



Analysis of the authority of the kppu regarding administrative fine sanctions may apply for bankruptcy

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Abstract

Making efforts following the provisions of statutory regulations is one of the legal steps that can be taken by KPPU to ensure the effectiveness of the implementation of decisions that have permanent legal force regarding the execution of administrative fines based on Article 107 of KPPU Regulation Number 2 of 2023 which can be interpreted as an effort bankruptcy petition to business actors in the bankruptcy law. The purpose of this research is to analyze the authority of the KPPU in carrying out efforts following the provisions of the law regarding the execution of administrative fines with bankruptcy applications in terms of bankruptcy law. This juridical-normative research uses a legislative approach, with techniques for searching legal materials through literature studies and legal materials techniques analysis using systematic interpretation methods. Based on the results of the discussion in this research, Article 107 paragraph (2) Letter e of Commission Regulation Number 2 of 2023 can be interpreted as an attempt to apply for bankruptcy, however the Commission Regulation only serves as a guideline and/or publication relating to Law Number 5 of 1999. Based on the previous sentence, the authority to collect administrative fines by the KPPU then can not be imperatively applied to business actors because it is a guideline for the KPPU only. The KPPU can use Article 1377 of the Civil Code in conjunction with Article 13 paragraph (1) of Government Regulation Number 44 of 2021 regarding the Implementation of Prohibitions on Monopoly Practices and Unfair Business Competition as the legal basis for the KPPU to request Bankruptcy of Business Actors who do not implement Commission Decisions which have permanent legal force. Bankruptcy applications for business actors are an adequate legal remedy in collecting administrative fines. It is necessary for the KPPU to be given the authority to collect administrative penalties through a bankruptcy mechanism by revising and adding the KPPU as one of the parties that can request bankruptcy in the bankruptcy law.

Keywords: KPPU, administrative fines, bankruptcy

Introduction

Indonesia, as a sovereign country, which is stated in the preamble to the Constitution of the Republic of Indonesia, has to advance general welfare as one of its objectives. One of the fundamental efforts in achieving general prosperity can be seen in Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which gives every citizen the right to work and a livelihood worthy of humanity. The constitutional mandate contained in Article 27 paragraph (2) implies the state's obligation to ensure the fulfillment of the collective interests of every citizen, including the economy. This is in line with Article 33, paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental awareness, independence, and by maintaining a balance of progress and national economic unity. One of the efforts to ensure the fulfillment of the collective interests of each citizen in terms of the economy is by implementing regulations to create a healthy business competition climate.

Healthy business competition (fair competition) is one of the requirements for countries to manage a market-oriented economy. Indonesia already has regulations regarding business competition, namely Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, subsequently updated with Law Number 11 of 2020 concerning Job Creation, which also regulates business competition. Law Number 5 of 1999 regulates various provisions regarding the prohibition of

monopolistic practices and unfair business competition, and one of the contents of this law is the establishment of the Business Competition Supervisory Commission (KPPU). KPPU has the authority to conduct investigations, make decisions, and impose sanctions in the form of administrative action on business actors who violate the provisions of Law Number 5 of 1999.

At the moment, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law Number 5 of 1999) is almost 23 years old, and the Business Competition Supervisory Commission is nearly 22 years old. The KPPU often experiences difficulties and obstacles in the process of implementing/executing commission decisions, especially regarding efforts to collect administrative witnesses, especially in the form of fines and compensation. These obstacles include business actors as the reported parties not being cooperative in voluntarily implementing the commission's decision. Based on the reality of what is happening in the field, since the founding of the KPPU in 2000 to 2017, it has been recorded that approximately IDR. 493 billion in fines contained in decisions that have been determined *inkracht*, while those that have entered the state treasury reached Rp. 334 Billion, Rp. 159 billion has never been paid by business actors who have been found guilty of violating business competition regulations. The perpetrators mostly took advantage of the weaknesses in the authority of the KPPU, such as in the areas of execution and receivables. The birth of Job Creation Law also regulates business competition, and implementing regulations were also born, such as Government Regulation Number 44 of 2021

