

**ACT OF DISCRIMINATION IN BUSINESS COMPETITION**

**(Case Study of Verdict Number 13/KPPU-I/2019 with Verdict Number**

**468/Pdt.P/2020/PN Jkt)**

**UNDERGRADUATE THESIS**

**BY:**

**Nabiela Azhariyani Fitri**

**SIN 18220089**



**SYARI'AH ECONOMIC LAW**

**SYARI'AH FACULTY**

**THE STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM**

**MALANG**

**2022**

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**MALANG**

**2022**

## STATEMENT OF THE AUNTHENTICITY



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In the name of Allah,

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**COMPARATIVE STUDY OF VERDICT NUMBER 13/KPPU-I/2019 WITH  
VERDICT NUMBER 468/Pdt.P/2020/PN Jkt Sel CONCERNING  
ALLEGED PRACTICES OF UNFAIR BUSINESS COMPETITION (Case  
Study of PT Solusi Transportasi Indonesia and PT Teknologi Pengangkutan  
Indonesia)**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 12 May 2022

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Study of PT Solusi Transportasi Indonesia and PT Teknologi Pengangkutan  
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(Case Study of Verdict Number 13/KPPU-I/2019 with Verdict Number  
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*Scan Untuk Verifikasi*



## MOTTO

إِنَّ مَعَ الْعُسْرِ يُسْرًا

Q.S Al-Insyirah: 6

Artinya: “Sesungguhnya setelah kesulitan, ada kemudahan”.

Meaning: “Indeed, after hardship, there is ease”.

## ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Alhamdulillahirabbil'amin, have given His rahmat and servan, so we can finish this thesis entitled **“ACT OF DISCRIMINATION IN BUSINESS COMPETITION (Case Study of Verdict Number 13/KPPU-I/2019 with Verdict Number 468/Pdt.P/2020/PN Jkt)”**.

Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (uswatun hasanah) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end, Amien.

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With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Malang, 12 May 2022

Writer,

Nabiela Azhariani Fitri

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## TRANSLITERATION GUIDENCE

The Latin Arabic Transliteration Guidelines which are the result of a joint decision decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia. Number: 158 of 1987 and Number: 0543b/U/1987.

### A. Consonants

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arab Letters	Name	Latin Letters	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	S/a	S/	Es (with the dot above)
ج	Jim	J	Je
ح	H[a	H[	Ha (with thw dot above)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De
ذ	Z/al	Z/	Zet (with the dot above)

ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es and Ye
ص	S[ad	S[	Es (with the dot above)
ض	D[ad	D[	De (with the dot above)
ط	T[a	T[	Te (with the dot above)
ظ	Z[a	Z[	Zet (with the dot above)
ع	'Ain	'	Apostrof backwards
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We

هـ	Ha	H	Ha
ء / إ	Hamzah	‘	Apostrof
ي	Ya	Y	Ye

Hamzah (ء) which is located at the beginning of the word follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (‘).

## B. Vocal

Arabic vowels, like Indonesian vowels, consist of a single vowel or monophonic and multi vowels or dhipthongs. The Arabic single vowel whose symbol is a sign or vowel, the transliteration is as follows:

Sign	Name	Latin Letters	Name
أ	Fath[ah	A	A
إ	Kasrah	I	I
أ	D[ammah	U	U

Arabic double vowel whose symbol is a combination of vowels and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin Letters	Name
ي & أ	Fath[ah and ya	Ai	A and I

ي & َ	Fath[ah and wau	Au	A and U
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Example:

كَيْفَ : *kaifa*

حَوْلَ : *hau-la*

### C. Maddah

*Maddah* or long vowels whose symbols are vowels and letters, transliteration in the form of letters and signs, namely:

Harakat and Letters	Name	Letters and Sign	Name
ي / ا & َ	Fath[ah and <i>alif</i> or <i>ya</i>	a>	a and the line above
ي & ِ	<i>Kasrah</i> and <i>ya</i>	i>	i and the line above
و & ُ	D[ammah and <i>wau</i>	u>	u and the line above

Example:

مَاتَ : *mata*

رَامَ : *rama*

قِيلَ : *qila*

يَمُوتُ : *yamutu*

#### D. Ta' Marbutah

There are two transliterations for *ta' marbutah*, namely *ta' marbutah* who live or get the letters *fathah*, *kasrah*, and *d[ammah*, the transliteration is [t]. While *ta' marbutah* who dies or get a sukun harakat, the transliteration is [h].

If the word ending with *ta' marbutah* is followed by a word that uses the article *al-* and the reading of the word is separate, then *ta' marbutah* is transliterated with [h].

الْمَدِينَةُ : *al-madinah*

#### E. Syaddah (Tasydid)

*Syaddah* or *tasydid* which in the Arabic writing system is denoted by a *tasydid* sign (ّ), in this transliteration it is symbolized by a repetition letters (double consonants) marked with a *syaddah*. Example:

رَبَّنَا : *rabbana*

الْحَقُّ : *al-haqq*

If latter i there is *tasydid* at the end of a word and preceded by the letter *kasrah*, then it is transliterated like the letter *maddah* (i).

Example:

عَلِيٌّ : 'Ali (not 'Aliyy or 'Aly)

عَرَبِيٌّ : 'Arabi (not 'Arabiyy or 'Araby)

## F. Sandang Word

Sandang word in the Arabic writing system are denoted by letters (alif lam ma'arifah). In this transliteration guide, the article is transliterated as usual, al-, both when it is followed by letter syamsiah and the letter qamariah. The article does not follow the sound of the direct letter that follows it. The article is written separately from the word that follows it and is connected by a horizontal line (-). Example:

الشَّمْسُ : *al-syamsu* (not *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (not *az-zalزالah*)

الْفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-biladu*

## G. Hamzah

The rule for transliterating the letter hamzah into an apostrophe (‘) only applies to hamzah which is located in the middle and end of the word. However, if hamzah is at the beginning of a word, it is not symbolized, because in Arabic it is an alif. Example:

تَأْمُرُونَ : *ta' muruuna*

سَيِّئٌ : *syai'un*

أَمْرٌ : *umirtu*

## H. Writing Arabic words commonly used in Indonesian

Transliterated Arabic words, terms or sentences are words, terms or sentences that have not been standardized in Indonesian. Words, terms or

sentences that are commonplace and become part of the Indonesian vocabulary, or have often been written in Indonesian writing, are no longer written according to the transliteration method above. For example the word Al-Qur'an (from the Qur'an), *Sunnah*, *specific* and *general*. However, if these words are part of a series of Arabic texts, then they must be transliterated in their entirety. Example:

*Fizila al-Qur'an*

Al-Sunnah qabl al-tadwin

Al-'Ibarat bi 'umum al-lafz bi khusus al-sabab

#### 1. Lafz al-Jalalah

The word Allah which is preceded by a particle such as the letter *jarr* and other letters or is located as a *mudlaf ilaih* (nominal phrase), is transliterated without the letter hamzah. As for the *ta' marbutah* at the end of the word that is attributed to *al-jalalah*, it is transliterated with the letter [t]. Example:

دِينُ اللَّهِ : *dinullah*

رَحْمَةُ اللَّهِ : *rahmatillah*

#### 2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration these letters are subject to provisions regarding the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are

used to write the first letter of a personal name is preceded by an article (al-), then what is written in capital letters remains the initial letter of the personal name, not the initial letter of the article. If it is located at the beginning of the sentence, then the letter A of the article uses a capital letter (Al-). The same provisions also apply to the initial letter of the reference title preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CKD, and DR). Example:

وما محمد إلا رسول	: Wa maâ Muhammadun illâ Rasûl
إن أول بيت وضع للدرس	: Inna Awwala baitin wudli'a linnâsi
شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ	: 'Syahru Ramadan al-lazliunzila fih al-
	Qur'an

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## ABSTRAK

Nabiela Azhariyani Fitri, 18220089, **Studi Komparatif Putusan Nomor 13/KPPU-I/2019 dengan Putusan Nomor 468/Pdt.P/2020/PN Jkt Sel tentang Dugaan Pelanggaran Persaingan Usaha**, Program Studi Hukum Ekonomi syariah, Fakultas Syari'ah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing Kurniasih Bahagiati M.H.

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Kata Kunci: Putusan KPPU, Putusan Pengadilan Negeri, Hukum Persaingan Usaha

Perkara Nomor 13/KPPU-I.2019 KPPU merupakan kasus dugaan pelanggaran pasal 14, pasal 15 ayat 2, dan pasal 19 huruf (d) diawali dengan adanya informasi terkait dugaan pelanggaran berupa tindakan diskriminasi antara Grab dan PT Teknologi Pengangkutan Indonesia (TPI). Proses penyelesaian perkara di KPPU selesai dengan hasil putusan pihak Terlapor terbukti bersalah atas pasal 14 dan 19 huruf (d) membuat para Terlapor I dan Telapor II merasa keberatan dan akhirnya mengajukan upaya keberatan ke Pengadilan Negeri Jakarta Selatan. Hasil putusan PN Jakarta Selatan hasilnya bertolak belakang dengan Putusan KPPU yang telah ada. Grab dan PT TPI dinyatakan tidak terbukti bersalah atas pasal 14 dan pasal 19 huruf (d) Undang-Undang Nomor 5 Tahun 1999. Penelitian ini bertujuan untuk mengetahui hasil komparatif studi atas dua putusan yang memiliki perbedaan amar putusan.

Jenis penelitian yang digunakan adalah penelitian normative dengan menggunakan pendekatan kasus dan undang-undang. Metode pengumpulan data menggunakan metode studi pustaka yang bersumber dari bahan hukum primer dan bahan hukum sekunder yang dianalisis menggunakan pendekatan kualitatif.

Hasil dari penelitian ini adalah amar putusan yang bertolak belakang disebabkan oleh perbedaan hasil penilaian terhadap suatu tindakan diskriminasi. Adapun beberapa hal yang mempengaruhi hal tersebut seperti fakta persidangan, perbedaan penilaian terhadap saksi, perbedaan keterangan saksi, dan kurangnya pertimbangan dalam hal alasan untuk mengambil suatu tindakan yang dapat menjadi salah satu hal penting dalam mengevaluasi tindakan persaingan usaha tidak sehat.

## ABSTRACT

Nabiela Azhariani Fitri, 18220089, **Comparative Study Of Verdict Number 13/KPPU-I/2019 With Verdict Number 468/Pdt.P/2020/PN Jkt Sel Concerning Alleged Practices of Unfair Business Competition (Case Study of PT Solusi Transportasi Indonesia and PT Teknologi Pengangkutan Indonesia)**, Syari'ah Law Department, Syati'ah Faculty, The State Islamic University Maulana Malik Ibrahim Malang, Pembimbing Kurniasih Bahagiati M.H.

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Keywords: KPPU's Verdict, District Court's Verdict, Business Competition Law

Case Number 13/KPPU-I.2019 KPPU is a case of alleged violation of article 14, article 15 paragraph 2, and article 19 letter (d) beginning with information regarding alleged violations in the form of acts of discrimination between Grab and PT Teknologi Pengangkutan Indonesia (TPI). The case settlement process at KPPU was completed with the result of the decision of the Reported Party being found guilty of Articles 14 and 19 letter (d) which made the Reported Party I and the Reported Party II objected and finally filed an objection to the South Jakarta District Court. When the South Jakarta District Court Decision was announced, it turned out that the result was contradictory to the existing KPPU's Decision. Grab and PT TPI were found not guilty of Article 14 and Article 19 letter (d) of Law Number 5 Year 1999. This study aims to determine the results of a comparative study of two decisions that have different verdicts.

The type of research used is normative research using a case and law approach. The data collection method used a literature study method sourced from primary legal materials and secondary legal materials which were analyzed using qualitative approach.

The results of this study are contradictory of this decisions caused by differences in the results of the assessment of an act of discrimination. Several things that affect these matters such as trial facts, assessment of differences judgments, and the lack of consideration in terms of the reasons for taking an action which can be one of the important things in evaluating unfair business competition actions.

## مستخلص البحث

نبيلة أزهاريان فطر، ١٨٢٢٠٠٨٩ ، دراسة مقارنة للقضية رقم ١٣ / KPPU-I / ٢٠١٩ مع القضية رقم ٤٦٨ / PN Jkt Sel / ٢٠٢٠ / Pdt.P فيما يتعلق بممارسات المنافسة التجارية غير العادلة المزعومة (دراسة حالة لشركة PT Teknologi و PT Solusi Transportasi Indonesia (Pengangkutan Indonesia) ، برنامج قسم القانون الاقتصادي الشرعي (المعاملة) ، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج المشرفة : كورنياسيه بهاجياتي الماجستير .

الكلمات الرئيسية : القضية KPPU ، القضية محكمة المقاطعة ، قانون المنافسة التجارية القضية رقم ١٣ / KPPU-I / ٢٠١٩ هي حالة انتهاك مزعوم للفصل ١٤ ، والفصل ١٥ الآية ٢ ، والفصل ١٩ الحرف (د) بدءًا من المعلومات المتعلقة بالانتهاكات المزعومة تركز على أعمال التمييز بين Grab و PT Teknologi Pengangkutan Indonesia (TPI) اكتملت عملية تسوية القضية في KPPU بنتيجة الحكم أنّ المبلغ عنه مذنب بالمادتين ١٤ و ١٩ حرف (د) مما جعل المبلغ عنه الأول والمبلغ عنه الثاني قد اعترضوا ثم اقدموا اعتراضًا إلى المحكمة الأهلية جاكرتا الجنوبية. عندما أُعلن حكم من المحكمة الأهلية جاكرتا الجنوبية، اتضح أن النتيجة مناقضة لحكم KPPU الحالي. يعني Grab و PT TPI غير مذنبين بموجب الفصل ١٤ والفصل ١٩ حرف (د) من القانون رقم (٥) لعام ١٩٩٩. هدف هذا البحث لتحديد نتائج مقارنة لدراسات قراراتين لهما محتويان الحكم مختلفان.

نوع البحث المستخدم هو البحث المعياري باستخدام نهج الدعوى والقانون. و طريقة جمع البيانات في هذا البحث طريقة دراسة الأدب التي تم الحصول عليها من المواد القانونية الأولية والمواد القانونية الثانوية التي تم تحليلها باستخدام نهج نوعي.

نتائج هذه الدراسة هي قرارات متناقضة بسبب الاختلافات في نتائج تقييم فعل من أفعال التمييز. العديد من الأشياء التي تؤثر على هذه الأمور مثل حقائق المحاكمة، وتقييم الاختلافات، والاعتبارات، والاعتبارات في مسألة ما لاتخاذ الإجراءات التي يمكن أن تتخذ قرارات في إجراءات غير صحية.

## CHAPTER I

### INTRODUCTION

#### A. Background

Transportation is one of the facilities that can help humans in carrying out their daily lives as a means of moving objects from one place to another. Some sectors of agriculture, industry, government, transmigration and others really need transportation services to transport goods and people to various places with the aim of completing their respective interests. Therefore, transportation services are called *derived demand*, which means that the demand for transportation services will increase because they are needed to serve various economic activities and increasing development.<sup>1</sup>

In the 4.0 era which has rapid development in the field of technology, it is natural that all kinds of community activities will use sophisticated technology services. This is true in the field of transportation services, which are increasingly accessible. In recent years, application-based public transportation services have emerged that are often used by today's society, where prospective consumers are required to access these special applications on Android-based mobile phones to order the desired transportation services. There are several

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<sup>1</sup> Siti Fatimah, *Pengantar Hukum Transportasi*, (Ponorogo: Myria Publisher, 2019) 2.

companies that provide transportation services in the territory of Indonesia, such as Go-jek, Grab, Uber, Transjek, Bajaj App, wheel Line and others.

