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THE IMPACT OF REGULATION ON ISLAMIC FINANCIAL INSTITUTION TOWARD THE MONOPOLISTIC PRACTICES IN BANKING INDUSTRIAL IN ACEH, INDONESIA

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Abstract

The ratification of Aceh regulation (Hereafter called Qanun) Number 11 of 2018 concerning Islamic Financial Institutions (Hereafter called Qanun LKS), has provided special rights for Islamic banking institution, while non-Islamic banking institutions are not permitted to run their business in the province. At the same time, the central government also decided to merger three stated-owned Islamic banks, namely BNI Syariah, BRI Syariah, and Mandiri Syariah to become Bank Syariah Indonesia (BSI). These policies have potentially violated Law on Anti-Trust, especially in Aceh Province. This article aims to analyse whether the local government's policy in enacting the Qanun LKS, as well as consolidating the BSI is part of monopoly practices and unfair business competition in the banking sector in the Aceh region? This research classified as a normative qualitative research, where data is obtained from secondary

sources, such as laws, books, journals and related studies. The results show that the enactment of Qanun LKS has created a restriction for conventional banking to expand their business in the region. In addition, the government's policy to consolidate of three state-owned Islamic banks, which control more than seventy-five of market share in Aceh province, is considerably contrary to the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition Number 5 of 1999.

Keywords: *Aceh, Islamic Banking, and Monopoly, Qanun LKS*

A. Introduction

Aceh is one of special autonomous regions in the Republic of Indonesia (Damanik et al., 2010; Salim, 2015). This recognition has been adopted into several laws by the central government. First, the government adopted Law Number 44 of 1999 concerning the Implementation of Special Rights for the Aceh Province. In 2001, the government issued a new law number 18 of 2001 concerning Special Autonomy Region of Aceh to revise the previous one. However, after the Helsinki peace agreement that signed on 15 of August 2005, the government adopted the Law Number 11 of 2006 on the Government of Aceh (Hereafter abbraviated with LoGA). The law has provided broadly rights and authorities for local government of Aceh.

The most absorbed special rights that recognised by the government is the right for the local government to carry out the implementation of Islamic law in all aspects, including in economics (Fahmi, 2012; Salim, 2015). Article 155 of the LoGA states that "the economy in Aceh is directed at increasing productivity and competitiveness for the realization of people's prosperity and welfare by

upholding Islamic values, justice, equity, people's participation and efficiency in a pattern of sustainable development".

In order to implement the norms practically, the local government adopted several local regulations (namely *Qanun*) related to implementation of Islamic law in the region (Nadia et al., 2019). For instance, the Aceh administration adopted *Qanun* Number 8 of 2014 concerning General Principles of Islamic Law in Aceh. In Article 21 of the *Qanun*, Para (1) states that "Financial institutions that will operate in Aceh must be based on *sharia* (Islamic) principles". Furthermore, Para (4) of the *Qanun* required that "Further provisions regarding Islamic financial institutions are regulated in the other specific *Qanun*" (Aceh, 2020). Following this provision, the government of Aceh enacted *Qanun* Number 11 of 2018 concerning Islamic Financial Institutions, or most popular called, *Qanun Lembaga Keuangan Syariah* (Hereafter abbreviated with *Qanun* LKS).

The main purpose of the *Qanun* LKS is to implement the Islamic principles in all financial institutions in Aceh province (Aceh, 2020). The Islamic principles are initially referred to the concept of Koran and *hadis* and other Islamic jurisprudences, which do not contain element of *riba* (usury), *gharar* (obscurity), *maisir* (gambling), fraud, and others things or acts that are prohibited in Islam (El-Gamal, 2006). As a result, non-Islamic banking institutions are not permitted to conduct their business within the region, unless the banking system is converted to the Islamic system.

Following the enactment of the *Qanun* LKS, Unintendedly, the central government also decided to merging three state-owned Islamic banks, namely Bank Mandiri Syariah, BNI Syariah and BRI Syariah to

become Bank Syariah Indonesia (BSI). The Financial Service Authority (*Otoritas Jasa Keuangan*, OJK) officially issued a permit for the merger of the Bank on January 2021 through letter Number SR-3/PB.1/2021. Hence, the author argues that both policies have an intersected that lead the state-owned Islamic banks become the most dominant business player in banking sector in the region.

The data found that the state-owned Islamic banks have controlled more than seventy-five percent of the market share, and this domination has been supported by *Qanun* LKS of which preventing conventional banking industry from running their business or competing with the government-owned bank institutions fairly and competitively. As a result, it has potentially violated the Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition. Accordingly, Article 1 Para 1 of the law defines that the meaning of "monopoly" is controlling over the production and or marketing of goods and or over the use of certain service by one business actor or a group of business actors.