concerning the Implementation of Prohibitions on Monopolistic Practices and Unfair Business Competition and Commission Regulation Number 2 of 2023 concerning Procedures for Handling Cases of Monopoly Practices and Unfair Competition. In Government Regulation Number 44 of 2021, namely in Article 13 paragraph (1), it is emphasized that administrative fines are state receivables that are deposited into the State treasury as non-tax State revenue. Meanwhile, Article 1137 of the Civil Code essentially states that state receivables are the priority for payment. In Article 107 of Commission Regulation Number 2 of 2023 concerning Procedures for Handling Cases of Monopoly Practices and Unfair Business Competition, there is a phrase that says you can make efforts following the provisions of statutory regulations. This provision can be interpreted as another legal step stated in the article. Accordingly, the legal steps that can be taken by the KPPU to make it possible to carry out legal steps such as applying for bankruptcy to business actors as a legal alternative in maintaining the effectiveness of the implementation of decisions that have permanent legal force, where these legal steps are counted as possible efforts to recover state losses resulting from violations in business competition by business actors. However, Commission Regulations cannot be used to punish Business Actors because these regulations are guidelines for the KPPU. However, Commission Regulations cannot be used to punish Business Actors because these regulations are guidelines for the KPPU. Meanwhile, both the Business Competition Law, its implementing regulations, and the Law on Bankruptcy do not regulate the KPPU's authority to request bankruptcy from business actors for administrative fines that are not paid by business actors.

Bankruptcy is considered more efficient and puts more pressure on Debtors, considering that the legal consequences are also more risky, so they are afraid and try as much as possible to make efforts such as payment, settlement, or submitting a PKPU so that their company does not go bankrupt. Unfortunately, Law No. 37 of 2004 concerning Bankruptcy and PKPU also does not accommodate the authority of the KPPU as a party that can file for bankruptcy or submit a bill for administrative fines through this legal mechanism. In fact, business actors who are proven to have committed business fraud and are punished by the commission in the form of administrative sanctions are not in insolvency status or in a state of default, but on the contrary, they are in a financially strong economic condition as a result of the profits obtained while committing business fraud.

Research Methods

To answer this problem, in this research, the author analyzes the KPPU's authority to request bankruptcy of business actors who do not implement the commission decisions regarding administrative fines, which have permanent legal force. This juridical-normative research uses a legislative approach, with techniques for searching legal materials through literature study and legal materials techniques analysis using systematic interpretation methods.

Research Results and Discussion

Regulations Regarding the Authority of KPPU

The Business Competition Supervisory Commission (KPPU) is an independent institution whose main task is to

enforce business competition law based on Law Number 5 of 1999. In carrying out this task, the KPPU is given the authority to impose administrative action sanctions on business actors who are proven to have violated business competition law. By the logic, every violation of competition law can result in loss of welfare for some consumers and/or business actors. KPPU as a business competition law enforcement agency is given the task of taking legal steps to prevent and/or restore lost prosperity.

In general, the Law has regulated in Article 30 of Law Number 5 of 1999 that the KPPU is an independent institution that is independent of the influence and power of the Government and other parties, in the time of carrying out its authority, the KPPU is responsible to the President. Regarding the position and scope of the KPPU's authority, in Constitutional Court Decision Number 85/PUU-XIV/2016, the Court officially stated the KPPU is a state institution which is a state auxiliary organ that was formed outside the constitution and the KPPU is an institution which assists in carrying out the duties of the main State institutions. According to the provisions of Article 30 paragraph (1) of Law Number 5 of 1999, which states the KPPU was formed to supervise the implementation of Law Number 5 of 1999, and Article 36 letter I of Law Number 5 of 1999 states that the KPPU has the authority to impose sanctions in the form of administrative action on business actors who violate Law Number 5 of 1999. The Court believes that supervision and enforcement of sanctions is an instrument of state administrative law enforcement. In other words, the KPPU, in this case, is an institution that carries out law enforcement in state administrative law. Therefore, the duties and authority of the KPPU are within administrative law.