As a user of application-based transportation services, the author finds several advantages possessed by transportation services. application-based in addition to the ease of access provided. For example, in terms of security that can be felt by consumers. Application-based transportation services have been equipped with GPS (*Global Positioning System*) access which can make it easier for drivers and consumers to know their destination clearly. In addition, the identity of the driver of the application-based transportation service along with the vehicle to be used has been provided and is transparent so that potential consumers can find out who the driver is and what vehicle will be used.

The existence of several application-based transportation services operating in the territory of Indonesia and under the auspices of different companies, it can be seen that these application-based transportation service providers are in the same market share in carrying out their business. When business activities take place, companies will compete with each other to attract consumers to get profits in accordance with the plan. In the process of competition, there will be two possible conditions for the business competition environment, namely the creation of healthy business competition and unfair business competition. fair business competition occurs when business actors pay attention to and implement the principles of creating fair business competition in accordance with applicable

regulations, namely Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

A condition of business competition can be categorized as unfair business competition, namely if there are obstacles for business actors to enter the same market, dishonest behavior committed by business actors, collusion between business actors and other things that cause unfair business competition conditions. This is in accordance with Article (1) number (6) in Law Number 5 of 1999, namely "*Unfair business competition is competition between business actors in carrying out production and or marketing activities of goods or services carried out in a dishonest or against law or hinder business competition*".

Indonesia has a Business Competition Supervisory Commission which is tasked with supervising the behavior of business actors not to engage in monopolistic activities and unfair business competition in order to create a condition for good business competition. Based on the KPPU's decision database, there are 383 decisions that have been issued by the KPPU during the last 21 years, starting from 2001 to 2022.<sup>2</sup> The decision was issued due to allegations of unfair business competition practices carried out by business actors.

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<sup>2</sup> *Database Putusan KPPU*, diakses pada tanggal 10 Februari 2022 , pukul 05.10 WIB, <https://putusan.kppu.go.id/simper/menu/>

In 2019, a case was filed with the Business Competition Supervisory Commission Number 13/KPPU-I/2019 regarding alleged violations of article 14, article 15 paragraph (2) and article 19 letter (d), which began with a report from the Special Chartered Transport Organization. Indonesia (Oraski) North Sumatra regarding allegations of discriminatory actions by the company PT Solusi Transportasi Indonesia (Grab) which provides the Grab Indonesia application and PT Teknologi Pengangkutan Indonesia (PT TPI) which is a transportation service provider company equipped with an agrometer and has a special rental transportation permission.<sup>3</sup> So, the parties in this case are the Grab company as the Reported Party I and PT TPI as the Reported Party II.

Based on an investigation conducted by the Business Competition Supervisory Commission, it was found that there was an alleged agreement planned to dominate the market between Grab (Reported I) and PT TPI (Reported II). According to the consideration of the Commission Council, Reported Party I and Reported Party II were proven to have discriminated against drivers who were not PT TPI's partners. In addition, it was found that there was a cooperation agreement aimed at controlling the service product for providing technology-based special rental transportation applications, resulting in a

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<sup>3</sup> *Kronologi Kasus Grab dan TPI, Sekaligus Tanggapan Hotman Paris*, Diakses pada tangga; 10 Februari 2022, pukul 05.28 WIB, <https://www.tribunnews.com/bisnis/2020/07/03/kronologi-kasus-grab-dan-tpi-sekaligus-tanggapan-hotman-paris>

decrease in the percentage of drivers who are not PT TPI's partners.<sup>4</sup> The consideration of this commission assembly was stated in KPPU's Decision Number 13/KPPU-I/2019 which stated that the Reported Party I and the Reported Party II were declared legally in violation of Article 14 and Article 19 letter (b) of Law Number 5 of 1999, and not proven to have violated Article 15 paragraph ( 2), so that reported party I was subject to a fine of 7.5 billion for the violation of article 14 and 22.5 billion for the violation of article 19 letter (b). while the second reported sanction is 4 billion for violating article 14 and a fine of 15 billion for violating article 19 letter (b).

After the KPPU's decision Number 13/KPPU-I/2019 was received by the reported party, the reported party felt that the result of the decision was not in accordance with the actual situation. Therefore, the reported party filed an objection to the South Jakarta District Court on the contents of the KPPU's decision. After the trial was carried out on the petition for objections from the reported parties. The South Jakarta District Court Panel of Judges issued Decision Number 468/Pdt.P/2020/PN Jkt Sel which stated that the reported parties in the KPPU's decision Number 13/KPPU-I/2019 were not proven guilty of violating Article 14 and Article 19 letter (d) Law Number 5 of 1999. This shows that Decision Number 468/Pdt.P/2020/PN Jkt Sel annuls the contents of

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<sup>4</sup> KPPU Jatuhkan Sanksi Grab dan TPI, diakses pada tanggal 10 Februari 2022, pukul 06.03 WIB. <https://kppu.go.id/blog/2020/07/kppu-jatuhkan-sanksi-ke-grab-dan-tpi/>

KPPU's decision Number 13/KPPU-I/2019. Then, it did not stop there, the KPPU objected to the contents of Decision Number 468/Pdt.P/2020/PN Jkt Sel so that it submitted a cassation request to the South Jakarta District Court and the results of the cassation request were stated in Decision Number 485 K/Pdt.Sus - KPPU/2021 which stated that the Panel of Judges affirmed the contents of the decision Number 468/Pdt.P/2020/PN Jkt Sel.

In the legal considerations in Decision Number 468/Pdt.P/2020/PN Jkt Sel stated that in KPPU's decision Number 13/KPPU-I/2019 the Commission Council did not have a clear legal basis which found that the respondent objected to Decision Number 468/ Pdt.P/2020/PN Jkt Sel, namely KPPU has not conducted a thorough investigation of the case it is handling. This was explained by the Panel of Judges when examining the evidentiary documents, the Panel of Judges found that the Council of Commissions for the Objection Respondent did not conduct a study or research on the data that became the reference for its legal considerations. Because, there are differences in the results of the decisions in this case, the author will conduct research related to legal considerations in the decisions of the Grab and TPI cases focusing on alleged discrimination acts with the title "A Comparative Study of Verdict Number 13/KPPU-I/2019 with Verdict Number 468/Pdt.P/2020 /PN Jkt Sel regarding alleged violations of Law Number 5 of 1999 concerning Unfair Business Competition Practices (Case Study of PT Solusi Transportasi Indonesia and PT Teknologi Pengangkutan Indonesia)".

## **B. Problem Formulation**

Based on the background of this research, it can be drawn a formulation of the problem that will be the subject of discussion in this study, namely:

1. What are the legal considerations in Verdict Number 13/KPPU-I/2019 issued by KPPU regarding alleged competition violations unhealthy business?
2. What are the legal considerations in Verdict Number 468/Pdt.p/2020/PN Jkt Sel regarding Grab and TPI's objection to the KPPU's decision.

## **C. Research Purposes**

Based on the formulation of the problem above, it can be seen that this study aims to:

1. Find out the legal considerations in Verdict Number 13/KPPU-I/2019 issued by KPPU regarding alleged violations of unfair business competition.
2. Knowing the legal considerations in Verdict Number 468/Pdt.p/2020/PN Jkt Sel related to Grab and TPI's objection to the KPPU's decision.

## **D. The Benefits Research**

results of the discussion obtained in this study are expected to provide benefits. Some of them are:

1. Theoretical benefits

The results of this research are expected to be a real contribution that can be used as additional insight in developing theory in the legal field, especially regarding the Decisions of the Business Competition Supervisory Commission and Court Decisions. Of course, this research is very useful for the author personally, and can be additional knowledge for students who are studying business competition law in Indonesia.

2. Practical Benefits

This research is expected to serve as reference material by students, academics, or legal practitioners who are studying matters relating to the Decisions of the Business Competition Supervisory Commission and Court Decisions. In addition, the authors hope for this research to be able to provide an understanding to the public that as a legal practitioner who makes a decision, that he has an obligation to study and explore as well as possible about everything related to the case being handled.

#### **E. The Method of Research**

The methods of research is a procedure on how to conduct a research. There are two terms of research method, namely method and research. Based on the Big Indonesian Dictionary, the word "method" is a noun which means an orderly way used to carry out a job so that it is achieved and in accordance with

what is desired or a systematic way of working to facilitate the implementation of an activity in order to achieve a specified goal. Meanwhile, the word "research" means the activities of collecting, processing, analyzing, and presenting data which are carried out systematically and objectively to solve a problem.

#### 1. Types of Research

The type of research that will be used in this research is normative research. Normative legal research serves to provide juridical arguments when there are vacancies, ambiguities and conflicts of norms. The normative research method is used because the objects studied in this study are the KPPU Decision Number 13/KPPU-I/2019 and the South Jakarta District Court Decision Number 468/Pdt.P/2020/PN Jkt Sel which will be studied using a comparative method based on the concept of business competition law. Based on this, this research requires *legal argumentation*, so the type of research method that is suitable to be used is normative legal research.

#### 2. Research Approach

The approach of research that will be used in this research is the law approach, and the case approach. The legal approach is an approach that carried out by examining all laws that have a correlation with the legal

issues being studied.<sup>5</sup> Then, the understanding of the case approach is the approach taken to determine the application of the applicable law in a case that has been given a final and binding decision by the court.<sup>6</sup> In this study, a review will be carried out on Decision Number 13/KPPU-I/2019 and Decision Number 468/Pdt.P/2020/PN Jkt Sel.

### 3. Legal Materials for Normative Research

Legal materials in research with the type of normative legal research have two sources of legal materials, namely primary legal materials and secondary legal materials.

#### a. Primary Legal Material

*Cohen* and *Olson* provide a definition of primary legal material, namely the legal rules enforced by the state to be implemented in society. For example legislation, government regulations, and court decisions.<sup>7</sup> The primary legal materials used in this research include: Law Number 5 of 1999 concerning Anti-Monopoly and Unfair Business Competition Practices, KPPU's Regulation Number 3 of 2011 concerning Guidelines for the Implementation of Article 19 Letter (d) Law Number 5 of 1999, KPPU's Decision Number 14/KPPU-I/2019, and Decision Number 468/Pdt.P/2020/Jkt Sel.

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<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005) 93.

<sup>6</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Ui Press, 1981) 10.

<sup>7</sup> Prof. Dr. I Made Pasek Diantha, S.H., M. S., *Metodologi penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, (Jakarta: Prenada Media group, 2017) 143.

b. Secondary Legal Material

If interpreted, secondary legal material has a broad and narrow meaning. Usually secondary legal materials are in the form of books that have been published that explain a certain theory, doctrine or teaching, legal review articles, and legal dictionaries or encyclopedias, this statement is the narrow meaning of secondary legal materials. While the broad understanding is all legal materials that are not included in primary legal materials, which means scientific works that are not published, which are published in newspapers or magazines can be used as secondary legal materials.<sup>8</sup> This study uses several secondary legal materials, such as legal dictionaries, law books, legal journals, thesis research, and court judges' decisions.

4. Legal Material Collection Method

This study uses the technique of collecting legal materials with the literature study method. There are four characteristics of literature study research, namely: First, researchers do not deal directly with field knowledge but deal directly with text or data. Second, researchers do not need to go to the field and only deal directly with legal materials that are already available, such as in a library. Third, researchers get data that is not original or not from the first hand but from the second hand. Fourth, data

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<sup>8</sup> Prof. Dr. I Made Pasek Diantha, S.H., M. S., *Metodologi penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, 145

from literature study is not limited by space and time.<sup>9</sup> This method of collecting legal materials with literature study was chosen because this research uses a normative type of research.

#### 5. Legal Material Analysis Method

A comparative approach is used as a method of analyzing legal materials in this study because this research is descriptive in nature which analyzes the results of different decisions in one case. Descriptive research aims to provide an explanation, description, and validation of the issue being studied.<sup>10</sup> All legal materials, both primary and secondary, will be collected, qualified and analyzed regarding the relationship between primary and secondary legal materials, so that research results are obtained.

#### **F. Previous Research**

The existence of previous research in a study provides important benefits in order to maintain the authenticity of research. This is necessary to avoid plagiarism or similarities between the current research and previous research. Previous research can also be used as a reference or reference material to obtain data relating to the new research being studied. So, here are three previous studies that are related to this research, namely:

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<sup>9</sup> Mestika Zed, *Library Research Methods*, (Jakarta: Indonesia Obor Foundation. 2008) 5.

<sup>10</sup> Dr. Muhammad Ramadhan, S. Pd. M. M, *Research Methods*, (Surabaya: Cipta Media Nusantara (CMN), 2021) 8.

1. Mei Indah Sari Sihombing, *Tinjauan Yuridis Mengenai Putusan Pengadilan Negeri Nomor 468/Pdt.P/2020/PN Jkt Sel tentang Pembatalan Putusan KPPU Nomor: 13/KPPU-I/2019 Dugaan Pelanggaran Pasal 14, pasal 15 ayat (2) dan Pasal 19 huruf (d) U Nomor 5 Tahun 1999 Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat Oleh Jasa Angkutan Sewa Khusus*, 2021. This study aims to know the legal arrangements related to the operation of special rental transportation services in Indonesia, to find out the regulations regarding vertical integration, tying-in, and discriminatory practices against other business actors in Law Number 5 of 1999, and to find out the juridical review related to the District Court Decision Number 468/Pdt .P/2020/PN Jkt Sel.
2. Hesti Erfiani, *Praktik Barrier To Entry yang Bertentangan dengan Pasal 19 Undang-Undang Nomor 5 Tahun 1999 dalam Prespektif Undang-Undang Ekonomi Syariah (Studi Kasus antara Grab dengan PT TPI dalam Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2019 tentang Jasa Angkutan Sewa Khusus*, 2021. This study aims to explain the concept of *Barrier to Entry* which is contrary to Article 19 of Law Number 5 of 1999, explain the legal analysis of the monopolistic practice between Grab and PT TPI, and explain the practice of *Barrier to Entry* in a Sharia economic perspective. .

3. I Gusti Ayu Dewi Sawitri, *Integrasi Vertikal dan Praktik Diskriminasi dalam Perspektif Hukum Persaingan Usaha Indonesia: Analisis Kasus PT Solusi Transportasi Indonesia (Grab) dan PT Teknologi Pengangkutan Indonesia (TPI)*, 2021. This study aims to examine the application of the provisions of the Business Competition Law in the case of alleged violations of vertical integration and discriminatory practices by Grab and PT TPI and reviewing the legal consequences of the South Jakarta District Court Decision Number 468/Pdt.P/2020/PN Jkt Sel which overturned KPPU's Decision Number 13/KPPU-I/2019.
4. Khawiy Bawazir, *Analisa Hukum Praktik Diskriminasi oleh Lion Air Group Terkait Kerja Sama Penjualan Kapasitas Kargo pada Jasa Pengangkutan Barang dari Bandara Hang Nadim ke Bandara Soekarno-Hatta, Halim Perdana Kusuma, Juanda, dan Kuala namu (Studi Putusan KPPU Nomor 07/KPPU-I/2020)*, 2022. This study aims to find out how to analyze business competition law enforcement in Indonesia, regulating discriminatory practices of Law no. 5 of 1999 and the legal analysis of KPPU's Decision No. 07/KPPU-I/2020. to examine the research method used is normative legal research through literature study
5. Deni Aulia Ahmad, *Diskriminasi dalam Pengadaan Jasa Pembuatan Logo Baru PT. PERTAMINA (PERSERO)*, 2011. This journal

examines whether it is true that the differential treatment carried out by PT PERTAMINA has caused the practice of unfair business competition.

