] Syah, Muhammad Irfan, Yuni Dhea Utari, Koni Piranda, dan Muhammad Rizky Anes. "The Relationship Between Business Competition Law and Commercial Law in Ensuring Healthy Business Competition in the Market." *INTERDISIPLIN: Journal of Qualitative and Quantitative Research* 1, no. 3 (2024): 116–30. https://doi.org/10.61166/interdisiplin.v1i3.29

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harming market competition, or if the impact outweighs the economic benefits that could be generated.[13] The fundamental difference in the two approaches is contained in the content of the articles in Law Number 5 of 1999, in the *per se illegal approach* there is a phrase "*prohibited*" in the article containing the prohibition there are no other phrases such as "*which can result*", meaning that this is an absolute prohibition without exceptions, while in the *rule of reason* in the formulation of the article the phrase " *that can result*" and or "*reasonably suspected*", meaning that in the phrase there needs to be in-depth research related to the actions carried out whether they have a negative or positive impact on business competition.[14]

Unfair forms of business competition can also occur in the form of cartels, which is one of the practices that are often encountered in the business world. A cartel is an agreement or collusion between two or more business actors in an industry to regulate the market in a way that is detrimental to competition. Typically, in cartels, business actors agree to set prices, limit production, or divide specific market areas, with the aim of reducing competition and increasing their profits illegally.[15] Cartel practices can lead to higher prices for consumers, limited product choices, as well as inhibition of innovation that should occur in a healthy market.[16] Cartels are regulated in Article 11 of Law Number 5 of 1999 as follows: "Business actors are prohibited from making agreements, with their competitors, that intend to influence prices by regulating the production and/or marketing of goods and/or services, which may result in monopolistic practices and/or unfair business competition".

One of the cartel cases that has occurred in Indonesia is in the period of 2004-2007, which is related to the Short Message Service (SMS) cartel involving telecommunication companies in Indonesia including Telkomsel, XL Axiata, and Indosat as well as other companies, where 9 mobile operator companies entered into a secret agreement to set the price of *off-net* SMS

[13] Sembiring, Emya Pratidina, Ningrum Natasya Sirait, Mahmul Siregar, dan Detania Sukarja. "Analisis Yuridis Terhadap Perjanjian Penetapan Harga Tiket Pada Sektor Jasa Angkutan Udara Niaga Berjadwal Penumpang Kelas Ekonomi Dalam Negeri." *Locus Journal of Academic Literature Review* 1, no. 1 (2022): 46–58. https://doi.org/10.56128/ljoalr.v1i1.51.

[14] Aryadiputra, Dimas, Deny Slamet Pribadi, dan Aryo Subroto. "Perbedaan Penerapan Pendekaran Per se Illegal dan Rule of Reason dalam Putusan Komisi Pengawas Persaingan Usaha tentang Kartel Penetapan Harga." *Risalah Hukum* 18, no. 1 (2022): 1–19. https://doi.org/10.30872/risalah.v18i1.753

[15] Nur, Aisyah Amini, Paramita Prananingtyas, dan Irawati Irawati. "Analisis Yuridis Penerapan Prinsip Rule of Reason Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dalam Kasus-Kasukuns Dugaan Kartel." *Diponegoro Law Journal* 12, no. 3 (2023). https://ejournal3.undip.ac.id/index.php/dlr/article/view/39558/30659.

[16] Ramadhani, Marina, dan Muhammad Alhada Fuadilah Habib. "Praktik Kartel Dalam Perspektif Hukum Bisnis Syariah." *Journal of Economics and Policy Studies* 2, no. 2 (2021): 1–12. https://doi.org/10.21274/jeps.v2i2.4795.