Apart from that, what needs to be discussed is the status of the KPPU, which is not a judicial institution. Even though the KPPU has the function of law enforcement, especially business competition law, the KPPU is not a special judicial institution for business competition. Thus, the KPPU has no authority to impose criminal or civil sanctions. The position of the KPPU is more of an administrative institution, so the sanctions imposed are administrative ones. According to the Supreme Court, the KPPU is not a judicial institution, where what is meant by a judicial institution is a body that is included in judicial power in accordance with the 1945 Constitution, including Human Rights Courts, all of which are based on Article 24 of the 1945 Constitution.

KPPU has the authority to impose sanctions in the form of administrative action along with administrative fines on business actors who violate the provisions of Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition in conjunction with Law Number 11 of 2020 concerning Job Creation. The forms of KPPU administrative action regulated in the provisions of Article 47 paragraph 2 of Law Number 5 of 1999 can be in the form(s) of

- a. Determination of the cancellation of the agreement as intended in Articles 4 to Article 13, Article 15 and Article 16; and/or
- b. Orders to business actors to stop vertical integration as intended in Article 14; and/or
- c. Orders to business actors to stop activities that are proven to give rise to monopolistic practices and/or cause unfair business competition and/or are detrimental to society; and/or

- d. Orders to business actors to stop abuse of dominant positions; and/or
- e. Determination of cancellation of merger or consolidation of business entities and takeover of shares as intended in Articles 28 and/or
- f. Determination of compensation payments; and/or
- g. Imposition of a fine of as low as Rp. 1,000,000,000 (one billion rupiah) and a maximum of Rp. 25,000,000,000 (twenty five billion rupiah)

With the enactment of the Job Creation Law, it is known that there is substance regarding changes to Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, which relates to law enforcement prohibiting monopolistic practices in Indonesian business competition. The important points of change related to law enforcement include the contents of Articles 44, 45, 47 and 48, which relate to First, the change in objection efforts from the District Court to the Commercial Court. Second, the elimination of the period for reading objection and cassation decisions by the Commercial Court and the Supreme Court. Third, removing the maximum fine limit. Fourth, eliminate criminal threats for violations of monopolistic practices and unfair business competition. The issue that the author wishes to highlight in this section is whether the KPPU can apply for Bankruptcy to Business Actors who do not implement commission decisions that have permanent legal force, especially in terms of paying administrative fines. In the end, the KPPU made regulations that could force business actors to pay administrative fines to ensure the effective implementation of decisions with permanent legal force.

Enforcement of Business Competition Law by KPPU

After the validation of the Job Creation Law, the competence of the Commercial Court increased, namely the addition of business competition cases. Before the Job Creation Law, objections to KPPU decisions and Execution Fiat Requests were submitted to the District Court, but after the enactment of the Job Creation Law, objections to KPPU decisions and Execution Requests were submitted to the Commercial Court. On February 2nd, 2021, the President began enforcing Government Regulation Number 44 of 2021 concerning the implementation of Prohibitions on Monopoly Practices and Unfair Business Competition. This Government Regulation provides the KPPU with the opportunity to adjust all applicable commission regulations, so that they are in line with the new Government Regulation.

Government Regulation Number 44 of 2021 certainly cannot add new behavioral norms to Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition in conjunction with Law Number 11 of 2020 concerning Job Creation. However, this Government Regulation is more oriented to implement Article 118 of Law Number 11 of 2020 rather than Law Number 5 of 1999. In other words, this Government Regulation is very minimalist if it is considered a government regulation regarding the implementation of the Law concerning the Prohibition of Monopoly Practices and Unfair Business Competition. There are three things that are the content of this Government Regulation, namely: (1) The authority of the KPPU; (2) Sanction criteria, type of sanction, and amount of fine; and (3) examination of

objections and cassation of KPPU decisions. The three things regulated there are almost all related to secondary norms (meta-rules), especially authority norms and sanction norms.

In 2023, KPPU issued a legal product in the form of KPPU Regulation Number 2 of 2023 concerning Procedures for Handling Cases of Monopoly Practices and Unfair Business Competition. In KPPU regulation Number 2 of 2023, the provisions governing the authority of the KPPU in efforts to execute decisions, especially enforcing administrative sanctions, are contained in Part Three of Chapter The entire article 107 of KPPU Regulation Number 2 of 2023.