Tabel 1.

NO	Researcher, Title and Year of Research	The Differences	
		Previous Research	Author's Research
1	Mei Indah Sari Sihombing, <i>Tinjauan Yuridis Mengenai Putusan Pengadilan Negeri Nomor 468/Pdt.P/2020/PN Jkt Sel tentang Pembatalan Putusan KPPU Nomor: 13/KPPU-I/2019 Dugaan Pelang-garan Pasal 14, pasal 15 ayat (2) dan Pasal 19 huruf (d) U Nomor 5 Tahun 1999 Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat Oleh Jasa Angkutan Sewa Khusus</i> , 2021	The focus of the research is only on the decision of the District Court Number 468/Pdt. P/2020 concerning Cancellation of KPPU's Decision Number: 13/KPPU-I/2019.	The author's research focuses on the results of KPPU's decision Number 13/KPPU-I/2019 and decision Number 468/Pdt.P/2020/PN Jkt Sel regarding alleged acts of discrimination
2	Hesti Erfiani, <i>Praktik Barrier To Entry yang Bertentangan dengan Pasal 19 Undang-Undang Nomor 5 Tahun 1999 dalam Prespektif HUndang-Undangm Ekonomi Syariah (Studi Kasus antara Grab dengan PT TPI dalam Putusan Komisi Pengawas Persaingan Usaha Nomor 13/KPPU-I/2019 tentag Jasa Angkutan Sewa Khusus)</i> , 2021	Examining barrier to entry practices which are analyzed from a sharia economic perspective (talaqqi al-rukban practice)	The author's research focuses on the results of the KPPU's decision Number 13/KPPU-I/2019 and the decision Number 468/Pdt.P/2020/PN Jkt Cell alleged Discriminatory
3	I Gusti Ayu Dewi Sawitri,	Research focused	The author's

	<i>Integrasi Vertikal dan Praktik Deskriminasi dalam Perspektif Hukum Persaingan Usaha Indonesia: Analisis Kasus PT Solusi Tansportasi Indonesia (Grab) dan PT Teknologi Pegangkutan Indonesia (TPI), 2021</i>	on activities prohibited under business competition law	research focuses on the results of the KPPU's decision Number 13/KPPU-I/2019 and the decision Number 468/Pdt.P/2020/PN Jkt Cell alleged Discriminatory
4	Khawiy Bawazir, Analisa Hukum Praktik Diskriminasi oleh Lion Air Group Terkait Kerja Sama Penjualan Kapasitas Kargo pada Jasa Pengangkutan Barang dari Bandara Hang Nadim ke Bandara Soekarono-Hatta, Halim Perdana Kusuma, Juanda, dan Kuala namu (Studi Putusan KPPU Nomor 07/KPPU-I/2020), 2022	This research is about KPPU's Decision Number 07/KPPU-I/2020), concerning discriminatory practices in business competition.	The author's research focuses on the results of the KPPU's decision Number 13/KPPU-I/2019 and the decision Number 468/Pdt.P/2020/PN Jkt Cell alleged Discriminatory
5	Deni Aulia Ahmad, Diskriminasi dalam Pengadaan Jasa Pembuatan Logo Baru PT. PERTAMINA (PERSERO), 2011	This research is about discrimination by PT. PERTAMINA (Persero)	The author's research focuses on the results of the KPPU's decision Number 13/KPPU-I/2019 and the decision Number 468/Pdt.P/2020/PN Jkt Cell alleged Discriminatory

## **G. Systematics of Discussion**

In order for the discussion in this research to be structured, directed and well understood, the systematics of the discussion are as follows:

**CHAPTER I:** This section is an introductory chapter which includes research background, problem formulation, research objectives, research benefits, research methods, previous research, and systematic discussion.

**CHAPTER II:** This section contains an explanation of theoretical studies or a literature review containing theories that are the basis for analysis in research that can clarify the direction of research.

**CHAPTER III:** This section contains the results of research and discussion, such as a description of the data obtained from the literature study to answer the formulation of the problem in the research.

**CHAPTER IV:** This section is the last chapter which contains conclusions and suggestions.

## CHAPTER II

### LITERATURE REVIEW

#### A. Definition of Business Competition Law.

Living in a capitalist environment does have a lot of freedom, especially in the economic system. In the economic sphere, all business actors have complete freedom in carrying out their business activities. Everyone is free to do business to get the maximum profit. According to Karl Marx, if there are conditions of free competition, bigger companies will eat smaller companies and result in the number of high-ranking officials will continue to decrease while the number of subordinates will continue to increase. If this condition occurs, then the iron wage law will apply and the existing large companies will become increasingly violent without paying attention to the negative impacts that will harm certain parties.<sup>11</sup> Thus, it can be seen that discipline regarding the conditions of business competition is considered important in order to realize the welfare of the community in accordance with the mandate of the 1945 Constitution.

The term business competition law emphasizes more on the aspect of competition in which this legal instrument contains matters concerning the

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<sup>11</sup> Nadir, S. H., M. H., *Hukum Persaingan Usaha Membidik Persaingan Tidak Sehat Dengan Hukum Anti Monopoli dan Persaingan Tidak Sehat*, (Malang: Universitas Brawijaya Press) 5.

regulation of how competition in effort that must be done.<sup>12</sup> In addition to the term business competition law, there are other terms such as anti-monopoly law, *unfair trade practices law*, and *fair competition law*. The purpose of the establishment of regulations in the world of business competition has been stated in Law Number 5 of 1999, specifically in chapter II article (3) which reads:

*“Maintaining public interest and increasing national economic efficiency as one of the efforts to improve people's welfare; create a conducive business climate through the regulation of fair business competition, thereby ensuring the certainty of equal business opportunities for large business actors, medium business actors and small business actors; prevent monopolistic practices and or unfair business competition caused by business actors; and the creation of effectiveness and efficiency in business activities.*

From the four goals mentioned above, it can be seen that one of the efforts to improve the welfare of the community is to establish conditions for good business competition.

The implementation of business competition in Indonesia must be carried out in accordance with the principles of economic democracy, as

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<sup>12</sup> Arie Siswanto, *Hukum Persaingan Usaha* (Bogor Selatan: Penerbit Ghalia Indonesia, 2002), 25.

stated in Article (2) of Law Number 5 of 1999: "*Business actors in Indonesia in carrying out their business activities are based on economic democracy by paying attention to the balance between the interests of business actors and the public interest.*". The term economic democracy is contained in Article 33 of the 1945 Constitution after the amendment, namely: "*The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, environmental insight, independence, and by maintaining a balance of progress and national economic unity*".

The characteristics of the principle of economic democracy that must be applied in a business competition environment include: (1) the economic system is carried out jointly based on the principle of kinship, (2) the production sector which is important and regulates the needs of people's lives will be controlled by the State, (3 ) the earth, water and natural resources therein will be controlled by the State and utilized optimally for the welfare of the people, (4) the sources of wealth and state finances are used with the consensus agreement of the people's representative institutions, accompanied by supervision of policies that are also in the people's representative institutions, (5) Indonesian citizens have the freedom to determine the desired job and have the right to a decent job and livelihood, (5) individual property rights are recognized by the State and

their use is prohibited from violating the public interest, (7) community initiatives, potential and creativity will fully developed with brick sans that do not harm the public interest, (8) the poor and neglected children are cared for by the State.<sup>13</sup>

Evidence of the establishment of regulations related to comprehensive business competition is the legitimacy of Law Number 5 of 1999 on March 5, 1999 which was published in the State Gazette of the Republic of Indonesia Number 33 of 1999. Initially this law was formed due to pressure from the IMF (International Monetary Fund). so that Indonesia has special rules related to the world of business competition. However, this does not mean that before the enactment of Law Number 5 of 1999, Indonesia did not have any regulation regarding business competition, only that it had not been specifically codified into a special regulation. This Anti-Monopoly Law has several regulations regarding prohibited agreements, prohibited activities, dominant positions, and matters related to the Business Competition Supervisory Commission as well as procedures for resolving cases at KPPU.

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<sup>13</sup> Tarmizi Abbas dan Min Konadi Manan, *Keterkatian Antara Demokrasi Politik, Demokrasi ekonomi, dan Sistem Ekonomi Kerakyatan*, vol. XXI, No. 3, Mimbar: Jurnal Sosial dan Pembangunan, 2005. 431

## **B. Per se illegal and Rule of Reason Approach**

Assessment of agreements or activities carried out by business actors is the authority of the business competition authority to determine the consequences of such agreements or activities causing unfair business competition or not. The assessment in question is using the per se illegal approach and the rule of reason. First, the illegal approach itself is an approach that states that a certain agreement or business activity is illegal, but does not require further evidence of the resulting impact. Activities that are considered illegal, usually include price fixing and resale price fixing for certain products. The application of this approach in Articles of Law Number 5 of 1999 is usually contained in articles that use the term "prohibited..." without being accompanied by the sentence "which can result in ...".<sup>14</sup>

Second, the Rule of Reason approach, or approach, is to evaluate certain agreements or business activities that create barriers that require further research from this approach to show the existence of unfair commercial competition.<sup>15</sup> Thus, interpretation of the applicable law based

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<sup>14</sup> Lewinda Oletta Sidabutar, *Pendekatan "Per Se Illegal" dan "Rule of reason" dalam Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Praktik Persaingan Usaha Tidak Sehat*, *Media Pembinaan Hukum Online*, Jurnal Rechtsvinding Online. 2, diakses pada tanggal 14 Februari 2022, pukul diakses melalui 10.41[https://rechtsvinding.bphn.go.id/jurnal\\_online/Lewinda%20Oletta%20RV%20Online%20-%20Final.pdf](https://rechtsvinding.bphn.go.id/jurnal_online/Lewinda%20Oletta%20RV%20Online%20-%20Final.pdf),

<sup>15</sup> Dr. Andi Fahmi Lubis, SE., ME., dkk, *Hukum Persaingan Usaha Antara Teks dan Konteks*. (Indonesia: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), 2009). 55

on the actions taken by business actors is absolutely necessary in the use of this approach. In addition, the rule of reason approach usually uses the sentence "which can lead to .." or "it is reasonable to suspect ..". This sentence has the intention that an activity or agreement must be investigated more deeply to find evidence that it is true or not that it was caused by unfair business competition after the activity or agreement was carried out.

Syamsul Maarif and BC Rikrik Rizkiyana provide their views on the concept of the rule of reason, certain competitive behavior by business actors is categorized as wrong if there are consequences of the action and can be proven to have harmed other economic actors and the national economic condition. Using a rule of reason approach to evaluate an agreement or activity can yield different results. First, the results which state that the agreement or activity is anti-competitive, but can also result in an efficiency that benefits consumers and the national economy. Second, the result which states that the activity or agreement is considered wrong even though the purpose of doing the act is efficiency, which in practice turns out to be abusing the dominant position to the detriment of other

business actors and consumers, and even has an impact on the national economy.<sup>16</sup>

The use of the per se illegal approach can be found in Article 6 of Law Number 5 of 1999 which reads: "*Business actors are prohibited from entering into agreements that result in one buyer having to pay a price different from the price paid by another buyer for goods and or/or services. the same service*". There is the word "prohibited..." in this article which states that the agreement has been prohibited because business actors have different behavior towards consumers by giving different prices to get the same goods or services.

Meanwhile, the use of the rule of reason approach can be found in Article 7 of Law Number 5 of 1999 which reads: "*Business actors are prohibited from entering into agreements with business competitors to set prices below market prices, which may result in unfair business competition*". There is a sentence "prohibited..." in this article, however, the appropriate approach to understanding the meaning of this article is the rule of reason approach. Because evidence is needed for unfair business competition as a result of a price fixing agreement below the market price. According to the author, to determine the use of the per se illegal approach

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<sup>16</sup> Wihelmus Jemarut, *Pendekatan Rule of Reason dan Per Se Illegal dalam Perkara Persaingan Usaha*, Vol. 3, No. 2, 2020, Widyia Yuridika: Jurnal Hukum. 379

or the rule of reason, it is not only because there is a sentence "forbidden" or "which results in .." but still has to pay attention to the overall sound of the article in Law Number 5 of 1999.

### **C. Discrimination in Business Competition Law**

Regulations regarding the prohibition of acts of discrimination are contained in Law Number 5 of 1999 concerning Anti-monopoly and Unfair Business Competition, specifically in article 6 and article 19 letter (d). Article 6 relates to the existence of price discrimination, which is stated in article 6 that business actors are prohibited from giving different prices to consumers from one another for the same goods or services. Meanwhile, Article 19 letter (d) states that business actors, either alone or together with other business actors, are prohibited from carrying out activities that can lead to monopolistic practices and unfair business competition, one of which is in Article 19 letter (d) namely by conducting monopolistic practices. (discrimination) with certain business actors.

The Regulation of the Business Competition Supervisory Commission concerning Guidelines for the implementation of article 19 letter (d) of Law Number 5 Year 1999 was finally made for the implementation of the contents of the article. The formation of this guideline is motivated by the impact and characteristics of very broad acts of discrimination. Therefore, this guideline was made to serve as the basis

for an analysis of the aims and impacts of discriminatory practices. The objectives listed in the Guidelines for Article 19 of Law Number 5 of 1999 include:

- a) Provide a clear and precise understanding of the prohibition of discriminatory practices as referred to in Article 19 letter (d) of Law Number 5 Year 1999;
- b) Provide a basis for understanding and clear directions in the implementation of article 19 letter (d) so that there is no other interpretation other than those described in this guideline;
- c) It is used by all parties as a basis for behavior so that no parties are harmed and furthermore to create conditions for business competition that grow naturally.