This paper aims to examine whether the enactment of *Qanun* LKS, along with the consolidation of three state-owned Islamic banking institution has violated law on Antitrust in Aceh region of Indonesia? Indeed, the *Qanun* LKS has stipulated that all financial sectors, both banking and non-banking industries shall be based on Islamic principles in running their business in Aceh region, Indonesia. It means that that *Qanun* LKS has provided a special right to the Islamic banking institutions to monopolise of all financial transaction and banking industrial business in the region. In contrast, the conventional (non-Islamic) banking

institutions are not permitted to operate or run their business, unless under the sharia platform.

At the same time, the central government also carried out a policy of merging three national bank companies, namely Bank Mandiri Syariah, BNI Syariah and BRI Syariah to become Bank Syariah Indonesia (BSI). Consequently, the BSI has been controlling more that seventy-five percent of the banking market share, from urban to rural areas across the region. Furthermore, the customers of banking services in Aceh region have no other choice except with Islamic banking facilities. Consequently, this policy has led to monopolistic practices and unfair competition in banking industry in the westernmost region of Indonesia.

Following the introduction, this article will examine the basic concept of monopoly practices, legal basis and case analysis on monopoly practices in Indonesia, which can be used as jurisprudence in understanding monopoly practices of Islamic banking institution in Aceh region, Indonesia. Then, the authors will also examine the concept of Islamic banking, the rights of local government in Aceh in implementing the regulation on the *Qanun* LKS of which assumed by some scholars has contrary to the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition. Finally, the conclusion, in which the core finding of this paper will be described along with recommendations, so readers can use them as a basis for further analysing of this issue from other legal aspects.

B. Method

This study draws on a doctrinal approach or the 'black-letter method (McConville, 2007). This method proposes to understand the existing legal provisions from the textual interpretation of legal doctrines (Musson & Stebbings, 2012). The concept of legal doctrinal will be used to analyse the phenomena of the implementation of the law and the contestation of its application. The primary data will be gathered from legal texts, such as laws and jurisprudences. The author also will use the secondary data, mainly from books, journals, articles, and other related resources to the topic. All data will be analysed qualitatively over all legal materials to support the hypothesis.

C. Result and Discussion

1. Monopoly Practices and Unfair Business Competition

Etymologically, the word monopoly comes from the Greek called "*monospolein*", meaning a single seller (H.L, 2016). In the United States of America (U.S.A), the term of monopoly called "antitrust" (Ezrachi, 2021), while in Europe, it was well-known as "domination" (Ramos, 2020). There are several other terms called or related to the word of "monopoly", such as oligopoly, monopsony, oligopsony, cartel, dan trust (Djolov, 2014).

In term of terminology, monopoly is defined as an activity that controls an economic activity by one or more business actors, resulting in the controlling of the production and or marketing of certain goods and or services, which create unfair competition and can harm the public interest (See Article 1 Para 2 of Law Nomor 5 of 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition, 1999). In

addition, monopoly also defined as a privilege rights obtained or given by a ruling institution to one or several companies to carry out certain businesses or trades, produce goods or services, distribute or control a form of business that can lead to monopolistic practices and or competition, which resulted unfairly market share (Friedman, 1983).

Based on the definition above, it can be understood that monopoly practices is a control over the production, distribution and services or procurement of goods and or services that is controlled by one entrepreneur or several entrepreneurs which causes concentration of power in the economic sector, and there is no choice for consumers to freely and fairly choose, especially in business transactions.

In Indonesia, monopoly practices have occurred since the Dutch East Indies colonial era, when the United Dutch Chartered East India Company (*Vereenigde Nederlandsche Oostindische Compagnie, abbreviated as the* VOC) controlled all the purchasing processes of agricultural products in Indonesia, and the VOC assumed to be the very epitome of successful monopolizing company on earth at that time (Balk et al., 2007).

During the New Order era, led by President Suharto, there were no specific rules on prohibiting monopolistic practices and unfair business competition. Provisions concerning the prohibition of Monopolistic Practices are only regulated in a limited manner, which is in Law Number 5 of 1984 concerning Industry. So that monopolistic practices were frequently occurred, especially in the industrialization sectors. According to Basri, as cited by Findi (2019), the large number of monopolistic practices during the New Order era were influenced by several aspects, including: (1) Indonesian's political economic conditions tended to be

filled with practices of corruption, collusion and nepotism, (2) the government policies tended to support monopoly companies that supported the personal interests of the rulers, (3) the practices of controlling the state economy is not in line with the ideals of the constitution and laws, (4) there was no state institution authorized to prevent and punish monopoly practices, and (5) monopolistic practices and business competition carried out by certain companies were influenced by cartels related to the business of rulers.