Looking at the formulation of Article 107 of KPPU Regulation Number 2 of 2023, it can be seen that the phrase "able to make efforts under statutory provisions" in paragraph (2) letter e indicates that the legal steps listed in the article are not the only legal steps that can be carried out by the KPPU or in other words there is a loophole that allows other legal steps to be taken apart from the legal steps stated in the article. In PERMA Number 3 of 2021, there is a provision that KPPU decisions, both decisions that have not been objected to or decisions that have been objected to and have been examined and decided, and have permanent legal force, must be implemented voluntarily by Business Actors no later than 30 (thirty) days from the date the decision is read and/or the Business Actor receives notification of the Decision. If the Business Actor, in this case, does not implement the decision, then the KPPU submits a request for execution to the Commercial Court at the Business Actor's legal domicile. Then, based on the request for execution, the decision with legal force remains to be executed under the provisions of civil procedural law.

Regarding the authority possessed by the KPPU to hand down decisions, the decisions issued by the KPPU ultimately still require a fiat of execution from the Commercial Court. In this case, fiat of execution can be interpreted as a form of approval by the Commercial Court for the KPPU's decision to be implemented. Of course, this approval will not be given if the Chairman of the Commercial Court considers that the KPPU has made a mistake in examining the current case. In this way, fiat execution mechanism can act as control over decisions made by the KPPU that are not submitted for objection or cassation by the business actor (reported party). For decisions that are appealed against, the control role exercised by the Commercial Court will be more visible because the judge who examines the objection will examine the facts and the application of the law carried out by the KPPU. Thus, the KPPU will definitely be very careful in examining cases because errors in concluding, qualifying and reconstituting will result in the decision being annulled by judges at the Commercial Court and the Supreme Court. Even when a decision is issued by the KPPU, in the end, it still requires a fiat of execution from the Commercial Court. Apart from that, regarding the point of the Court's opinion in the Constitutional Court Decision Number 85/PUU-XIV/2016 which the author also wants to highlight, namely that the Court is of the opinion that based on the provisions contained in Article 35 letter f of Law Number 5 of 1999 the KPPU has the task of compiling guidelines and/or publications relating to Law Number 5 of 1999. In this regard, Law Number 5 of 1999 does not explicitly grant regulatory authority to the KPPU. Article 35 letter f only allows the KPPU to prepare work guidelines or manuals

which, although their contents may be regulatory, are only limited to serving as guidelines. In this case, the guidelines issued in the form of Commission Regulations do not have binding force as a statutory regulation, so the KPPU cannot include the Commission Regulations it makes as a legal basis for punishing business actors. Thus, when the provisions on the authority to collect receivables by the KPPU are only based on legal products in the form of KPPU regulations, then this authority can not be applied imperatively to business actors.

Basic Concepts of Bankruptcy Law

Bankruptcy is basically an institution that provides a solution to the parties if the Debtor stops paying debts to Creditors. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations has provided a definition of Bankruptcy, namely the general confiscation of all assets of the Bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge (Article 1 number 1, Law Number 37 of 2004 regarding Bankruptcy and PKPU). Sudargo Gautama stated that a decision to declare bankruptcy constitutes a general confiscation of the debtor and does not result in the debtor being placed under guardianship unless the assets confiscated become bankruptcy assets and are under the power of the curator. This form of curatorial power is temporary because the state of the bankruptcy estate can end. After the settlement of all the debtors' debts carried out in the bankruptcy case, the curator's powers end, and the debtor regains the right to manage his business.

Bankruptcy is a situation when the debtor is unable to make payments on the debts of his creditors. The situation of being unable to pay is usually caused by the financial distress of the debtor's business, which has experienced a setback. Meanwhile, bankruptcy is a court decision that results in the general confiscation of all assets of the bankrupt debtor, both existing and those that will exist in the future. Bankruptcy management and settlement are carried out by the curator under the supervision of the Supervisory Judge with the main aim of generating proceeds from the sale of assets to pay all debts of the bankruptcy debtor proportionally (*Prorata Parte*) and in accordance with the creditor structure. According to Munir Fuady, bankruptcy is a state in which the debtor is no longer able to pay. More precisely, it is someone who has been declared bankrupt by the court and whose assets or inheritance have been used to pay his debts. In Article 1 point 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, the definition of Bankruptcy is a general confiscation of all the assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.