Based on what has been stated regarding the purpose of establishing the Guidelines for the Implementation of Article 19 letter (d) of Law Number 5 of 1999, the important point is that there is a conformity in the interpretation of acts of discrimination that result in the practice of unfair business competition. However, this Guideline article 19 letter (d) is not intended to explain how the Business Competition Supervisory Commission (KPPU) conducts audits to enforce the law or to provide advice or policies, but to convey its scope, which explains that its focus is on providing a clear understanding of limits on provisions prohibiting

market control. Thus, the law enforcement process by KPPU still prioritizes the views and decisions of the commission so that it is not limited to the Guidelines or in other words the implementation guidelines of article 19 letter (d) do not limit the KPPU's interpretation in examining a business competition case until the decision-making process.<sup>17</sup>

The meaning of discrimination is the difference in treatment of fellow citizens. Discrimination in a business competition environment means different treatment from a person or group of business actors towards other people or certain groups for unfair reasons. Every action that occurs, always has several factors that are the reasons why the action is finally carried out. It is the same with discriminatory behavior, for example, unfair actions are carried out to prevent potential competitors from entering the market or removing competing business actors from the market. An act of discrimination is closely related to a significant market authority. In fact, for entrepreneurs who plan to discriminate either alone or in collaboration with other entrepreneurs if both do not have great power in the same market, it is very difficult to influence prices in that market.<sup>18</sup>

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<sup>17</sup> Peraturan Komisi Pengawas Persaingan Usaha Nomor 3 Tahun 2011 tentang Pedoman Pelaksanaan Pasal 19 Huruf (d) dalam Undang-Undang Nomor 5 Tahun 1999 tentang Anti Monopoli dan Praktik Persaingan Usaha Tidak Sehat. 2

<sup>18</sup> Prof. Dr. H. Sudiarto, S. H., M. Hum., *Pengantar Hukum Persaingan Usaha di Indonesia*, ( Jakarta: Kencana 2021) .76

Article 19 letter (d) of Law Number 5 of 1999 as a whole reads:  
*"Business actors are prohibited from carrying out one or several activities, either alone or with other business actors, which can result in monopolistic practices and or unfair business competition in the form of: (a) ) refuse and or prevent certain business actors from carrying out the same business activities in the relevant market; or (b) prevent the consumers or customers of their competing business actors from entering into business relations with their competing business actors; or (c) limit the circulation and or sale of goods and or services in the relevant market; or (d) carry out monopolistic practices against certain business actors.*

Several elements contained in Article 19 letter (d) that must be met to make an action of a business actor fall into the category of discriminatory practice or not, namely the element of business actor, element of doing it alone or together, element of other business actor, element of committing one or several activities, elements that can lead to monopolistic practices, elements of unfair business competition, elements of discriminatory practices.<sup>19</sup> All of these elements must be met along with the Commission Council's interpretation after conducting an examination of the case at hand.

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<sup>19</sup> Peraturan Komisi Pengawas Persaingan Usaha Nomor 3 Tahun 2011 tentang Pedoman Pelaksanaan Pasal 19 Huruf (d) dalam Undang-Undang Nomor 5 Tahun 1999 tentang Anti Monopoli dan Praktik Persaingan Usaha Tidak Sehat. 5

The relationship between the contents of Article 19 letter (d) with several other articles in Law Number 5 of 1999 is also explained in KPPU's Regulation Number 3 of 2011 concerning Guidelines for the Implementation of Article 19 Letter (d), including the relationship with Articles 17 and 18 concerning monopoly and monopsony, article 19 on market domination, article 22 on conspiracy, and article 25 on dominant position. The relationship between the contents of article 19 letter (d) with other articles is seen from the side that article 19 letter (d) is included in the section of article 19.

First, related to articles 17 and 18 regarding monopoly and monopsony, the meaning of control in this activity has similarities but also has difference. As for the difference, namely the element of control in Article 19, the main point is the impact of unfair business competition felt by other business actors, while Articles 17 and 18 themselves are not necessarily aimed at controlling the market because this activity is usually more aimed at fulfilling personal gains.

Second, it is related to article 19 regarding market domination. Of course, article 19 letter (d) is an inseparable part of article 19 itself and is an integral part. There are four activities stated in this article that are prohibited to be carried out, namely activities aimed at preventing certain business actors from doing business in the same market, preventing

consumers from competing business actors from conducting business relations with those competing business actors, limiting the circulation or sale of goods. or services in the relevant market and one of them includes discriminatory practices against certain business actors. There are differences in the conditions of the first three activities with discriminatory activities with other business actors from the side of the aggrieved party. If the first three activities of the aggrieved party are business actors competing in the same market, while for discriminatory activities as referred to in article 19 letter (d) they may not be business actors competing in the same market from discriminatory business actors.

Third, related to article 22 concerning the prohibition of conspiracy activities. Between article 19 letter (d) and article 22 have the same consequences that will arise later. However, there are differences in the things that are prohibited from the contents of the article. Article 22 prohibits conspiracy activities, while Article 19 letter (d) prohibits acts of discrimination as a result of conspiracy activities. Then the fourth point is related to article 25 regarding the dominant position. The existence of a dominant position can also end up with an element of discrimination against other business actors. However, there is a different side of the two, namely the requirement for a minimum limit of market control in the mastery of articles as the contents of article 19 letter (d).

## CHAPTER III

### **Comparative Analysis of Verdict Number 13/KPPU-I/2019 and Verdict Number 468/Pdt.P/2020/South Jakarta State Court**

#### **A. Background of the Alleged Violation of the Business Competition Law**

The case in KPPU's Decision Number 13/KPPU-I/2019 makes PT Solusi Transportasi Indonesia (Grab) as Reported Party I and PT Teknologi Pengangkutan Indonesia (PT TPI) as Reported Party II. Grab is a company in the form of a legal entity which was established on August 11, 2015 based on Deed No. 19 drawn up by Notary Eduard Suharto Wiryomartani, SH, M. Kan., in West Jakarta. Grab does business by providing a digital platform to make it easier for transportation service providers to get orders for the transportation services provided. So, to provide convenience in realizing these business activities, this company cooperates with transportation service providers.<sup>20</sup>

PT TPI as Reported Party II is a company in the form of a legal entity which was established on December 16, 2015 based on Deed Number 36 made by Notary Mala Mukti, SH, LL.M., in South Jakarta. This company carries out its business activities by providing passenger transportation services using public passenger cars that serve door-to-door transportation

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<sup>20</sup> Putusan Nomor 13/KPPU-I/2019 tentang Dugaan Pelanggaran Pasal 14, Pasal 15 ayat (2), dan Pasal 19 huruf (d). 362

within the administrative area and tariffs based on an agreement between users and transportation providers as well as passenger transportation using cars with special markings equipped with a meter that serves door-to-door transportation. door with limited area.<sup>21</sup>

The characteristics of the report that will be submitted to the KPPU must include, among others: (a) the complete identity of the reporter, the reported party, and the witness; (b) a clear, complete and accurate description of the alleged budgeting; (c) attachment of evidence; (d) a copy of the identity of the reported party; (e) sign a report. This provision is contained in Article 11 paragraph (3) of KPPU's Regulation Number 1 of 2010 concerning Procedures for Handling Business Competition Cases.<sup>22</sup> Or at least only contain the identity of the complainant and the reported party, a clear and accurate description of the alleged fraud, and evidence of the alleged violation. This provision is stated in article 3 number (4) of KPPU's Regulation Number 1 of 2019 concerning Procedures for Handling Monopolistic Practices and Unfair Business Competition. It was found that the facts in the trial of witnesses only conveyed information, so that KPPU took the initiative to conduct research on the information on the alleged violation. Article 3 of KPPU's Regulation Number 1 of 2019 states that everyone who knows that there has been or is reasonably suspected of a

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<sup>21</sup> Ibid. 368

<sup>22</sup> Peraturan KPPU Nomor 1 Tahun 2010 tentang Tata Cara Penanganan Perkara Persaingan Usaha, 9.

business competition violation has the right to report the matter to KPPU accompanied by the completeness of the reporting criteria as stipulated in the KPPU's regulations.

There are two sources of cases in which KPPU has the right to process investigations regarding alleged violations, namely based on reports and initiatives. Business competition cases originating from reports are reports from the public who feel aggrieved or from business behavior that is harmed by the reported actions of business actors. The business competition case originating from the initiative is a problem that will be examined by KPPU because of its own initiative as a follow-up to an alleged or indication of violation of Law Number 5 of 1999.

The characteristics of a business competition case originating from reports or initiatives can be seen from the case number crack. Cases based on a written report (case number/ KPPU-L (report)/ year) while cases based on written initiative (case number/ KPPU-I (initiative/ year)).<sup>23</sup> Judging from the case number on the copy of the decision Number 13/ KPPU-I/2019 for alleged violations of Article 14, Article 15 paragraph (2), Article 19 letter (d), the source of this business competition case is on the basis of the KPPU's initiative

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<sup>23</sup> Dr. Andi Fahmi Lubis, SE, ME, dkk, *Hukum Persaingan Usaha Antara Teks dan Konteks*, 326.

(Oraski) North Sumatra, who stated that there was an allegation that Grab made a system that was more profitable for one of its partners, namely PT TPI.<sup>24</sup> The contents of the decision Number 13/KPPU-I/2019 provides an explanation regarding the origin of the case for this alleged violation. there is one witness to the KPPU Investigation Team who has provided information to the KPPU Medan Regional Representative Office regarding the alleged violation committed by Grab, namely acts of discrimination against business partners. the witness refused to be declared a reporter because in fact he did not provide a report according to the criteria for a valid report.<sup>25</sup> The non-fulfillment of the requirements for this report to be received became the basis for KPPU to declare that the business competition case Number 13/KPPU-I/2019 was a case originating from the initiative.

## **B. Legal Considerations of the Business Competition Supervisory Commission in KPPU's Decision Number 13/KPPU-I/2019**

Next will be discussed regarding the considerations of the Commission Council regarding the discrimination actions carried out by Grab as Reported Party I and PT TPI as Reported Party II in Decision Number 13/KPPU-I/2019 The acts of discrimination referred to are:

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<sup>24</sup> Kronologi Kasus Grab dan TPI, Sekaligus Tanggapan Hotman Paris, <https://www.tribunnews.com/bisnis/2020/07/03/kronologi-kasus-grab-dan-tpi-sekaligus-tanggapan-hotman-paris>. Diakses pada tanggal 15 Maret 2022, pukul 15.18

<sup>25</sup> Putusan Nomor 13/KPPU-I/2019,388.

- a. Regarding the enactment of different incentive calculations between PT TPI partner drivers and non-TPI partner drivers.

The KPPU Commission Assembly's consideration is to consider the differences in the incentive system between individual partners and PT TPI partners. For individual partners, a trip system applies, namely the achievement of incentives within 1 (one) day the driver operates which is divided into several trip levels or categories, while for Grab partners a metered system applies, namely the achievement of incentives within 1 (one) week of the driver operating which is divided into several metered tiers. (*fares*). According to the Panel of Judges, the metered system (*fares*) tends to make it easier for Grab partners to achieve the incentives set every week. With this system, PT TPI partners can add up their metered income at a later date, which if the driver doesn't operate on a certain day, they can still accumulate metered income to get incentives per week. Meanwhile, drivers who are not PT TPI partners (individual partners and others) cannot do the same, because the incentive scheme is obtained daily.

In addition, the metered system causes Grab partners to take a large number of orders or at least driver partners will not pick up passengers on short distances, while the trip system causes individual partners to take trips either short or long distances because individual

partners are prioritized is the maximum number of trips in one day to achieve the incentive. Based on the facts of the trial, there have been several changes to PT TPI's partner incentives resulting from discussions between PT TPI and Grab. Meanwhile, with individual partners, Grab has never opened a negotiation room regarding the applicable incentive system. So, the Commission Council assessed that Grab provided PT TPI facilities to determine the incentive system to be applied. And based on these considerations, the Commission Council considers that the calculation of incentives using the metered system implemented by Grab for Grab partners is more profitable than the trip system imposed by Grab for individual partners. And this is a different treatment from Grab for its partners.

- b. Regarding licenses for different operating hours between PT TPI partner drivers and non-TPI partner drivers.

The Commission Council's considerations regarding the application of different operating hours, namely the Commission Council assessed that there was no difference in operating hours, but differences in the hours of obtaining incentives. PT TPI partners are valid 24 hours X 1 day X 7 days to get weekly incentives. Meanwhile, Non-Grab Partners start from 05.00-23.59 (19 hours) to achieve incentives in a day. Thus, the Commission Council hereby assesses that there is a different treatment related to operating hours to achieve

incentives, which will be more profitable for the partner of Portfolio

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c. Regarding loyalty program

The KPPU Commission Council's consideration regarding the existence of a loyalty program, which begins with considering the meaning of the intended loyalty program. Loyalty Program is a program owned by Grab that will be provided to Grab partners. This program, provides an opportunity for drivers to have private vehicles in the fifth year of cooperation and this program will provide a special loyalty incentive that will be given at the end of the cooperation year (five years) to drivers to buy the vehicle they used during their partnership with PT TPI.

The Commission Council considers that Grab as an application company that continues to collaborate with driver-driving service providers should provide opportunities or at least offer cooperation to both Grab and other Grab partners in the form of Loyalty programs or other programs under Grab's policy. The Commission Council stated that there was a special case against Grab, even though Grab has several other partners.

d. Regarding the creation of video content for promotion

The Commission Council's assessment regarding this matter is that Grab, which provides the application, should carry out

promotions in the same form to all its partners. Then, the Commission Council assessed that after examining the content of the video in question, that Grab had never carried out promotions in the same form to its other partners. In the facts of the trial, the video delivered the opening sentence, "Welcome to TPI" and in the background in the promotional video you can see Grab's standing banner. so that according to the Commission Council the promotions carried out were promotions for prospective driver partners carried out by Grab and PT TPI to join PT TPI. This shows that there is a relationship between Grab's interests and PT TPI.

The promotional video contains promotions related to the Gold program (loyalty program) that will be run by PT TPI. According to the Commission Council, the promotion that Grab should do for its partner PT TPI is about the application used by PT TPI, namely the Grab app or at least promoting PT TPI as a Grab partner. Not a promotion related to the Gold program. In addition, in the contents of the video, Grab explains that it will give priority orders to drivers. So, on some of these considerations. The Commission Council considered that there was preferential treatment by Grab to PT TPI.

e. About the priority order program Priority

The priority of order is giving PT TPI partners priority of order without having to activate any features in the driver application that causes a decrease in the number of individual partner orders, and what is meant by the priority order feature is a feature that must be activated first to receive incoming orders from passengers. The consideration of the Commission Council regarding the discriminatory act in question refers to the testimony of witness Abdi Fauzan Siregar in the trial, what is meant by priority order is Grab's behavior in giving consumer orders. While the "lightning symbol" feature is an application that makes it easier for drivers to get passengers. Referring to the statements of Witness David Bangar Siagian and Witness Daniel Ompu Sunggu, individual partners in the Medan area once held a demonstration demanding that priority orders be returned according to advertisements and brochures at the beginning of recruitment and this information is in accordance with the statement of Witness Sarma Hutajulu as a member of the DPRD of North Sumatra Province (2014-2019 ).

Referring to the statements of PT TPI's partner witnesses, the status of a Witness who has good performance will affect the number of orders that will be obtained, but in fact the status of a Witness with good performance does not affect the number of orders obtained by

the driver-partner. The Commission Council considered that the statement regarding the status of the Elite Plus driver that was conveyed by Iki Sari Dewi from the Grab party that it would receive priority orders for drivers with good performance was inconsistent, because in fact it had no effect. Then, based on the comparison table for the number of Grab and Non-Grab partner drivers.<sup>26</sup> Therefore, the Commission Council considers that giving priority orders is proven as an act of discrimination in article 19 letter (d).

- f. Regarding the implementation of the open suspend system, which differs between PT TPI partner drivers and non-TPI partner drivers.

Open suspend is meant in this case the sanctions imposed on drivers for violating the code of ethics as Grab partner drivers. As a result, the vehicle and driver cannot operate during the suspend period. However, PT TPI partners can use the open suspend procedure so that the vehicle can still operate even if the driver is not operating.

The Panel of Judges considered related to this, namely the testimony of witness Ricat Fernando who had stopped collaborating with Grab and at that time the Witness had asked Grab to turn off the driver's account and replace it with the buyer of the car. However, at that time, Grab refused because there were no openings for new

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<sup>26</sup> Appendix Table II

drivers. There is a statement from Witness Haris Effendi who stated that the car provided by Grab for its partners who participated in the flexi program was a car that had been withdrawn by Grab because the previous driver was unable to pay for the rental. Thus, this has led the Commission Council to consider that the different open suspend treatment makes PT TPI more profitable than other Grab partners.