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minimum IDR 250,- which is stated in the clause of their interconnection agreement. The existence of this agreement has clearly limited healthy market competition and caused losses for consumers, in this case the Business Competition Supervisory Commission calculated that public losses reached Rp. 2.827 trillion due to the difference between cartel prices and fair prices that should be formed in the competitive market mechanism.[17]

Cartels stand in the way of market mechanisms that are supposed to run efficiently, where healthy competition can encourage innovation, improve product quality, and lower prices. The implementation of cartels, the companies involved are more likely to regulate the market together, which causes distortions in the price and distribution of goods or services, thus harming consumers and society in general, in many cases, cartel practices can be very detrimental to the economy as a whole because it can create inequities in profit sharing, as well as reduce motivation for business actors to innovate and improve efficiency. Therefore, cartels are one of the practices that are strictly prohibited in the competition law to keep the market competitive and beneficial to all parties.[18] The negative impact of cartels is widespread and undermines a healthy economic structure for both the economy and consumers. Cartel practices can result in market imbalances, damage market competitiveness, exacerbate inflation, and harm consumers.[19]

One of the sectors that is often considered in the application of this principle is the aviation industry. The aviation industry in Indonesia has been successful in 2011-2017, where the number of passengers in 2011 reached up to 68 million passengers, in 2016 as many as 100 million passengers. The growth rate of the aviation industry in Indonesia is followed by the increase in demand from domestic passengers, which reached 5% in 2020. Therefore, it has been recognized in the eyes of the world that the aviation industry is one of the triggers for economic

[17] Fanny, Nadhifa Tri, dan Sandy Ekki Wiratama Buana. "Indikasi Kartel Tarif SMS (Short Message Service) Antaroperator Selular (Analisis Putusan Komisi Pengawas Persaingan Usaha dalam Perkara Nomor 26/KPPU -L/2007)." *Ahmad Dahlan Legal Perspective* 1, no. 2 (2021): 112–28. https://doi.org/10.12928/adlp.v1i2.4787

[18] Alfiana, Aufa Shofi, Ikarini Dani Widayanti, dan Galuh Puspaningrum. "Kesesuaian Ratio Decidendi Majelis Komisi Pengawas Persaingan Usaha Dalam Penyelesaian Monopoli Jasa Transportasi Pengiriman Benih Bening Lobster (Studi Putusan Komisi Pengawas Persaingan Usaha Nomor: 04/KPPU -I/2021)." *Jurnal Hukum Sehasen* 10, no. 04 (2024): 389–96. https://doi.org/10.37676/jhs.v10i2.6135

[19] Sitompul, Rahul Kristian, dan Hudi Yusuf. "Dampak Tindak Pidana Ekonomi Khusus Terhadap Stabilitas Ekonomi Nasional: Studi Tentang Kasus Kartel Di Sektor Industri." *Jurnal Intelek Insan Cendikia* 1, no. 9 (2024): 5309–29. https://jicnusantara.com/index.php/jiic/article/view/1449.

growth.[20] However, despite this, the problem that often arises in this industry is that airline ticket prices are often instable, and there are sometimes allegations that airlines work together to determine prices. This raises concerns about whether the pricing policy implemented by airlines reflects healthy business competition or is it a practice that is detrimental to consumers.

For example, at the beginning of 2019, people felt that airline ticket prices for economy class domestic flights remained high even though the holiday season was over. Usually, price increases during the holiday season are considered reasonable due to high demand, but after that ticket prices do not return to normal. This condition raises the suspicion that there is a concentrated market tendency in the domestic aviation industry, where a few airlines have a large dominance. If it is proven that there is a price agreement or a reduction in capacity to maintain high prices, then this can be considered a practice that violates the law of competition.[21] To assess alleged violations in the case of airfare pricing, the Business Competition Supervisory Commission must consider various factors with a *rule of reason* approach. The analysis includes market structure, level of competition, as well as the impact of pricing policies implemented by airlines.

This study aims to analyze in more depth the application of the principle *of rule of reason* according to Law Number 5 of 1999 concerning Monopoly Practices and Unfair Business Competition, as well as the consideration of the Business Competition Supervisory Commission in determining violations of the principle *of rule of reason* due to the determination of airline ticket prices.