After the political reform era that erupted in 1997, the central government passed Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The enactment of this law aimed to create a better, free and fair market system and Indonesia economy (Hastiadi & Nagara, 2023). The government's policy to pass the post-reform antitrust law is inseparable from the influence of the international organisations' effort to encourage market liberalism in Indonesia (Jiuhardi, 2022). In liberalism perspective, monopoly practices can damage a nation's economic system. Monopoly also will eliminate individual rights to determine their options according to their wishes and freedom (Hardin, 2003). Moreover, a strength economy of nation shall be based on an economic system that promotes fair competition (Mosca, 2018).

However, practices of monopoly in business sector are not always illegal. In some cases, the State even legalizes monopolistic practices and unfair business competition in term of national economic interest. According to Aziz (2019), monopolistic practices can be categorised into three forms: firstly, monopoly by law – this type of monopoly desired and legalised by law. In this context, the government issues such of law or a

regulation which stipulates that certain business sector may only controlled by one particular business institution. In Indonesia, monopoly by law occurs in the context of state control in important and essential sectors, namely those related to the basic need or livelihoods of people, such as mineral resources, water, and all natural resources contained within the Indonesian territory. Secondly, monopoly by nature, which is a form of monopoly that is established and growth naturally due to perseverance, a high work, and the advantages possessed and supported by environmental conditions that make it possible to carry out this type of monopoly. For example, a large company that controls market share, giving rise to unfair competition with other small companies. Thirdly, monopoly is implied by license, namely a type of monopoly that is obtained through a formal license by relying on mechanisms and channels of power and statutory procedures and or government bureaucracy. This type of monopoly often disrupts unfair competition and cause market turbulences. This practice had been occurred since the VOC regime and still remains until now, where certain corporate powers are granted monopoly rights by the rulers due to have a personal or political – economic interests.

Moreover, monopolistic practices are also formed due to various aspects (Aziz, 2019). The first is the relationship between the state and economic sector. This aspect is inseparable between the nation interests on economy. The state considers controlling over economy system as part of the state sovereignty, especially controlling all lands and natural resources within territory. Second, the government believes that the sovereignty state has a right to claim as the only producer of all goods and services.

This concept shows that in a nation's economy, certain products are fully controlled by state companies, such as in supplying electricity, water, gas, and so on. Hence, the state becomes the sole producer in producing goods and services. Third, the state as a regulator, in which the rules made by the state are always aimed at the interests of the state, and these interests are influenced by political and economic factors. Finally, the state entitled as an economic policy maker. In this context, the state officials issue legal policies in the economic sector that aims to develop the national economy and achieve the people prosperity (Aziz, 2019; Nuraini, 2016). Hence, the state has a power and right to adopt and implement any policies which relevant to obtain the State's interests.

Furthermore, the antitrust law has formulated a number of economic activities that can be categorising as a form of monopoly activities and unfair business competition, namely:

(1) Oligopoly practice is an agreement among the business actors in controlling the production and or marketing of goods and or services which controls over seventy-five percent of the market segments of a certain type of goods and or services.

(2) Fixing of Price. This type of monopoly occurs when one business actor enter into agreement with his business competitors to fix the price of certain goods and services payable by costumers on the same relevant market.

(3) Third, dividing of market territory. It means, a business actor enters into an agreement to share territory with other entrepreneurs in relation to the marketing of product or

service, resulting in unfair competition and the occurrence of monopolistic practices.

(4) Boycott practices. This type of monopoly is carried out by making an agreement between business actors to block other business actors or refuse to sell or buy a product from certain entrepreneurs so that it result harm over other business actors, and this action is illegal.

(5) Cartel practices, which aims to influence prices by regulating the production and or marketing of goods and or services.

(6) Trust, namely an agreement in which a business actor enters into an agreement with other business actors by forming a combined company to become larger in order to control the production of goods and or services resulting in monopolistic practices and unfair business competition.

(7) Oligopsony is an agreement from a company with other companies that aiming to jointly controlling the purchase or acquisition of supplies in order to control prices of goods and or services in the relevant market, which may result in monopolistic practices and or unfair business competition.

(8) Vertical integration practices, in which an agreement that occur between several business actors who are at different but interrelated stages of production and operation and distribution. The form of the agreement that occurs is in the form of a combination of some or all of the successive

operating activities in a series of production. Consequently, this practice can lead to unfair competition, because these activities integrate several activities to control the supply of raw materials and final production from the same industry.

(9) Closed/exclusive Agreements, is an agreement in which one business actor as a buyer and another as a seller enters into a closed agreement which may cause other business actors to enter in the same agreement. Article 15 of Law number 5 of 1999 stated, "Business actors shall be prohibited from entering into agreements with other parties stipulating that the party receiving certain goods and or services shall be prepared to buy other goods and or services of the supplying business actor". This practice is prohibited because it is contrary to the principle of freedom of contract.