**C. Legal Considerations of the Panel of Judges in the Decision of the South Jakarta District Court Number 486/Pdt.P/2020/PN Jkt Sel.**

After knowing the contents of the KPPU's decision, the reported parties namely Grab and PT Teknologi Pengangkutan Indonesia (PT TPI) objected to what was stated by the Commission Council in the decision. So, Grab and PT TPI decided to file an objection to the South Jakarta District Court. An objection request is an application for examination to the District Court submitted by the reported party who does not accept the contents of the KPPU's decision, this is explained in the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2019 concerning Procedures for Filing an Objection to the Decision of the Business Competition Supervisory Commission.

Result of Decision Number 468/Pdt.P/2020/PN Jkt Sel regarding the objection to Decision Number 13/KPPU-I/2019, namely canceling the

contents of KPPU's decision Number 13/KPPU-I/2019 in its entirety. This research was conducted by focusing on matters concerning acts of discrimination which are a violation of Article 19 letter (d) of Law Number 5 of 1999. Regarding forms of discrimination committed by Grab as Grab and PT TPI as Grab, such as:

- a) Regarding the enactment of different incentive calculations between PT TPI partner drivers and non-TPI partner drivers. The calculation of incentives for PT TPI is considered more profitable than the calculation of incentives that apply to other Grab partners. Such as Grab's individual partners, INKOPPOL Cooperative, PT Cipta Lestari Trans Jakarta, Indonesian Rental Association Service Cooperative, and PT CSM Corporatama.
- b) Regarding the different driver operating hours between PT TPI partner drivers and non-TPI partner drivers. TPI partner driver operating hours are more than other Grab partners. For TPI partner drivers it is valid for 24 hours while for other Grab partners it is only valid for 19 hours.
- c) About the loyalty program. The loyalty program in question is a special program run by PT TPI. This program provides an opportunity for PT TPI partners to get the vehicle they rent to become private property by working together for 5 years and will get

special incentives at the end of the cooperation period to redeem the vehicle in question.

- d) About the creation of video content for promotion. Where the making of a promotional video is only done for PT TPI in order to attract prospective drivers. As for other Grab partners, the same thing is not done.
- e) About priority order program. Priority orders will be given to PT TPI partners, so TPI partner drivers will get more consumer orders than other Grab partners.
- f) Regarding the implementation of the different open suspend system between PT TPI partner drivers and non TPI partner drivers. The meaning of open suspend is the permitting of the driver's vehicle that is suspended to continue to be used. Grab allows PT TPI Partner driver's vehicle to continue operating even if the driver is not operating. This is different from other Grab partners, if the driver is suspended, the driver's vehicle cannot operate.

In conducting an assessment of an alleged violation of business competition, such as an act of discrimination, both the Investigator Team and the Commission Council are required to carry out a series of assessments to evaluate the characteristics of the action, it can be stated that discriminatory activities cause unfair business competition. This series of assessments has been regulated in KPPU's Regulation Number 1 of 2019 concerning Guidelines for the

implementation of Article 19 letter (d) of Law Number 5 of 1999. Among them are:

1) Determination of the relevant market

Article 1 number 10 in LAW Number 5 of 1999 provides a definition regarding the relevant market. "*The relevant market is a market related to a certain marketing range or area by business actors for the same or similar goods or services or substitutes for these goods or services*". There are two things that need to be identified in determining the relevant market, namely the identification of the product or service in question and the identification of the geographical area.

Product identification of goods or services is defined as a competitor's product for a particular product and then combined with other products that can replace the product. While the geographic market is an area where business actors can increase prices without attracting or losing money due to the loss of large consumers, who move to other economic actors outside the area. This is partly due to the fact that the transportation costs that must be incurred by consumers are not so large, so that they do not cause consumers to switch to other products.<sup>27</sup> Identification of relevant

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<sup>27</sup> Peraturan Komisi Pengawas Persaingan Usaha Nomor 3 Tahun 2009 tentang Pedoman Pelaksanaan Pasal 1 angka 10 Undang-Undang Nomor 5 Tahun 1999. 11

markets is very necessary to determine the potential entry of competing business actors in the same market.

2) Identifying market

*Market control* is the ability of business actors to influence the formation of prices or quantities of a production or other aspects of a market. What is meant by these other aspects are marketing, purchasing, distribution, use or access to certain goods or services in the relevant market. Then, these activities can be carried out together, alone, and can consist of one or several activities at once.<sup>28</sup> Thus, market control is the ability of buyers or sellers to influence the price or quantity of goods, services, or commodities (products that can be traded in a market).

Market control is closely related to the existence of market power or *market power*. If one business actor either individually or in groups with other business actors to dominate the market if he does not have one or all of the market power, then market control will be impossible to realize. Market control can take the form of control in terms of price formation, distribution network,

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<sup>28</sup> Peraturan Komisi Pengawas Persaingan Usaha Nomor 3 Tahun 2009 tentang Pedoman Pelaksanaan Pasal 1 angka 10 Undang-Undang Nomor 5 Tahun 1999. 11

production, marketing, purchasing, or access to important facilities under their control. In essence, control can occur if a business actor has a dominant position, market power, or has special factors such as ownership of Intellectual Property Rights (IPR), government regulations, exclusive rights (licenses) for distribution networks, financial support, consumer loyalty, and others. .

3) Discriminatory practices against certain business actors

This stage is the stage of determining the different treatment between business actors. All forms of different treatment against certain business actors may be included in the scope of article 19 letter (d). however, whether or not the discriminatory act can be prohibited or not is the area of the rule of reason which is the authority of the KPPU to evaluate the form of the act accompanied by relevant evidence.

4) Impacts and indications of discriminatory activities

Discriminatory actions of business actors against certain business actors must have a real impact on unfair business competition, either at the vertical level (in the market for victims of discriminatory practices) or horizontally (in the same market as the discriminatory actor). The guideline Article 19 letter (d) provides several examples of the impact of discriminatory practices, but is

not limited to what has been mentioned. Such as the existence of business actors who are eliminated in the relevant market, the reduced role of business actors in the relevant market, the existence of one or a group of business actors who can impose their will in the relevant market, there are barriers to competition in the relevant market, such as barriers to entry for new business competitors, reduced activities. fair business competition in the relevant market, monopolistic practices occur, consumers have little choice of a product or service.

In evaluating the impact of such discriminatory actions, there are several indications such as the existence of different treatment of certain business actors in the relevant market, the motive for the different treatment that is not accompanied by reasonable legal, economic, technical justifications, and other acceptable reasons. , and the impact of the different treatment causes unfair business competition.

#### 5) Violation analysis

There are two different sides to an act of discrimination, namely the pro-competition side and the anti-competitive side. The analysis of this violation can be carried out by evaluating the reasons for business actors to treat certain business actors differently, such as economic or other acceptable reasons.

Furthermore, it will discuss how the South Jakarta District Court judges considered the violation of article 19 letter (d) regarding discriminatory practices in the Grab and PT TPI cases in Decision Number 468/Pdt.P/2020/PN Jkt Sel along with their analysis using the *rule of reason* which has several stages of evaluating discriminatory practices in the Implementation Guidelines of Article 19 letter (d).

First discussion is about relevant market between PT TPI and the other Grab partners. In article 19 letter (d) in Law Number 5 of 1999 reads: "Business actors are prohibited from carrying out one or more activities, either alone or with other business actors which may result in monopolistic practices and unfair business competition in the form of: (d) carry out discriminatory practices against certain business actors. According to expert witness testimony in Decision Number 468/Pdt.P/2020/PN Jkt Sel (Mr. Faisal Basri), certain business actors referred to in this article are business actors who have the same characteristics. In this case, the relevant market in question is a special rental transportation service that operates in the Jabodetabek, Medan, Makassar and Surabaya areas

Then, the Panel of Judges gives a first assessment of the characteristics of PT TPI and other Grab partners (Grab Individual Partners, INKOPPOL Cooperatives, PT Cipta Lestari Trans Jakarta, Indonesian Rental Association Service Cooperative, and PT CSM Corporatama) are similar or not. The results of the consideration of the Panel of Judges regarding this matter stated that the

characteristics of PT TPI with other Grab partners were not *apple to apple* (different characteristics).

The consideration of the Panel of Judges on the statement of the difference in characteristics in question, namely (a) partners who join PT TPI are partners who do not have private cars and will rent vehicles to PT TPI as a business actor in the field of car rental services in collaboration with the Grab application company. Meanwhile, other Grab partners are partners who own private cars and work directly with Grab. In essence, the owner of PT TPI's partner vehicle is Grab, while the owner of the other Grab partner vehicle is an individual; (b) The mechanism for joining partners with PT TPI must go through a selection, if they pass the selection then register online with Grab, while other Grab partners immediately join Grab after that they just register to the cooperative; (c) PT TPI conducts training for its partners independently through more stringent tests than other Grab partners; (d) PT TPI partner rental payments are made weekly to Grab, while other Grab partners, if they are members of a cooperative, pay directly to the cooperative; (e) Differences in vehicle technology used. PT TPI partners have CCTV and GPS facilities; (f) Regarding business risks. PT TPI has a greater business risk than other Grab partners, because PT TPI is required to pay loans to leasing or banking, spare parts, and has the possibility of embezzlement of rented vehicles. Meanwhile, other Grab partners do not have a business risk like PT TPI. So, the conclusion from these considerations is that the

characteristics of PT TPI and other Grab partners (individuals or cooperatives) are different. So that it can produce a different form of cooperation.

The second determination of the relevant market is regarding the geographical market for which Grab and PT TPI's business operates. In the Report of Alleged Violations, there are 4 geographic areas stated by the KPPU's investigatory team, namely Jabodetabek, Makassar, Medan, and Surabaya.<sup>29</sup> Even though they are in the same market, namely regarding special rental transportation services, PT TPI and other Grab partners have different characteristics because there are differences in their business systems.

Then, the second discussion is about identifying market mastery between Grab and PT TPI. One of the considerations in evaluating market control is the ownership of *market power* or market power. The statement that Grab and PT TPI have entered into an agreement aimed at controlling the market is different from what was considered by the Panel of Judges in Decision Number 468/Pdt.P/2020/PN Jkt Sel, the Panel of Judges considered that there was a trial fact that the Investigator Team did not submit evidence to strengthen this statement, either research or research evidence or witness statements regarding the percentage of competition in the market share of Special Leasing Transportation business actors, either before or after Grab and PT TPI entered into an agreement to use the Grab application.

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<sup>29</sup> Decision Number 468/Pdt.P/2020/PN Jkt Sel, 447

All statements in the trial must be accompanied by evidence that can corroborate the statement. The evidence referred to in the settlement of business competition cases are (1) witness statements, expert statements, (2) letters and or documents, (3) instructions, and (4) statements of business actors.<sup>30</sup> However, it is not only limited to this. In business competition, there is indirect evidence that can be accepted. Indirect evidence is evidence that does not directly describe the contents of the agreement or the parties to the agreement, consisting of evidence of communication between business actors suspected of committing violations and economic evidence regarding the market and the behavior of the perpetrators of violations.<sup>31</sup>

So, according author's opinion of the Investigator Team's statement which stated that there was a special rental market domination in the four geographic markets of Grab and PT TPI, it was not proven to be accurate so that the Panel of Judges considered that the KPPU Commission Council which decided that the market share of Grab was 70% had no basis because not supported by evidence. Then, based on data on the number of PT TPI partners with other Grab partners attached by Grab.<sup>32</sup> That all Grab partners have increased and are not proven to dominate the market, this is considered under the legal considerations of the Panel of Judges.

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<sup>30</sup> Undang-Undang Nomor 5 tahun 1999 tentang Anti-Monopoli dan Persaingan Usaha Tidak Sehat, pasal 42.

<sup>31</sup> Mahmud Siregar, *Bukti Tidak Langsung (Indirect Evidence) dalam Penegakan Hukum Persaingan Usaha*, Jurnal Hukum Samudra Keadilan, Vol. 13, Nomor 2, 2018, 188.

<sup>32</sup> Appendix Table 1

And the third discussion is about discriminatory practices against certain business actors and the judges's legal consideration. The forms of discrimination carried out by Grab are:

First, regarding the enactment of different incentive calculations between PT TPI partner drivers and non-TPI partner drivers. There are several considerations of the Panel of Judges regarding the discriminatory act in question, including: (a) PT TPI and other Grab partners have different characteristics based on the relevant market analysis; (b) In terms of business risk, PT TPI has a greater risk than other Grab Partners; (c) PT TPI's vehicle has security facilities namely CCTV and GPS; (d) The quality of PT TPI's company is proven to be good because it has received the Best ASK Award in Jabodetabek by BPTJ; (e) From a business point of view, PT TPI has the right to negotiate an incentive scheme with Grab, and this is considered reasonable; (f) The Investigator Team did not include evidence of alleged discrimination in the geographical areas of Surabaya and Makassar. So that the Panel of Judges cannot provide a comprehensive evaluation. Therefore, based on the statements above, the Panel of Judges considers that there is no evidence of discriminatory behavior due to the difference in the incentive scheme that applies between PT TPI and other Grab Partners.

Second, regarding licenses for different operating hours between PT TPI partner drivers and non-TPI partners. The Panel of Judges' considerations regarding different operating hours, namely the existence of security reasons, that

PT TPI's vehicles are accompanied by CCTV and GPS, there are crime-prone hours, and the quality of the drivers required ( considering that PT TPI has conducted a rigorous selection of prospective drivers). The reason for this security is due to the fear of unwanted things such as accidents, robberies and others. So, the difference in operating hours is very reasonable. According to expert Prof, Ningrum Natasya, this is included in economic reasoning (economic reasons and security reasoning). Therefore, based on these statements, the Panel of Judges considers that there is no evidence of discrimination over differences in operating hours licensing that applies between PT TPI and other Grab partners. Based

Third, regarding the loyalty program that only applies to PT TPI partners. On the testimony of witness Iki Sari Dewi that the loyalty program in question is a program owned by Grab and then run by PT TPI regarding the provision of special incentives to partners who are loyal to Grab for 5 years. The panel of judges related to the discriminatory act in question, namely regarding the background of the selection of PT TPI as a partner running the loyalty program, because the PT TPI company dared to take a big risk to cooperate with a leasing company or bank in which PT TPI's vehicle would be rented out to its driver partner. Many people who do not own a car can rent it from PT TPI and then use the Grab application and earn income from it. So, this special program is offered to TPI as a reciprocal so that *win-win conditions are* for Grab and PT TPI. Based

on this information, the Investigator Team did not provide any rebuttal or evidence for the statement.

Then there are testimonies from other Grab partners, namely the INKOPPOL Cooperative, Pt Cipta Lestari Trans Jakarta, the Jasa Perkumpulan Rental Indonesia Cooperative, and PT CSM Corporatama which essentially denies allegations of alleged business competition violations in the form of discriminatory practices carried out by Grab to PT TPI. Therefore, the Panel of Judges considered that there were acceptable economic and business reasons or justifications for the validity of the loyalty program only for PT TPI and not for other Grab partners.