METHODS OF THE RESEARCH

This research is normative *legal research* which in its application focuses on the study of applicable legal norms, legal principles, and legal doctrines that develop in business competition. This research uses several approach methods, namely the statute *approach* by examining the provisions in Law Number 5 of 1999, especially related to the principle of the rule of reason, the *case approach* by examining the Decision of the Business Competition

[20] Nurcahyo, Yanuar Bangun, Ghais Rizky Ramadhan, Apip Supriadi, Gusti Tia Ardiani, dan Dwi Hastuti LK. "Pendekatan Non Parametik: Apakah Industri Penerbangan Indonesia Sudah Efisien?" *Welfare: Jurnal Ilmu Ekonomi* 4, no. 1 (2023): 42–53. https://doi.org/10.37058/wlfr.v4i1.7048

[21] Fachri, Faisal, dan Iwan Erar Joesoef. *Opcit.*

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Supervisory Commission Number: 15/ICC -I/2019, and the *conceptual approach* By discussing legal concepts such as the rule of reason, per se illegal, cartels and the principle of fair competition based on the theories and doctrines of experts. This approach is used as a problem solving in research by understanding the development of legal science and adjusted to laws and regulations, legal theories, and relevant legal concepts. This is in accordance with the application of the qualitative normative analysis method, where problems are studied based on applicable legal rules.[22] Because the research method used is normative legal research, where the acquisition and/or collection of data is sourced from *library research,* the data produced is secondary data, which consists of primary legal materials, secondary legal materials, and tertiary legal materials .[23] The main characteristics of normative legal research in this study are reflected in its focus on research applied a descriptive method, namely research that focuses on the analysis of the legal norms contained in Law Number 5 of 1999 and its implementation, the study of legal principles underlying the principles of healthy business competition and the prohibition of monopoly practices. Then connect it to various sources such as academic literature, legal expert opinions, and the provisions of applicable laws and regulations. This approach aims to provide a more comprehensive understanding of the legal issues being studied and formulate relevant legal ideas or concepts.[24]

RESULTS AND DISCUSSION

A. Application of the Rule of Reason Principle According to Law Number 5 of 1999 concerning Monopoly Practices and Unfair Business Competition

The application of the *principle of rule of reason* in assessing alleged violations of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition is carried out through an analysis of the real impact of an action on market structure, market behavior, and consumer welfare. This principle does not qualify an agreement or action as an automatic violation, but rather requires a substantive assessment of the economic consequences caused. Therefore, *the rule of reason* requires the Business Competition Supervisory Commission

[22] Soekanto, Soerjono, dan Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. (Jakarta: Raja Grafindo Persada, 2003).
[23] *Ibid*
[24] Rizkia, Nanda Dwi, dan Hardi Fardiansyah. *Metode Penelitian Hukum (Normatif Dan Empiris)*. (Bandung: Widina Media Utama, 2023).

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to evaluate whether an action actually creates an obstacle to fair competition or actually has a legally justifiable efficiency benefit. This approach in its application focuses on the reasons given by business actors, considering whether the reasons given can be rationally and objectively accepted.[25] The existence of a sudden change in a business activity is the main indicator of the Business Competition Supervisory Commission in the examination, especially if in a short period of time there is an increase in the price of goods and services or a drastic reduction in the amount of production. This condition will be thoroughly analyzed by the Business Competition Supervisory Commission to be able to determine that the actions of business actors can be categorized as legitimate business strategies or even lead to anti-competitive violations that can cause losses to the market and consumers.[26] Therefore, it is very important to apply a *rule of reason* approach to be able to ensure that every activity that is suspected of violation is not always considered an unlawful act, but there is a need for an analysis based on existing facts as well as business motives and the impact caused on the mechanism of healthy business competition.[27]