According to Article 2 of the Bankruptcy Law, it is stated that the parties who can file a bankruptcy declaration are: Creditors, Debtors, Bank Indonesia/Financial Services Authority, Capital Market Supervisory Agency, and Prosecutors in the public interest. Bankruptcy does not free someone who is declared bankrupt from the obligation to pay their debts. Creditors are classified and grouped according to their respective classes, namely separatist creditors, preferred creditors and concurrent creditors. According to H. Man S Sastrawidjaja, based on their level,

bankruptcy creditors can be divided into 3 (three) types, namely

- a. Separatist Creditors;
- b. Preferred Creditors;
- c. Concurrent Creditors.

Separatist creditors are creditors who can exercise their rights as if the bankruptcy had not occurred, the example of separatist creditors are pawn holders, fiduciary security holders, mortgages, mortgages, and other material collateral. Meanwhile, preferred creditors are creditors with special rights as intended in Article 1139 and Article 1149 of the Civil Code. According to Article 1134 of the Civil Code, special privileges are rights that are given by law to a debtor so that his or her level is higher than that of other debtors, solely based on the nature of the receivable. Pledges and mortgages are superior to privileges, except in cases where the law provides otherwise. Concurrent creditors or competing creditors are creditors who do not have privileges so that their positions are the same as each other. Law Number 37 of 2004 concerning Bankruptcy and PKPU defines the meaning of debt in the provisions of Article 1 point 6 of Law Number 37 of 2004. It says "*Debt is an obligation that is expressed or can be expressed in amounts of money both in Indonesian currency and foreign currency; whether directly or which will arise in the future or contingent; which arises due to an agreement or law and which must be fulfilled; gives the creditor the right to be able to fulfil the debtor's assets arising from the agreement or law.*"

Application and Declaration of Bankruptcy

An application for a declaration of bankruptcy can be submitted if the bankruptcy requirements contained in Article 2 paragraph (1) of the Bankruptcy Law and PKPU are met, namely, the debtor has two or more creditors and has not paid in full at least one debt that has matured and can be collected. An application for a bankruptcy declaration must be submitted to the Chairman of the Commercial Court in accordance with the provisions of Article 6 of the Bankruptcy Law and PKPU. The application for declaring bankruptcy must be granted if some facts or circumstances prove that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) have been fulfilled.

Qualification of Administrative Fine Sanctions in KPPU Decisions

Sanctions for business actors who are proven to have violated Law Number 5 of 1999 are administrative sanctions, which usually take the form of an order to carry out or stop certain actions along with paying a fine as regulated by the Law, where the fine ultimately goes into the Country Treasury. Based on this fact, it is clear that the objective is to protect in maintaining the effectiveness of the implementation of decisions in business competition law are fines that will go into the State Treasury, which automatically become State Receivables. So, it can be interpreted that the fine sanctioned by the KPPU is a debt arising from the law. In the Civil Code, as stated in Article 1137 of the Civil Code, it is stated that "The rights of the State Treasury, Auction Office, and other public bodies established by the Government, to prioritize the orderly implementation of these rights, and the period these rights

last, are regulated in special laws regarding those matters.” These provisions apply in general and can also apply to KPPU Receivables, based on Article 1 number 6 of Law Number 37 of 2004 concerning Bankruptcy and PKPU regarding the definition of debt, KPPU receivables are debts that arise from law.