Fourth, about the creation of video content. Content in video aims to attract potential Grab driver-partners. The panel of judges' considerations regarding the discriminatory act in question were the fact in the trial that the promotional video was a video about the promotion of the loyalty program run by PT TPI by the Grab Director, the reason for the promotion was because many prospective drivers were unsure of the existence of a loyalty program, and all Grab partners are allowed to use the Grab symbol in any of their interests such as promotional activities or other activities. Then, the Panel of Judges considered that the KPPU's Investigation Team had misjudged the purpose of creating video content. Because basically there is an economic reason or justification related to the creation of video content, namely to promote the loyalty program so that prospective drivers believe in the program scheme and eventually become

partners with PT TPI. Another trial fact is that there are no PT TPI competitors over other Grab partners who object to the existence of a loyalty program that only applies to PT TPI and the Investigator Team does not include evidence of alleged discrimination in the geographic areas of Surabaya and Makassar. So that the Panel of Judges cannot provide a comprehensive evaluation. So, given these considerations, the Panel of Judges assessed that there was no evidence of discrimination regarding the creation of promotional video content because in fact Grab also did the same thing to its other partners for promotion.

Fifth, about priority order program. There are 2 definitions related to priority order program. First, is the priority order feature, which is a technology feature found in the Grab application. Second, prioritizing an order by a consumer to a Grab driver-partner. Regarding the priority order feature in the Grab application. This feature aims to be able to receive orders automatically without the need to press the accept order button. Then, this feature has been socialized to all drivers, both PT TPI partners or other Grab partners. So, the consideration of the Panel of Judges is that no acts of discrimination were found in accordance with Article 19 letter (d) of Law Number 5 of 1999 regarding the application of priority orders in the definition of priority orders as the priority order feature in the Grab application.

Regarding the second understanding, namely prioritizing an order by a consumer to a Grab driver-partner. The consideration of the Panel of Judges is that there are levels of driver levels, namely Elite Plus and Elite program drivers.

This program is a determinant of driver status. Drivers who have met certain requirements will achieve the best program and will get various benefits. And information about the criteria for Elite Plus and elite drivers has been given or informed to all Grab driver partners.

Then, the Investigator Team presented 14 witnesses, in which the witness was the driver who was reported to the police on charges of embezzling a car. Seeing this information, the Panel of Judges considered that the quality of witnesses should also be considered in providing a legal assessment. then, to find out if there is a priority order, KPPU must open the Grab application algorithm system that can explain the driver's work track and achievements. Meanwhile, during the investigation, KPPU never checked the algorithm system in question. Therefore, based on the aforementioned considerations, the Panel of Judges assessed that the treatment of priority orders as a form of discriminatory behavior as alleged by the KPPU Commission Council was not proven.

Sixth, about implementation of the open suspend system, which differs between PT TPI partners and the other Grab partners. Open suspend drivers, what is meant here is that the vehicles rented by PT TPI to its partners can still operate after a violation of the code of ethics while other Grab partners cannot be operated again. The Commission Council's considerations regarding the discriminatory act in question are the differences in characteristics of PT TPI and other Grab partners, such as PT TPI's partner vehicles are not owned by individuals but belong to PT TPI which are leased and the ownership of different

levels of risk between PT TPI and other Grab partners. Then regarding the violation of the code of ethics, it is the fault of the driver, not the vehicle used, either PT TPI or other Grab partners can apply for an open suspend to Grab. In addition, according to the facts of the trial, the Investigator Team did not include evidence of alleged discrimination in the geographical areas of Surabaya and Makassar, so the Panel of Judges was unable to provide a comprehensive evaluation. Therefore, the Panel of Judges considers that there is an acceptable justification or reason for the open suspend action. So there is no evidence of discriminatory practices related to the open suspend.

**D. Comparison of Legal Considerations for Decision Number 13/KPPU-I/2019 and Decision Number 468/Pdt.P/2020/South Jakarta District Court.**

Case Background	<p>This case was initiated by the KPPU's initiative. This initiative from the KPPU began with a report from the Special Lease Transport Organization (Oraski) of North Sumatra which stated that there was an allegation that Grab created a system that was more profitable for one of its partners, namely PT TPI. The contents of the decision Number 13/KPPU-I/2019 provides an explanation regarding the beginning of the entry of this alleged violation case. It was explained that there was one witness to the KPPU Investigator Team who had provided information to the KPPU Medan Regional Representative Office regarding the alleged violation committed by Grab, namely acts of discrimination against business partners. However, the witness refused to be declared a reporter because in fact he did not provide a report according to the criteria for a valid report. The non-fulfillment of the requirements for the report received is the basis for KPPU to state that the business competition case Number 13/KPPU-I/2019 is a case that originates from an initiative.</p>		
No	The Discrimination Act	Legal considerations of the KPPU commission committee	Judges' legal considerations
1	The differences of incentive system	<p>There are differences in the incentive system between individual partners and PT TPI partners. For individual partners, a trip system applies, namely the achievement of incentives within 1 (one) day the driver operates which is divided into several trip levels or categories, while for Grab partners a metered system applies, namely the achievement of incentives within 1 (one)</p>	<p>(a) PT TPI and other Grab partners have different characteristics based on the relevant market analysis;</p> <p>(b) In terms of business risk, PT TPI has a greater risk than other Grab Partners;</p> <p>(c) PT TPI's vehicle has security facilities namely CCTV and GPS;</p>

	<p>week of the driver operating which is divided into several metered tiers. (<i>fares</i>). According to the Panel of Judges, the metered system (<i>fares</i>) tends to make it easier for Grab partners to achieve the incentives set every week. With this system, PT TPI partners can add up their metered income at a later date, which if the driver doesn't operate on a certain day, they can still accumulate metered income to get incentives per week. Meanwhile, drivers who are not PT TPI partners (individual partners and others) cannot do the same, because the incentive scheme is obtained daily.</p> <p>In addition, the metered system causes Grab partners to take a large number of orders or at least driver partners will not pick up passengers on short distances, while the trip system causes individual partners to take trips either short or long distances because individual partners are prioritized is the maximum number of trips in one day to achieve the incentive. Based on the facts of the trial, there have been several changes to PT TPI's partner incentives resulting from discussions between PT TPI and Grab. Meanwhile, with individual partners, Grab has never opened a negotiation room</p>	<p>(d) The quality of PT TPI's company is proven to be good because it has received the Best ASK Award in Jabodetabek by BPTJ;</p> <p>(e) From a business point of view, PT TPI has the right to negotiate an incentive scheme with Grab, and this is considered reasonable;</p> <p>(f) The Investigator Team did not include evidence of alleged discrimination in geographical areas.</p>
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		<p>regarding the applicable incentive system. So, the Commission Council assessed that Grab provided PT TPI facilities to determine the incentive system to be applied. And based on these considerations, the Commission Council considers the calculation of incentives with the metered system imposed by Grab for Grab partners to be more profitable than the trip system imposed by Grab for individual partners and this is a different treatment from Grab for its partners.</p>	
<p>Analysis of Comparative Legal Considerations</p>		<p>The elements in Article 19 letter (d) are elements of business actors, elements of doing either alone or together, elements of other business actors, elements of carrying out one or several activities, elements that can lead to monopolistic practices, elements of unhealthy business competition, and elements of discriminatory practices. .</p> <p>First, it is clear that the business actors involved in this case are PT Solusi Transportasi Indonesia (Grab) and PT Teknologi Pengangkutan Indonesia (PT TPI), these two decisions have the same opinion and there is no difference in this matter.</p> <p>Second, the elements perform alone or together. In this case, the act of discrimination was only carried out by Grab as the Reported Party I in the KPPU Decision and the Petitioner for Objection I in the South Jakarta District Court Decision against PT TPI as the Second Reported Party in the KPPU Decision and the Petitioner for Objection II in the South Jakarta District Court Decision.</p> <p>Third, elements of other business actors. The parties allegedly harmed by acts of discrimination in this case are Grab's partners other than PT TPI, namely: INKOPPOL Cooperative, Pt Cipta Lestari Trans</p>	

Jakarta, Indonesian Rental Association Service Cooperative, and PT CSM Corporatama.

Fourth, the element of doing one or more activities. All business actors in this case run their business in the market for Special Lease Transportation services which have different characteristics. Grab is a company that provides applications to make it easier for drivers to get orders for transportation services, PT TPI is a company that rents vehicles to driver partners accompanied by the use of the Grab application, while other Grab partners are individual partners who already have private vehicles and then some join cooperatives.

Fifth, is the core point in the original 19 letter (d) violation, namely the element of discriminatory practices that can result in unfair business competition or monopolistic practices. The alleged discriminatory practices in question are the calculation of different incentives between PT TPI partners and other partners, differences in operating hours, provision of video content for promotions, the validity of the loyalty program only for PT TPI, priority orders for PT TPI partners, and differences in the application of open suspend between PT TPI partners and other partners. All elements in article 19 letter (d) are met. However, the role of the rule of reason approach is needed. so that it is not finished here, but KPPU has the authority to evaluate the act of discrimination whether it is included in unfair business competition or not.

Judging from the consideration of these two decisions, the evaluation of the fulfillment of the elements has been attempted to be fulfilled. However, it turns out that the evaluation process produces has different results. The point of this difference, according to the author, lies in the assessment of the characteristics of PT TPI with other Grab partners. In the consideration of the commission assembly, it did not focus on the differences in characteristics shared by PT TPI and Grab partners as stated in Decision Number 468/Pdt.P/2020/PN Jkt Sel, but rather the assessment of the Commission Council only considered how the scheme of calculating direct incentives and the impact of differences incentive scheme. In essence, there are things that are not included in the consideration of the KPPU Commission Council but are things that are considered by the Panel of Judges.

In author's opinion, considerations about the characteristics of PT TPI with other Grab partners need

		to be analyzed because of the different characteristics of these business actors, even though they are in the same relevant market, it can lead to different forms of cooperation.	
2	The difference of operational hour	<p>The Commission Council considered that there was no difference in terms of operating hours, but in terms of the hours of obtaining incentives. PT TPI partners are valid 24 hours X 1 day X 7 days to get weekly incentives. Meanwhile, Non-Grab Partners start from 05.00-23.59 (19 hours) to achieve incentives in a day.</p> <p>Thus, KPPU commission committee assesses that there is a different treatment related to operating hours to achieve incentives, which will be more profitable for the partner of PT TPI</p>	<p>The consideration of the Panel of Judges regarding the different operating hours is the existence of security reasons, that PT TPI's vehicles are accompanied by CCTV and GPS, the existence of crime-prone hours, and the quality of the drivers required (considering that PT TPI has conducted a strict selection of prospective drivers). The reason for this security is due to the fear of unwanted things such as accidents, robberies and others. So, the difference in operating hours is very reasonable. According to expert Prof, Ningrum Natasya, this is included in economic reasoning (economic reasons and security reasoning). Therefore, based on these statements, the Panel of Judges considers that there is no evidence of discrimination over differences in operating hours licensing that applies between PT TPI and other Grab partners.</p>
	Analysis of Comparative Legal Considerations	<p>The fulfillment of the elements of article 19 letter (d) has been fulfilled as described in the previous point. Then, the difference between the results of the considerations of the Commission Council and the considerations of the Panel of Judges according to the author is absolute on the differences in the sides considered. At the consideration of the Commission Council, the comparison of the number of operating hours and the opportunity to achieve the targets of PT TPI's partners was considered, while non-partners of PT TPI did not have the same opportunity if there was one day of non-operation due to different incentive calculations. If the panel of judges considers, there are reasons for the operation of the operating hours which are also considered. The reason referred to is based on the testimony of Iki Sari Dewi in the trial stating that the difference in operating hours is due to considering</p>	

	<p>the safety of drivers and passengers when operating at vulnerable hours. Jan 24 hour incentives are given to PT TPI because Grab considers the quality of the drivers and the vehicles used to be guaranteed, considering that PT TPI has made a strict selection when recruiting drivers.</p> <p>According to the author, things that should be considered are including the reasons or factors that cause the action to be taken because by considering these reasons, the judge can give a decision that is in accordance with the reality that happened. This is in accordance with the concept of the rule of reason approach in business competition, which requires proof in it by evaluating each form of violation and including considering the reasons or factors that cause the action to be carried out. If there is an acceptable reason, then the action does not include discrimination as described in article 19 letter (d). then, the judges' assessment has applied the fiqh rules which read: <i>تصرف الإمام على الراعية منوطاً بالمصلحة</i> (<i>tasharraf al-imam ala al-ra'iyati manuthun bi al-maslahah</i>) which means "The decision of a leader must always prioritize the benefit of the community because a leader is a person who has power over what he leads". As we know the Panel of Judges is a leader in the trial and obliged to give a fair decision.<sup>33</sup></p> <p>The difference in operating hours is caused by considerations of driver and consumer safety factors. This is a consideration for the Panel of Judges to assess whether the act of difference in operating hours includes discrimination in business competition or not. And in the end, the Panel of Judges considered that there was a reason for different operating hours, so this action does not include discrimination as referred to in article 19 letter (d). According to the author, the suitability of the fiqh rules lies in the Panel of Judges who also considers the reasons for Grab's and PT TPI's policies as well as information from other business actors who do not feel aggrieved by the different treatment in which the benefits of the parties concerned have been included in the priority considerations of the Panel of Judges before giving the verdict.</p>		
3	Loyalty program	Grab as an application company that continues to collaborate with driver-driving service providers should provide opportunities or at least offer cooperation to	Testimony of witness Iki Sari Dewi that the loyalty program in question is a program owned by Grab and then carried out by PT TPI regarding the provision of special incentives to partners who are loyal to Grab for 5

<sup>33</sup> Achmad Musyahid Idrus, *Kebijakan Pemimpin Negara dalam Prespektif Kaidah Fikih: Tasarruf Al-Imam Manutun Bil Maslahah*, Jurnal Al-Daulah, Vol. 1, No. 2, 2021, 129.