Law Number 5 of 1999 basically does not explicitly stipulate the parameters used in assessing violations in an action, but the application of the *rule of reason* approach in this law can be identified in the formulation of rules in certain articles, in some articles there is the use of the phrase "*which may result*" or "*reasonably suspected*"", this shows that an action is not necessarily called a violation of the law, but there needs to be further analysis regarding the impact it has on business competition.[28]

The *Rule of Reason* approach in Law Number 5 of 1999, among others, is:[29] 1) Prohibited agreements: a) Prohibition for business actors to control production and/or marketing that may result in unhealthy monopoly practices; b) The prohibition of determining prices below the cost of living may result in unfair competition; c) the prohibition of price discrimination that results in unfair business competition, an act can be said to be price discrimination if it has

[25] Jawani, Lunita. *Opcit*
[26] *Ibid*
[27] *Ibid*
[28] Lubis, Andi Fahmi. *Hukum Persaingan Usaha Antara Teks & Konteks*. 2 ed. (Jakarta: KPPU, 2017).
[29] Usman, Rachmadi. *Hukum Persaingan Usaha Di Indonesia* (Jakarta: Sinar Grafika, 2013).

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been proven to unfairly favor competitors; d) Prohibition of market sharing agreements between business actors that can result in monopoly or unfair competition, for example, two companies are not allowed to divide their sales territory exclusively if it results in inhibiting competition; e) Prohibition of agreements that have the purpose of controlling prices or production that could result in monopoly or unfair competition, a rule of reason approach in this case to prove whether the cartel has a detrimental impact on the market and consumers; f) Prohibit trust activities but it must be proven that this trust has a negative impact on market competition; g) Prohibition related to the existence of agreements between buyers that may result in drastic price reductions and harm suppliers; h) Prohibition of agreements with foreign parties that result in monopolies or unfair competition. 2) Prohibited activities: a) Prohibit the control of production and/or marketing by one business actor that may result in unfair business competition. Not all monopolies are banned, but only those that are proven to close the chance of new competitors entering and harm consumers; b) Prohibit actions aimed at inhibiting other business actors in the market that may result in unfair competition. There must be evidence that this market domination is indeed deliberately done to undermine competition; c) Prohibit restrictions on production or supply that may result in unfair competition. For example, a company holds back production to raise the price of goods in the market; d) Prohibit conspiracy in tenders that may result in unfair business competition. It must be proven that the companies cooperating in the tender do indeed aim to set winners and prices, not just legitimate business alliances; e) Prohibit business actors who have a dominant position from engaging in practices that may result in unfair business competition. Dominant companies are not always at fault unless proven to have abused the position; f) Prohibit acquisitions that may result in unfair business competition. An acquisition is only considered an infringement if it is proven to impede competition or create a monopoly that is detrimental to consumers.

In principle, Law Number 5 of 1999 categorizes several violations in the realm of *the rule of reason*. Based on the explanation above, these actions cannot be automatically considered as violations of the law, but every alleged violation needs to be analyzed first and studied in depth by considering the impact that has been caused on the business competition activities. The

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analysis can include the extent to which its business practices can impede business competition, cause losses to consumers, or provide benefits that can increase market competitiveness.[30]

In the case of determining the price of airline tickets, the Business Competition Supervisory Commission applies the principle *of the rule of reason* by analyzing the reasons put forward by the airlines. The airlines argue that the increase in ticket prices and the reduction in the number of flights are a response to rising operating costs and the need to maintain business continuity. However, through the *rule of reason approach*, the Business Competition Supervisory Commission not only assesses this, but also tests whether the action has a direct impact on the competition mechanism in the market. The Business Competition Supervisory Commission found that concerted actions in reducing the availability of low-cost tickets and raising prices have eliminated alternative pricing options for consumers, narrowed the space for competition between airlines, and caused systemic increases in ticket prices that are disproportionate to the cost conditions experienced by each airline. The principle *of rule of reason* in Law Number 5 of 1999 is contained in the elements of "*monopoly practice*" and "*unfair business competition*", to assess the legality of an agreement or business activity, in this principle can be done with two main aspects, First, namely the impact aspect refers to the extent to which the agreement or business practice carried out causes obstacles to competition and results in losses for consumers, either in the form of reduced choices for consumers, price increases, or lowering the quality of goods or services. Second, the aspect of the way of implementation in this aspect focuses on a method used in carrying out agreements or business activities carried out, an activity can be considered a violation of the principle of healthy business competition if it is carried out in a manipulative or dishonest way. The application of the principle of rule of reason in Law Number 5 of 1999 requires the authority of business competition to consider the economic impact of a business competition and integrity in its implementation. This needs to be done in order to ensure that every policy and action carried out by business actors remains in a fair legal corridor and does not cause harm to the public interest.[31]