Law Number 37 of 2004 concerning Bankruptcy and PKPU does not regulate the position of KPPU Receivables as a creditor who can request bankruptcy. In the author's view, KPPU's Receivables should be included as one type of Creditor because the position of State Receivables represented by KPPU should actually be higher than the position of material collateral holders, and State Receivables have a position that should take precedence in repayment of debtors' debts. KPPU's receivables include receivables that can be collected before the court because KPPU's receivables have executorial power since the commission's decision has permanent legal force and has received fiat execution of the decision from the Commercial Court. Based on the description above, the fiat execution of a decision from the Commercial Court can be interpreted as an agreement or claim right from the KPPU that has expired. In this case, the KPPU should be able to request bankruptcy, register its claim rights or follow the process of verifying the receivables in the bankruptcy case of the Business Actor to the curator at the Commercial Court. Still, it cannot be ascertained whether the position of the KPPU's receivables is as a referent, concurrent or separatist creditor because there are no special rules explaining this. However, if we refer to Article 1137 of the Civil Code, which states that the rights of the State treasury must take priority, then the KPPU should be placed as the preferred creditor if the receivables are accepted by the Panel of Judges at the Commercial Court.

The Petition Authority by the KPPU of the Bankruptcy

Quoting the opinion of Dr. Sukarni, SH., MH. As stated in the Business Competition Journal, Law Number 5 of 1999 does not give the KPPU the authority to place a security confiscation (*conservatoir beslag*) on the assets of business actors. Thus, to guarantee the implementation of the decision, the KPPU must ask the Chairman of the District Court to place an execution confiscation on the business actor's assets, which will then be followed by an auction sale. However, the implementation of the execution is, in fact, not as easy as written. Various problems still arise in the field as obstacles to implementing the KPPU's decision. These obstacles are both juridical and non-juridical. Juridical obstacles, as it is known, are that based on Law Number 5 of 1999, some of the KPPU's decisions are still in the form of constitutive decisions, which, of course, makes it difficult for the District Court to carry out executions based on the KPPU's request, there is no *irah-irah* (final decision has executorial power and its use is limited only to court decisions and certain documents) because the KPPU is not a judicial institution and KPPU's decision is not final and binding, and the KPPU does not have a bailiff. As for non-juridical obstacles, there are business actors who are given administrative sanctions the fact that their company no longer exists, there are attempts to repay fines by the reported party/business actor imposed by the KPPU, and there has not been good communication regarding applications for fiat execution to the District Court, which causes long execution time.

Seeing the reality both juridically and the reality that occurs in the field, it is not surprising that the authority to apply for bankruptcy is something that needs to be studied further in terms of strengthening the authority of the KPPU in enforcing business competition law in Indonesia, especially in taking action against business actors who are proven to have violated the provisions of the Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition in conjunction with Law Number 11 of 2020 concerning Job Creation in order to maintain the effectiveness of business competition law enforcement. In the first half of 2021, the Government issued a legal product in the form of Government Regulation Number 44 of 2021 concerning the Implementation of the Prohibition of Monopoly Practices and Unfair Business Competition. The Government included material regarding the status of administrative fines, which were categorized as being included in state receivables. The provisions governing administrative fines as state receivables are written in Article 13 of Government Regulation Number 44 of 2021, which reads as follows

Article 13

1. Administrative actions in the form of fines stated in the commission's decision which have obtained permanent and binding legal force, is a constitute state receivables and are deposited into the state treasury as non-tax state revenue.
2. In the event that the reported party does not implement the commission's decision in paragraph (1), the Commission will coordinate with the government agency authorized in the field of state receivables affairs and/or law enforcement officials in accordance with the provisions of statutory regulations.

Indonesian civil law regulates the position of State Receivables as stated in Article 1137 of the Civil Code, stating that "The rights of the State Treasury, Auction Office, and other public bodies established by the Government, to prioritize the orderly implementation of these rights, and the period they last These rights are regulated in various special laws regarding these matters." These provisions are generally used for Tax Receivables as the authority or legal standing of the Directorate General of Taxes regarding the collection of tax receivables, which will later be specifically regulated in the Law on Taxation. In KPPU Regulation Number 2 of 2023 concerning Procedures for Handling Cases of Monopoly Practices and Unfair Business Competition in Part Three of Chapter V Article 107 paragraph (2) letter e, which reads "Making efforts in accordance with the provisions of statutory regulations". The words in the Commission Regulation do not explain that the KPPU has the authority to apply for bankruptcy against business actors, only that the phrase in Article 107 says that it can carry out efforts as regulated by law, which can be interpreted as bankruptcy legal action.