		<p>both Grab and other Grab partners in the form of Loyalty programs or other programs under Grab's policy. The Commission Council stated that there was a special action against Grab, even though Grab has several other partners.</p>	<p>years. The consideration of the Panel of Judges regarding the discriminatory action in question is regarding the background of the election PT TPI as a partner who runs the loyalty program, because the PT TPI company dares to take a big risk to cooperate with a leasing company or bank which will later rent out PT TPI's vehicle to its driver partner, so that many people who do not own a car can rent it to PT TPI instead and then use the Grab application and earn from it.</p> <p>So, this special program is offered to TPI as a reciprocal so that <i>win-win conditions are</i> for Grab and PT TPI. Based on this information, the Investigator Team did not provide any rebuttal or evidence for the statement.</p>
<p>Analysis of Comparative Legal Considerations</p>		<p>The fulfillment of the elements of article 19 letter (d) has been fulfilled as described in the first point. The difference between the consideration of the Commission Council and the Panel of Judges lies in the assessment of the reasons or factors behind the action or policy being carried out. Taking into account the consideration of the Commission Council, it is not accompanied by an assessment of the reasons for the appointment of PT TPI as Grab's partner who runs the loyalty program and only states how Grab as the company that owns the loyalty program should act. Namely, in the consideration of the Commission Council, it was stated that Grab should also offer this loyalty program to its partners other than PT TPI. Here the author does not agree with the opinion of the Commission Council because there is no thorough consideration of the assessment of the alleged act of discrimination in question.</p> <p>In the consideration of the Commission Council, there was a statement that there was no objection from the Investigator Team regarding the witness' explanation regarding the background for choosing PT TPI as a partner running the loyalty program. So, this right can be interpreted that the argument does not</p>	

		<p>need to be proven again and can be accepted or in essence the things that need to be proven are things that are denied by the reported party. If there is no objection or it has been clearly acknowledged, then there is no need to prove it.<sup>34</sup></p>	
4	Content video for promotion	<p>Grab should have provided the application to do promotions in the same form to all its partners. Then, the Commission Council assessed that after examining the content of the video in question, that Grab had never carried out promotions in the same form to its other partners. In the facts of the trial, the video delivered the opening sentence, "Welcome to TPI" and in the background in the promotional video you can see Grab's standing banner. so that according to the Commission Council the promotions carried out were promotions for prospective driver partners carried out by Grab and PT TPI to join PT TPI. This shows that there is a relationship between Grab's interests and PT TPI.</p> <p>The promotional video contains promotions related to the Gold program (loyalty program) that will be run by PT TPI. According to the Commission Council,</p>	<p>The reason for the promotion is because there are many prospective drivers are not convinced of the existence a loyalty program, and all Grab partners are allowed to use the Grab Logo in their event. Such as promotional event or other. Then, the Panel of Judges considered that the KPPU's Investigation Team had misjudged the purpose of creating video content. Because in essence there is a reason or economic justification.</p> <p>There is a court fact that the promotional video in question is a video about the promotion of the loyalty program run by PT TPI by the Grab Director, the reason for the promotion is because many prospective drivers are not convinced of the existence of a loyalty program, and all Grab partners are allowed to use the Grab symbol in their interests such as promotional activities or other activities. Then, the Panel of Judges considered that the KPPU's Investigation Team had misjudged the purpose of creating video content. Because basically there is an economic reason or justification related to the creation of video content, namely to promote the loyalty program so that prospective drivers believe in the program scheme and eventually become partners with PT TPI. Another</p>

<sup>34</sup> Dr. Binoto Nadapdap, S. H., M. H., *Hukum Acara Persaingan Usaha Pasca-Putusan Mahkamah Konstitusi*, (Jakarta: Kencana, 2020), 101

		<p>the promotion that Grab should do for its partner PT TPI is about the application used by PT TPI, namely the Grab app or at least promoting PT TPI as a Grab partner. Not a promotion related to the Gold program. In addition, in the contents of the video, Grab explains that it will give priority orders to drivers. So, on some of these considerations. The Commission Council considered that there was preferential treatment by Grab to PT TPI.</p>	<p>trial fact is that there are no PT TPI competitors over other Grab partners who object to the existence of a loyalty program that only applies to PT TPI and the Investigator Team does not include evidence of alleged discrimination in the geographic areas of Surabaya and Makassar. So that the Panel of Judges cannot provide a comprehensive evaluation.</p> <p>So, given these considerations, the Panel of Judges assessed that there was no evidence of discrimination regarding the creation of promotional video content because in fact Grab also did the same thing to its other partners for promotion.</p>
<p>Analysis of Comparative Legal Considerations</p>		<p>The fulfillment of the elements of article 19 letter (d) has been fulfilled as described in the first point. The difference between the legal considerations of the Commission Council and the Panel of Judges lies in the consideration of the facts of the trial. The trial fact he objection application at the South Jakarta District Court contained witness statements stating that they did not object to the existence of video content for the promotion, the witness also argued that the promotion needs of each partner were different so that not all partners needed promotions in the form of video content.<sup>35</sup></p> <p>According to the author, one of the important points in evaluating an act of discrimination is related to the impact felt by the wider community. It turned out that in the facts of the trial, the witness who is a Grab partner who is not affiliated with PT TPI stated that he did not feel aggrieved by the promotional video content carried out by PT TPI with Grab, because Grab had allowed the use of the Grab logo in every event or event held. Thus, with this the element of harming other business actors is not fulfilled, which means that unfair business competition does not occur.</p>	

<sup>35</sup> Putusan Nomor 468/Pdt.P/2020/PN Jkt Sel, 151

5	Priority order	<p>Referring to the testimony of witness Abdi Fauzan Siregar in the trial, what is meant by priority order is Grab's behavior in giving consumer orders. While the "lightning symbol" feature is an application that makes it easier for drivers to get passengers.</p> <p>Referring to the statements of Witness David Bangar Siagian and Witness Daniel Ompu Sunggu, individual partners in the Medan area once held a demonstration demanding that priority orders be returned according to advertisements and brochures at the beginning of recruitment and this statement is in accordance with the statement of Witness Sarma Hutajulu as a member of the DPRD for North Sumatra Province (2014-2019).</p> <p>Referring to the statements of PT TPI's partner witnesses, the status of a Witness who has good performance will affect the number of orders that will be obtained, but in fact the status of a Witness with good performance does not affect the number of orders obtained by the driver-partner. The Commission Council considered that the statement regarding the status of the Elite Plus driver that was conveyed by Iki Sari</p>	<p>Regarding the priority order feature in the Grab application. This feature aims to be able to receive orders automatically without the need to press the accept order button. Then, this feature has been socialized to all drivers, both PT TPI partners or other Grab partners. So, the consideration of the Panel of Judges is that no acts of discrimination were found in accordance with Article 19 letter (d) of Law Number 5 of 1999 regarding of the priority order feature in the Grab application.</p> <p>Regarding the second understanding, namely prioritizing an order by a consumer to a Grab driver-partner. The consideration of the Panel of Judges is that there are levels of driver levels, namely Elite Plus and Elite program drivers. This program is a determinant of driver status. Drivers who have met certain requirements will achieve the best program and will get various benefits. And information about the criteria for Elite Plus and Elite drivers has been given or informed to all Grab driver partners.</p> <p>Then, the Investigator Team presented 14 witnesses, in wich the witnesses was the driver who was reported the police on charges of embezzling a car. Seeing this information, the Panel Judges considered that the quality of witnesses should also be considered in providing a legal assessment.</p> <p>then, to find out if there is a priority order, KPPU must open the Grab application algorithm system that can explain the driver's work track and achievements. Meanwhile, during the investigation, but KPPU never</p>
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	<p>Dewi from the Grab party that it would receive priority orders for drivers with good performance was inconsistent, because in fact it had no effect. Then, based on the comparison table for the number of Grab and Non-Grab partner drivers.<sup>36</sup></p> <p>Therefore, the Commission Council considers that giving priority orders is proven as an act of discrimination in article 19 letter (d).</p>	<p>checked the algorithm system in question. Therefore, based on the aforementioned considerations, the Panel of Judges assessed that the treatment of priority orders as a form of discriminatory behavior as alleged by the KPPU Commission Council was not proven.</p>
<p>Analysis of Comparative Legal Considerations</p>	<p>The fulfillment of the elements of article 19 letter (d) has been fulfilled as described in the first point. The difference between the legal considerations of the Commission Majelis and the Panel of Judges is absolute in 2 respects, namely the considerations of the panel of judges accompanied by considerations of cases that have occurred and have been explained by witnesses in the KPPU's decision. Namely that the witness felt that the Elite Plus and Elite driver program did not determine the priority of the order to be obtained. Therefore, the Commission considers that Grab's statement is inconsistent because the program does not in fact give priority to orders.</p> <p>Then, it is related to the quality of witnesses who are considered by the panel of judges' decisions. Fourteen witnesses presented by the Investigator Team are drivers who are being reported to the police by the Petitioner for Objection II (PT TPI).<sup>37</sup> The quality of witnesses must be considered in a trial. The criteria for a person who cannot be a witness in a business competition case include: (a) Blood family or by marriage according to straight lineage up or down to the third degree from the reported party; (b) The</p>	

<sup>36</sup> Appendix Table II

<sup>37</sup> Putusan Nomor 468/Pdt.P/2020/PN Jkt Sel, 476

		<p>reported wife or husband; (c) Ex-wife or ex-husband of the reported; (d) Children who are not yet 17 years old; (e) Mentally ill; (f) People who have witnessed and heard the trial at trial.<sup>38</sup></p> <p>Although it is not stated directly in Article 50 of KPPU's Regulation Number 1 of 1999. According to the author, the quality of witnesses should be considered because it affects the quality of the information presented. This is in accordance with the statement of Expert Faisal Basri, in addition to the large number of witnesses, the quality of the witnesses must also be considered.<sup>39</sup></p>
6	Open Suspend	<p>There is a witness statement that Ricat Fernando has stopped collaborating with Grab and at that time the Witness has asked Grab to turn off the driver's account and can be replaced with the buyer of the car. However, at that time, Grab refused because there were no openings for new drivers.</p> <p>There is a statement from Witness Haris Effendi who stated that the car provided by Grab for its partners who participated in the flexi program was a car that had been withdrawn by Grab because the previous driver was unable to pay for the rental. Thus, this has led the Commission Council to consider that the different open suspend treatment makes PT TPI more profitable than other Grab</p>
		<p>There are differences in the characteristics of PT TPI and other Grab partners, such as PT TPI's partner vehicles are not owned by individuals but belong to PT TPI which are leased and there are different levels of risk ownership between PT TPI and other Grab partners. Then regarding the violation of the code of ethics, it is the fault of the driver, not the vehicle used, either PT TPI or other Grab partners can apply for an open suspend to Grab. In addition, according to the facts of the trial, the Investigator Team did not include evidence of alleged discrimination in the geographical areas of Surabaya and Makassar, so the Panel of Judges was unable to provide a comprehensive evaluation. Therefore, The Panel Judges considers that there is an acceptable justification or reason for the open suspend action. So, there is no evidence of discriminatory practices related to the open suspend.</p>

<sup>38</sup> Dr. Binoto Nadapdap, S. H., M. H., *Hukum Acara Persaingan Usaha Pasca-Putusan Mahkamah Konstitusi*, (Jakarta: Kencana, 2020), 106

<sup>39</sup> Putusan Nomor 468/Pdt.P/2020/PN Jkt Sel, 477

		partners.	
	Analysis of Comparative Legal Considerations	<p>The fulfillment of the elements of article 19 letter (d) has been fulfilled as described in the first point. The difference between the consideration of the Commission Council and the Panel of Judges lies in the consideration of the existing trial facts. Where the Panel of Judges focused on considering the testimony of the Witness. The consideration of the Panel of Judges focused on assessing different characteristics where PT TPI still has an obligation to pay its obligations to the leasing company or bank for the vehicles that are leased to the driver-partners. In addition, witness Iki Sari Dewi from Grab stated that Grab provides an opportunity to apply for an open suspend to all partners which will be considered later in accordance with the conditions that occur.</p> <p>According to the author, there is no difference in the behavior between Grab and PT TPI and Grab and its other partners. Because the opportunity to apply for an open suspend is given to all partners. There is also no objection from the Investigator Team regarding this matter. Therefore, this statement can be accepted and taken into legal consideration. It is understood that the things that need to be proven</p>	

	<p>are things that are denied by the reported party. If there is no objection or it has been clearly acknowledged, then there is no need to prove it.<sup>40</sup> Therefore, the statement that there is no objection regarding the open suspend application is given for all of them to be accepted and taken into legal consideration. So that the practice of different treatment is not proven as an act of discrimination that causes unfair business competition.</p>
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<sup>40</sup> Dr. Binoto Nadapdap, S. H., M. H., *Hukum Acara Persaingan Usaha Pasca-Putusan Mahkamah Konstitusi*, (Jakarta: Kencana, 2020), 101

## CHAPTER IV

### CLOSING

#### A. Conclusions

1. The KPPU's Investigative Team conducted a reset based on the initiative of information regarding alleged violations of Law Number 5 of 1999 concerning Anti-monopoly and Unfair Business Competition Practices carried out by PT Solusi Transportasi Indonesia (Grab) and PT Teknologi Pengangkutan Indonesia. The result of the reset stated that Grab as Reported Party I and PT TPI as Reported Party II allegedly violated 3 articles of Law Number 5 of 1999 namely Article 14, Article 15 paragraph (2), and Article 19 letter (d). After going through the case settlement stage at KPPU, the Commission Council decided that Grab and PT TPI were proven to have violated Article 14 concerning vertical integration and Article 19 letter (d) regarding discriminatory practices and were not proven to have violated Article 15 paragraph (2). The discriminatory practices in question are the application of a different incentive scheme between PT TPI and other Grab partners, the application of different operating hours, the application of a loyalty program only for PT TPI, promoting only PT TPI in the form of video content, prioritizing PT TPI partners to get consumer orders, and different open suspends between PT TPI and other Grab partners.

2. Disapproved of the content of the decision, made this case an objection request to the South Jakarta District Court. And in the end, the Panel of Judges with their legal considerations stated that Grab and PT TPI were not proven to have violated the provisions of article 14 and article 19 letter (d). The difference in the results of this decision is caused by differences in the results of the assessment of an act of discrimination. Such as differences in the facts of the trial, differences in judgments regarding witness statements, the quality of witnesses, and the lack of consideration in terms of the reasons for taking an action which can be one of the important things in evaluating unfair business competition actions.

## **B. Suggestion**

1. KPPU's Commission Committee should be consider in its entirety all the elements found in the trial, both the facts of the trial and the prevailing concepts related to unfair business competition. So that it can provide decisions that are in accordance with events that occur in real life.

## BIBLIOGRAPHY

### BOOK:

Diantha, Made Pasek , *Metodologi penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Jakarta: Prenada Media group, 2017.

Fatimah, Siti, *Pengantar Hukum Transportasi*, Ponorogo: Myria Publisher, 2019.

Lubis, Andi Fahmi, *Hukum Persaingan Usaha Antara Teks dan Konteks*. Indonesia: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), 2009

Marzuki, Peter Mahmud, *Penelitian Hukum* Jakarta: Kencana, 2005.

Nadir, *Hukum Persaingan Usaha Membidik Persaingan Tidak Sehat Dengan Hukum Anti Monopoli dan Persaingan Tidak Sehat*, Malang: Universitas Brawijaya Press.

Ramadhan, Muhammad, *Research Methods*, Surabaya: Cipta Media Nusantara (CMN), 2021

Siswanto, Arie, *Hukum Persaingan Usaha*, Bogor Selatan: Penerbit Ghalia Indonesia, 2002.

Soekanto, Soerjono, *Pengantar Penelitian Hukum*, Jakarta: Ui Press, 1981.

Zed, Mestika, *Library Research Methods*, Jakarta: Indonesia Obor Foundation. 2008

**THESIS/JOURNAL:**

Mei Indah Sari Sihombing, *Juridical Review Regarding District Court Decision Number 468/Pdt.P/2020/PN Jkt Sel regarding Cancellation of KPPU's Decision Number: 13/ KPPU-I/2019 Alleged Violations of Article 14, Article 15 paragraph (2) and Article 19 letter (d) U Number 5 of 1999 Prohibition of Monopolistic Practices and Unfair Business Competition by Special Chartered Transport Services*, 2021.

Hesti Erfiani, *Barrier To Entry Practices Contrary to Article 19 of Law Number 5 of 1999 in the Perspective of Sharia Economic Law (Case Study between Grab and PT TPI in the Decision of the Business Competition Supervisory Commission Number 13/KPPU-I/2019 regarding Services Special Lease Transport)*, 2021.

Idrus, Achmad Musyahid, *Kebijakan Pemimpin Negara dalam Prespektif Kaidah Fikih: Tasarruf Al-Imam Manutun Bil Masalahah*, Jurnal Al-Daulah, Vol. 1, No. 2, 2021.