[30] Juwana, Hikmahanto, Ayudha D Prayoga, Hamid Chalid, dan Laode M Syarif. *Persaingan Usaha Dan Hukum Yang Mengaturnya Di Indonesia*. (Jakarta: Elips, 1999).

[31] Yani, Ahmad, dan Gunawan Widjaja. *Seri Hukum Bisnis Anti Monopoli*. (Jakarta: Rajawali Pers, 2002).

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The application of the rule of reason in business competition law requires the court to interpret the provisions of the applicable norms to ensure that every business action is assessed objectively, in the application of this principle, agreements or business practices must be reviewed based on certain criteria and factors that are in accordance with the dynamics of competition in the market.[32] The *rule of reason* approach is used in accommodating an act that is categorized as a "*grey area*", meaning that a situation that is not strictly categorized as a legal or illegal act. If an act that is in this gray area is proven to have benefited business competition, then the action is allowed after a thorough examination of the act, on the other hand, if an act after a thorough examination is more negative for business competition, then the act is not allowed, thus in this principle there is a possibility of flexibility in its application, So that not all business cooperation is considered to violate the regulations, but there needs to be a review based on the impact it has on the market, consumer welfare, and economic efficiency.[33]

Applying the principle of *the rule of reason*, the Business Competition Supervisory Commission considers two main aspects, namely the impact on market structure and behavior and the consequences for consumers. The reduction in the number of flights and the increase in ticket prices are considered to create new obstacles for consumers to obtain services at competitive prices, while narrowing the space for competition between business actors. In addition, the Business Competition Supervisory Commission also considers that the action results in a reduction in price variations available in the market and increases the burden of air travel costs for consumers. Although no explicit evidence was found regarding the existence of a written agreement between airlines, a pattern of simultaneous behavior that is carried out consistently and has an impact on consumers is considered sufficient to satisfy the elements of a business competition violation based on the principle *of the rule of reason*.

B. Considerations of the Business Competition Supervisory Commission in Determining Business Competition Violations Due to the Determination of Airline Ticket Prices

Determining the existence of suspected cartels is certainly not an easy thing, because business actors who carry out cartels will not necessarily admit the existence of the cartel

[32] Rizqi, Aditya Maulana, Deni Setiyawan, dan Dimas Amal Kurniawan. "Analisis Penerapan Prinsip Rule of Reason Terhadap Kasus Tying Agreement di Indonesia." *Jatijajar Law Review* 2, no. 2 (2023): 99. https://doi.org/10.26753/jlr.v2i2.1242.

[33] *Ibid*

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agreement they have agreed upon. Therefore, the Business Competition Supervisory Commission as an institution mandated by the State to supervise law enforcement of monopolistic practices and/or business competition, can identify factors that become indicators in the formation of cartels, including the following:[34] 1) Structural factors, referring to matters related to the organizational structure of the market or market characteristics that may affect competition between companies, such as the number of competitors in the market, the size of the company and barriers to entry into the market. Structural factors can be seen from the relatively high concentration level of the domestic aviation market with the dominance of several large airlines, thus facilitating the coordination of price behavior. High *barriers to entry* in the aviation industry also reinforce the oligopolistic market structure; 2) Behavioral factors refer to strategies or actions carried out by business actors in business competition activities, such as pricing strategies, information exchange and agreements between the Company. The behavioral factors demonstrated through the simultaneous actions of airlines, the reduction of certain flight routes and the restriction on the sale of tickets at low prices caused ticket prices to remain high even though consumer demand declined outside the holiday season.