Seeing the formulation of Article 107 paragraph (2) Letter e of KPPU Regulation Number 2 of 2023 as one of the legal steps that can be taken by KPPU, it is very likely that the legal steps referred to in this KPPU Regulation can refer to bankruptcy legal steps which regulate debt-receivables settlement. So far, the statutory provisions have not regulated the KPPU's authority to carry out bankruptcy petition efforts. However, measuring and considering the provisions of Article 13 of Government Regulation Number

44 of 2021 regarding the status of administrative fines, Article 1137 of the Civil Code regarding state receivables, which must take priority, and Article 107 paragraph (2) letter e of Commission Regulation Number 2 of 2023 regarding other legal remedies in accordance with the law, then it can be a reference for filing a bankruptcy petition which can be carried out by the KPPU, or in other words, a legal loophole which makes it possible to take other legal steps other than the legal steps stated in the article.

Conclusion

The KPPU's administrative sanctions fines are qualified as state receivables through the KPPU's right to claim since obtaining a decision that has permanent legal force for which business actors can request payment. However, the regulation regarding the authority to collect administrative fines by the KPPU still raises problems, those are: *First*, the Commission Regulations or guidelines do not have binding force as a statutory regulation, so they cannot be used as a legal basis for punishment, therefore this authority cannot be applied imperatively to Business Actors. *Second*, business actors take advantage of the KPPU's weakness in terms of collecting fines and receivables so that most of them are reluctant to pay administrative fines because there is no compelling impact to make them have to pay the administrative fines, sometimes even these business actors has moved or its whereabouts are unknown. *Third*, the existing regulations do not guarantee payment or return of state losses resulting from fraudulent business competition. There is a lot of debate on the concept of business competition law, which has an impact on the ineffectiveness of the mechanism for collecting administrative fines if it is directly applied by the KPPU in enforcing business competition law.

In principle, Government Regulation Number 44 of 2021 has confirmed that KPPU administrative fines are state receivables that must be paid to the State Treasury as non-tax state revenue, and Article 1137 of the Civil Code states that the State Treasury has the right to pay first, these two legal bases have been sufficient for the KPPU to be able to apply for bankruptcy against business actors who do not pay administrative fines which have permanent legal force. Article 107 paragraph (2) letter e Perkorm Number 2 of 2023 regarding carrying out efforts following the law can be interpreted by the KPPU to use other legal remedies if the business actor does not implement the commission's decision voluntarily and these efforts do not preclude the possibility of a bankruptcy petition despite its weakness. This regulation is still a guideline and should be accommodated in statutory regulations. Commercial Court Decision Execution Fiat can be interpreted as a form of agreement and proof of the KPPU's claim rights, which have expired if they have permanent legal force and are not implemented voluntarily by business actors. From the point of view of bankruptcy law, referring to the explanation above, it can also be concluded that KPPU can be categorized as a special creditor like tax receivables, this is whether viewed based on the Civil Code, Business Competition Law or administrative law, so that state receivables from KPPU administrative fines can be qualified as Preferred Creditors whose payment must take priority because they relate to the State's rights under bankruptcy law.

Thus, the importance of returning state receivables for the sake of national development through the KPPU's administrative fines, therefore the author suggests that to maintain the effectiveness of the implementation of the Commission's decisions regarding administrative fines, which have legal force, more specific rules regarding the collection of business competition debts must be established through mechanisms of bankruptcy's law, which includes the recognition of administrative fines as a right of collection when filing a bankruptcy petition so that collection can be applied imperatively to business actors. There is a need for lawmakers to include the KPPU in the Bankruptcy law by revising or adding the KPPU as one of the parties authorized to request bankruptcy of business actors who do not pay administrative fines as regulated in Article 2 of Law Number 37 of 2004 concerning Bankruptcy and PKPU. In the end, the bankruptcy petition becomes an alternative for enforcing business competition law in business competition law collection. It will also put KPPU's receivables as a preferred creditor or bills whose payment takes priority due to the law, such as bills from other state institutions, then it will provide legal certainty and not give rise to multiple interpretations, 2004 which can cause differences of opinion among law enforcement.

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