I Gusti Ayu Dewi Sawitri, *Vertical Integration and Discrimination Practices in the Perspective of Indonesian Business Competition Law: Case Analysis of PT Solusi Tansportasi Indonesia (Grab) and PT Teknologi Pegangkutan Indonesia (TPI)*, 2021

Khawiy Bawazir, Legal Analysis of Discriminatory Practices by Lion Air Group Regarding Cooperation in Sales of Cargo Capacity in Freight Forwarding Services from Hang Nadim Airport to Soekarno-Hatta Airport, Halim Perdana Kusuma, Juanda, and Kuala Namu (KPPU's Decision Study Number 07/KPPU -I/2020), 2022

Deni Aulia Ahmad, Discrimination in the Procurement of New Logo Making Services PT. PERTAMINA (PERSERO), 2011.

Manan, Tarmizi Abbas dan Min Konadi, *Keterkatian Antara Demokrasi Politik, Demokrasi ekonomi, dan Sistem Ekonomi Kerakyatan*, vol. XXI, No. 3, Mimbar: Jurnal Sosial dan Pembangunan, 2005.

Sidabutar, Lewinda Oletta, *Pendekatan “Per Se Illegal” dan “Rule of reason” dalam Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Praktik Persaingan Usaha Tidak Sehat, Media Pembinaan Hukum Online*, Jurnal Rechtsvinding Online. 2, diakses pada tanggal 14 Februari 2022, pukul diakses melalui [10.41https://rechtsvinding.bphn.go.id/jurnal\\_online/Lewinda%20Oletta%20RV%20Online%20-%20Final.pdf](https://rechtsvinding.bphn.go.id/jurnal_online/Lewinda%20Oletta%20RV%20Online%20-%20Final.pdf) ,

Jemarut , Wihelmus, *Pendekatan Rule of Reason dan Per Se Illegal dalam Perkara Persaingan Usaha*, Vol. 3, No. 2, 2020, Widya Yuridika: Jurnal Hukum.

**REGULATION:**

Undang-Undang Nomor 5 Tahun 1999 tentang Anti Monopoli dan Persaingan Usaha

Tidak Sehat

Peraturan Komisi Pengawas Persaingan Usaha Nomor 3 Tahun 2011 Tentang

Pedoman Pelaksanaan Pasal 19 Huruf (d) dalam Undang-Undang Nomor 5

Tahun 1999 tentang Anti Monopoli dan Praktik Persaingan Usaha Tidak Sehat.

Peraturan Komisi Pengawas Persaingan Usaha Nomor 1 Tahun 2010 Tentang Tata

Cara Penanganan Perkara Persaingan Usaha

**WEBSITE:**

*Database Putusan KPPU*, diakses pada tanggal 10 Februari 2022 , pukul 05.10 WIB,

<https://putusan.kppu.go.id/simper/menu/>

*Kronologi Kasus Grab dan TPI, Sekaligus Tanggapan Hotman Paris*, Diakses pada

tangga; 10 Februari 2022, pukul 05.28 WIB,

<https://www.tribunnews.com/bisnis/2020/07/03/kronologi-kasus-grab-dan-tpi-sekaligus-tanggapan-hotman-paris>

KPPU Jatuhkan Sanki Grab dan TPI, diakses pada tanggal 10 Februari 2022, pukul

06.03 WIB. [https://kppu.go.id/blog/2020/07/kppu-jatuhkan-sanksi-ke-grab-](https://kppu.go.id/blog/2020/07/kppu-jatuhkan-sanksi-ke-grab-dan-tpi/)

[dan-tpi/](https://kppu.go.id/blog/2020/07/kppu-jatuhkan-sanksi-ke-grab-dan-tpi/)

## APPENDIXES

### A. KPPU's Verdict Number 13/KPPU-I/2019

SALINAN

- 18. Tentang Diktum Putusan dan Penutup.**-----  
Menimbang bahwa berdasarkan fakta-fakta, penilaian, analisis dan kesimpulan di atas, serta dengan mengingat Pasal 43 ayat (3) UU Nomor 5 Tahun 1999, Majelis Komisi: -----

#### MEMUTUSKAN



- 1) **Menyatakan Terlapor I dan Terlapor II terbukti secara sah dan meyakinkan melanggar Pasal 14 Undang-Undang Nomor 5 Tahun 1999;**-----
- 2) **Menyatakan Terlapor I dan Terlapor II tidak terbukti melanggar Pasal 15 ayat (2) Undang-Undang Nomor 5 Tahun 1999;**-----
- 3) **Menyatakan Terlapor I dan Terlapor II terbukti secara sah dan meyakinkan melanggar Pasal 19 huruf d Undang-Undang Nomor 5 Tahun 1999;**-----
- 4) **Menghukum Terlapor I membayar denda sebesar Rp7.500.000.000,00 (Tujuh Milyar Lima Ratus Juta Rupiah) atas pelanggaran Pasal 14 Undang-Undang Nomor 5 Tahun 1999 yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 425812 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha);**-----
- 5) **Menghukum Terlapor II membayar denda sebesar Rp4.000.000.000,00 (Empat Milyar Rupiah) atas pelanggaran Pasal 14 Undang-Undang Nomor 5 Tahun 1999 yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 425812 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha);**-----
- 6) **Menghukum Terlapor I membayar denda sebesar Rp22.500.000.000,00 (Dua Puluh Dua Milyar Lima Ratus Juta Rupiah) atas pelanggaran Pasal 19 huruf d Undang-Undang Nomor 5**

Tahun 1999 yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 425812 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha);-----

- 7) Menghukum Terlapor II membayar denda sebesar Rp15.000.000.000,00 (Lima Belas Milyar Rupiah) atas pelanggaran Pasal 19 huruf d Undang-Undang Nomor 5 Tahun 1999 yang harus disetor ke Kas Negara sebagai setoran pendapatan denda pelanggaran di bidang persaingan usaha Satuan Kerja Komisi Pengawas Persaingan Usaha melalui bank Pemerintah dengan kode penerimaan 425812 (Pendapatan Denda Pelanggaran di Bidang Persaingan Usaha);-----
- 8) Memerintahkan Terlapor I dan Terlapor II untuk melakukan pembayaran denda selambat-lambatnya 30 (tiga puluh) hari sejak putusan ini memiliki kekuatan hukum tetap (*inkracht*).-----
- 9) Memerintahkan Terlapor I dan Terlapor II melaporkan dan menyerahkan salinan bukti pembayaran denda ke KPPU.-----

Demikian putusan ini ditetapkan melalui musyawarah dalam Sidang Majelis Komisi pada hari **Selasa, 30 Juni 2020** dan dibacakan di muka persidangan yang dinyatakan terbuka untuk umum pada hari **Kamis, 2 Juli 2020** oleh Majelis Komisi yang terdiri dari Dinni Melanie, S.H., M.E. sebagai Ketua Majelis Komisi, Dr. M. Afif Hasbullah, S.H., M.Hum., dan Dr. Guntur Syahputra Saragih, M.S.M. masing-masing sebagai Anggota Majelis Komisi, dengan dibantu oleh Sulastri Ambarianti S.H. dan Ita Damayanti Wulansari, S.E. masing-masing sebagai Panitera.

## B. South Jakarta District Court Verdict Number 468/Pdt.P/2020



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Menimbang, bahwa Majelis Hakim menilai Tim Investigator Termohon Keberatan dalam membuktikan laporan dugaan pelanggaran menyatakan adanya 4 wilayah geografis, namun dalam persidangan ditemukan fakta yakni Tim Investigator tidak memberikan bukti atas dugaan diskriminasi tersebut di atas pada wilayah geografis Surabaya dan Makassar. Berdasarkan keterangan ahli Prof. Ningrum Natasya Sirait SH MLI maka seharusnya Tim Investigator harus memberikan bukti atas seluruh wilayah geografis sehingga Majelis Komisi dapat memberikan penilaian secara komprehensif;

Menimbang, berdasarkan hal tersebut diatas maka Majelis Hakim berpendapat terdapat justifikasi atas tetap dapat dilakukannya open suspend atas kendaraan milik Pemohon Keberatan II, sehingga tidak terbukti adanya diskriminasi terkait open suspend tersebut;

Menimbang, berdasarkan seluruh uraian di atas, maka tidak terbukti Pemohon Keberatan I dan Pemohon Keberatan II melakukan pelanggaran atas Pasal 19 huruf d UU No 5 Tahun 1999;

Menimbang, bahwa dengan memperhatikan alasan keberatan dari Pemohon Keberatan I dan Pemohon Keberatan II, maka Majelis Hakim berpendapat bahwa terhadap alasan keberatan tersebut adalah beralasan hukum untuk dikabulkan;

Menimbang, bahwa oleh karena alasan para Pemohon Keberatan dikabulkan, maka amar yang dijatuhkan oleh Termohon Keberatan haruslah dibatalkan untuk seluruhnya;

Menimbang, bahwa oleh karena putusan Termohon Keberatan dibatalkan untuk seluruhnya, maka biaya perkara dibebankan kepada Termohon Keberatan yang besarnya akan ditetapkan dalam amar putusan dibawah ini;

Memperhatikan, Pasal 14 dan Pasal 19 huruf d UU Nomor 5 Tahun 1999, tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat, Peraturan Mahkamah Agung Nomor 3 Tahun 2019 tentang Tata Cara Pengajuan Keberatan Terhadap Putusan Komisi Pengawas Persaingan Usaha serta peraturan perundang-undangan lain yang bersangkutan;

**MENGADILI**

1. Mengabulkan permohonan Para Pemohon Keberatan untuk seluruhnya;
2. Meyatakan batal dan tidak berkekuatan hukum Putusan Komisi Pengawas Persaingan Usaha No. 13/KPPU-I/2019 tanggal 2 Juli 2020;
3. Menyatakan Para Pemohon Keberatan tidak terbukti melanggar ketentuan Pasal 14 Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat;

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4. Menyatakan Para Pemohon tidak terbukti melanggar ketentuan Pasal 19 Huruf d Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat;
5. Menghukum Termohon Keberatan untuk membayar biaya perkara yang sampai hari ini ditetapkan sejumlah Rp 346.000,- (tiga ratus empat puluh enam ribu rupiah);

Demikian diputuskan dalam sidang permusyawaratan Majelis Hakim Pengadilan Negeri Jakarta Selatan, pada hari Kamis, tanggal 17 September 2020 oleh Majelis Hakim Ratmoho, S.H., M.H. sebagai Hakim Ketua, Haruno Patriadi, S.H.MH. dan Dedy Hermawan, SH.,MH. masing-masing sebagai hakim anggota, putusan tersebut pada hari Jumat tanggal 25 September 2020 diucapkan dalam persidangan terbuka untuk umum oleh Hakim Ketua dengan didampingi oleh para Hakim Anggota tersebut, dan dibantu oleh Edi Suwitno., S.H.,MH. Panitera Pengganti dengan dihadiri kuasa Para Pemohon Keberatan dan Kuasa Termohon Keberatan.

Hakim-Hakim Anggota,

Hakim Ketua,

Haruno Patriadi, S.H.MH.

Ratmoho., S.H., M.H.

Dedy Hermawan, SH.MH.

Panitera Pengganti,

Edi Suwitno, SH.MH.

**Perincian biaya :**

Biaya Pendaftaran	: Rp.	30.000,-
Biaya Proses	: Rp.	100.000,-
PNBP Panggilan	Rp.	10.000,-
Materai	: Rp.	6.000,-
Redaksi	: Rp.	10.000,-
Panggilan	: Rp.	190.000,- +
Jumlah	: Rp.	346.000,- -



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C. Appendix Table I

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**MANA TELAH BANYAK SEKALI TERJADI DALAM DUNIA USAHA, CONTOH: PT INDOFOOD SUKSES MAKMUR TBK, PT ASTRA INTERNATIONAL TBK, PT BLUE BIRD TBK, DAN LAIN-LAIN.** Selain itu, pada faktanya **PARA PEMOHON KEBERATAN/PARA TERLAPOR** tidak melakukan penguasaan secara masif sebagaimana uraian di atas. Oleh karena itu, **TIDAK TERBUKTI ADANYA PENGUSAHAAN OLEH PARA PEMOHON KEBERATAN/PARA TERLAPOR** karena hanya sebatas aplikasi dan perusahaan Angkutan Sewa Khusus.

**vi. FAKTA HUKUM (VI):**

**MAJELIS KPPU TELAH SALAH DENGAN MENGABAIKAN FAKTA HUKUM PERSIDANGAN BAHWA JUMLAH MITRA PEMOHON KEBERATAN II/TERLAPOR II TIDAK MENGUASAI PANGSA PASAR**

1. Menunjuk pada bukti perbandingan data mitra Non **PEMOHON KEBERATAN II/TERLAPOR II** dan mitra yang bergabung melalui **PEMOHON KEBERATAN II/TERLAPOR II** (vide Bukti T.I-T.II-35), maka diketahui perbandingan jumlah mitra **PEMOHON KEBERATAN II/TERLAPOR II** dan Non **PEMOHON KEBERATAN II/TERLAPOR II** yang diluar daftar hitam (*blacklist*) adalah sebagai berikut:

Kota	2016	2017	2018	2019	2020

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	TPI	STI	TPI	STI	TPI	STI	TPI	STI	TPI	STI
Jabodetabek	1,429	52,036	4,999	140,998	9,619	198,948	13,030	211,154	13,487	211,154
Makassar	-	547	-	20,590	267	34,349	445	36,107	477	36,107
Medan	-	1,660	406	23,006	1,017	38,064	1,131	38,637	1,194	38,637
Surabaya	-	3,110	346	25,271	838	48,077	998	53,638	1,060	53,638

**Dalam Persentase**

Kota	2016		2017		2018		2019		2020	
	TPI	STI	TPI	STI	TPI	STI	TPI	STI	TPI	STI
Jabodetabek	2.7%	97.3%	3.4%	96.6%	4.6%	95.4%	5.8%	94.2%	6.0%	94.0%
Makassar	0.0%	100.0%	0.0%	100.0%	0.8%	99.2%	1.2%	98.8%	1.3%	98.7%
Medan	0.0%	100.0%	1.7%	98.3%	2.6%	97.4%	2.8%	97.2%	3.0%	97.0%
Surabaya	0.0%	100.0%	1.4%	98.6%	1.7%	98.3%	1.8%	98.2%	1.9%	98.1%

2. Berdasarkan bukti tersebut di atas, maka diketahui hal-hal sebagai berikut:

- a. **PENINGKATAN JUMLAH MITRA TERJADI BAIK DI PEMOHON KEBERATAN II/TERLAPOR II MAUPUN NON PEMOHON KEBERATAN II/TERLAPOR II;**
- b. **JUMLAH MITRA PEMOHON KEBERATAN II/TERLAPOR II TIDAK MENGUASAI PASAR KARENA TERBUKTI SECARA PERSENTASE BERDASARKAN DATA TERAKHIR TAHUN 2020 MITRA PEMOHON KEBERATAN II/TERLAPOR II DIBANDINGKAN**

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Email : kepaniteraan@mahkamahagung.go.id Telp : 021-384 3348 (ext.318)

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D. Appendix Table II



## CURRICULUM VITAE



### Personal Data:

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Place an Date of Birth : March 08, 2000 at Banyuwangi

Gender : Female

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MAN 2 Kota Malang

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