The allegation of cartel practices and airline ticket pricing agreements carried out by 7 (seven) airlines, namely PT Garuda Indonesia, PT Citilink Indonesia, PT Sriwijaya Air, PT NAM Air, PT Batik Air Indonesia, PT Lion Mentari, and PT Wings Abadi is motivated by the many unrest of the public who feel that the price of airline tickets for economy class domestic flights remains high even though the holiday season has ended. The increase in airline ticket prices raises suspicion because it is considered irrational, because the increase in ticket prices during the holiday season is considered reasonable due to high demand, but after that ticket prices do not return to normal.[35]

In this regard, the Business Competition Supervisory Commission then took the initiative to form a monitoring team to conduct an investigation by collecting data and information

[34] Nur, Aisyah Amini, Paramita Prananingtyas, dan Irawati Irawati. *Opcit*
[35] Fachri, Faisal, dan Iwan Erar Joesoef. *Opcit*

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indicating the existence of cartel practices and air ticket pricing agreements carried out by 7 (seven) airlines as Reported Parties in Decision Number: 15/KPPU-I/2019.

Although these indicators lead to the alleged existence of a cartel, the Business Competition Supervisory Commission found no explicit evidence of the existence of a written agreement or direct communication that formed a cartel between airlines. However, based on the principle of the rule of reason, the Business Competition Supervisory Commission considers that the pattern of simultaneous behavior shown by the airline, namely *concerted action* in reducing supply and equalizing ticket prices, is sufficient to prove the existence of a price fixing agreement that is prohibited under Article 5 of Law Number 5 of 1999. Thus, although no evidence of formal cartels was found, evidence of uniform conduct and its impact on the market proved that there had been a violation of the principles of fair business competition.

The consideration as in the results of the investigation conducted by the Business Competition Supervisory Commission, it is known that 7 (seven) airlines as Reported Parties are not proven to have carried out cartel practices as prohibited in Article 11 of Law Number 5 of 1999, but proven to have entered into a price fixing agreement as prohibited in Article 5 of Law Number 5 of 1999 by eliminating certain flight routes, change and reduce the number of airline ticket sales at low prices in order to reap large profits by increasing the price of airline tickets. The elements of fulfillment in Article 5 of Law Number 5 of 1999 are as follows: 1) Elements of business actors: This element refers to 7 (seven) airlines as PT Garuda Indonesia, PT Citilink Indonesia, PT Sriwijaya Air, PT NAM Air, PT Batik Air Indonesia, PT Lion Mentari, and PT Wings Abadi, which is a business entity that organizes business activities in the economic field in the air transportation service sector. 2) Agreement elements: This element is not included in the written agreement signed by 7 (seven) airlines, but is reflected in the *concerted action* carried out by 7 (seven) airlines that have collectively revoked route permits or reduced and eliminated the route of selling economic air ticket prices with the aim of increasing the price of air tickets. Therefore, the behavior shown by the 7 (seven) airlines is a meeting *of mind* prohibited by Law Number 5 of 1999. 3) Elements of pricing: This element is reflected where 7 (seven) airlines as Reported Parties are involved in pricing which is influenced by easy

access to see competitors' prices so as to allow multi-market contact to occur. The Reported Parties use *a dynamic pricing strategy*, which is to change the price of air tickets at any time adjusted to the price of air tickets of other business actors by monitoring prices in 1 (one) day. The similarity of the Reported Party's behavior is very unlikely to occur in competitive business competition, so it is likely that the Reported Party will make a joint agreement in manipulating the price of the plane ticket in order to reap a large profit, because the available air tickets are at a high price. 4) The relevant market element indicates that there is an alleged violation of business competition: This element is reflected in the determination of cases of violations of business competition through analysis of the relevant market, where the monitoring team of the Business Competition Supervisory Commission obtains information data about the right things related to the type and characteristics of the market, the role of business actors and the impact arising from the practice of determining air ticket prices carried out by 7 (seven) airlines flight as the Reported Party. 5) The element of competing business actors refers to 7 (seven) airlines as PT Garuda Indonesia, PT Citilink Indonesia, PT Sriwijaya Air, PT NAM Air, PT Batik Air Indonesia, PT Lion Mentari, and PT Wings Abadi which are business actors who carry out business activities with similar market share, namely air transportation services with coverage of Indonesian territory. 6) Consumer element refers to every user of economy class passenger scheduled air transportation services for all types of services that pay a certain amount of ticket prices for personal purposes or for the purposes of other parties.

The decision of the Business Competition Supervisory Commission, although PT Lion Mentari, PT Batik Air Indonesia, and PT Wings Abadi filed a legal remedy for Objection as in case Number 365/Pdt.SusKPPU/2020/PN Jkt.Pst which caused the cancellation of Decision Number: 15/ICC -I/2019, but then the Business Competition Supervisory Commission again submitted a legal remedy for Cassation to the Supreme Court, and through Decision Number 365/Pdt.Sus-KPPU/2020/PN Jkt.Pst, The Supreme Court granted the application of the Business Competition Supervisory Commission to uphold Decision Number: 15/KPPU-I/2019, so that it was proven to be true that 7 (seven) airlines, namely PT Garuda Indonesia, PT

Citilink Indonesia, PT Sriwijaya Air, PT NAM Air, PT Batik Air Indonesia, PT Lion Mentari, and PT Wings Abadi violated Article 5 of Law Number 5 of 1999.

The implication of the Supreme Court's decision that corroborated the Decision of the Business Competition Supervisory Commission is that legally it is legal and has permanent force (inkracht) that the airlines are proven to have violated Article 5 of Law Number 5 of 1999 through a pricing agreement. This strengthening emphasizes the importance of applying the principle of the rule of reason in proving violations of business competition, even in the absence of a written cartel agreement, in this decision it strengthens the position of the Business Competition Supervisory Commission in cracking down on competition violations based on *concerted practices* and clarifies the standard of proof of business competition law in Indonesia, namely that simultaneous behavior that is detrimental to the market can be sanctioned even if there is no Explicit evidence of a written communication or agreement.

CONCLUSION

The application of the *principle of rule of reason* in Law Number 5 of 1999 emphasizes the need to analyze the impact of an agreement or business practice before it is declared as a violation. This approach does not necessarily consider an action to be illegal, but rather requires an in-depth evaluation of the consequences for business competition and consumer welfare. The analysis in the *rule of reason* includes two main aspects, namely the economic impact on the market and the way a business activity is carried out, including whether it is carried out honestly and in accordance with the law. This principle also accommodates actions in the "*grey area*", i.e. situations that are not clearly classified as legal or illegal, but can still be allowed if they are proven to provide benefits to business competition. The application *of the rule of reason* in Law Number 5 of 1999 aims to create a balance between protection against market competition and flexibility in the business world, so as to encourage the creation of a healthy and fair business climate, in this study that although no evidence of cartel practices was found explicitly, seven airlines were proven to have entered into pricing agreements that violated unfair business competition. The Business Competition Supervisory Commission proved the violation by applying the principle of *the rule of reason*, namely through an objective analysis

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Published by: Postgraduate Program Doctoral of Law, Universitas Pattimura, Ambon, Indonesia

of the behavior of airlines that simultaneously reduce the number of flights and limit the sale of low-cost tickets, which has an impact on price increases and reduced choices for consumers, with this approach, the Business Competition Supervisory Commission considers that the actions of airlines have hindered healthy business competition and harm consumers, even though there is no formally written cartel agreement.

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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