Nevertheless, although there are a number of laws that prohibit monopolistic practices and unfair business competition, hundreds of cases of monopolistic practices have been occurred and handled by the Indonesian Commission for the Supervision of Business Competition (*Komisi Pengawas Persaingan Usaha*, hereafter: KPPU). Furthermore, the KKPU have received several decisions with permanent legal force from the Supreme Court to execute the Court decisions.

2. Understanding of Islamic Banking in Aceh region, Indonesia

In general, Islamic banking has the same role and function as conventional banking. Both business institutions have the same functions, which aimed as an intermediation institution for those who have a surplus of funds and lack of funds (Sjahdeini, 2018). On the one hand, the state recognises the existence of conventional banking, where this recognition is based on Law Number 10 of 2008 concerning Banking Institutions of Indonesia. On the other hand, the government also recognised Islamic banking institutions which are based on Law Number of 2008 concerning Islamic Banking Institutions. Hence, Indonesia has adopted and recognised to implement dual banking system within its territory.

However, these two banking systems also have different viewpoints. The difference is in implementing the form of an agreement or engagement. The conventional banking transaction mostly based on load agreement or contract with additional interest. Meanwhile, Islamic banking system is refer to sharia principles, or based on the provisions of Islamic law. Article 2 of Law Number 21 of 2008 concerning Islamic Banking in Indonesia, states that "Sharia (Islamic) banking is conducting business based on the sharia principles, economic democracy, and prudential principles".

There are three aspects of Islamic banking principles in Indonesia, namely aspects of sharia principles, aspects of democracy and aspect of prudence. Accordingly, the sharia aspect principles mean that a contract or agreement that signed between creditors and debtors shall be based on sharia principles. There are several forms of contracts or agreements that have been well-known in financial transactions in Islam. For example, the

contract based on the concept of *murabahah* (selling and buying), *wadi'ah* (entrusted), *mudharabah* (profit and loss sharing), *musyarakah* (joint venture), *qard* (interest free loads), *ijarah* (lease), *ijarah mumtahiya bittamlik* (lease purchase), *hawalah* (take over debt), *wakalah* (represent), and others that do not conflict with Islamic values.

The second aspect is related to the principle of economic democracy. This principle also been implemented in Islamic banking system, in which Islamic banking also must be a part of realising democratic principles in developing people economy in Indonesia. It means that the existence of Islamic banking must aim in achieving prosperity together with Islamic bank owners, shareholders, and customers. This means that customers also considered as owners or shareholders of capital, and they must become an inseparable part in developing the people's economy and part of achieving the welfare state of Indonesia.

The third aspect is a prudence principle. This aspect emphasizes that Islamic banking must also prioritise prudence principle in carrying out its business activities, both in raising funds and in channelling funds to the public. Accordingly, the Financial Services Authority (*Otoritas Jasa Keuangan*, OJK) of the Republic of Indonesia has issued a number of regulations related to the implementation to the principle of prudence in serving the banking sector. As a business institution, Islamic banking must also comply with a number of rules issued by both Bank Indonesia and the OJK, so that Islamic banking can run its business in a sustainable manner.

In the context of Aceh, Islamic banking cannot be separated from the national banking system. The Islamic banking law is the main legal

basis for the establishment of sharia-based banking in Indonesia. However, Aceh as a special region has another special law, called Law Number 11 of 2006 concerning the Government of Aceh. In Article 125 of the Law, it provides rights and authorities for the local government to implement Islamic law comprehensively in all aspects, including theology (*tauhid*), legal (*syariat*) and morals (*akhlak*). Accordingly, the local government of Aceh enacted local regulations (called *Qanun*) Number 8 of 2014 concerning the General Principle of Islamic Law in Aceh, in which this *Qanun* regulates the implementation of Islamic law in all aspects, including in term of economic manners . For instance, Article 21 regulates Islamic Financial Institutions, and explains that, as follows:

(1) Financial institutions that will operate in Aceh shall be based on sharia principles.
(2) Conventional financial institutions already operating in Aceh shall open a sharia business unit
(3) The financial transactions with the Aceh Government and regency governments shall use sharia principles and or go through the process of an Islamic financial institution.
(4) Further provisions regarding Islamic financial institutions are regulated in the *Qanun* of Aceh.

Based on Article 21 Para 2 of the *Qanun* Number 8 of 2014, it shows that the conventional banks that have been existed in Aceh merely required opening Islamic business units' platform, instead to close their business ultimately in the region. This means that this provision reflects the implementation of the dual banking system as applicable nationally.

However, with the enactment of *Qanun* LKS, it has required that all non-Islamic banking institutions shall convert their operational platform from conventional to sharia basis. This requirement is stated in Article 2 of

the *Qanun* LKS, namely: "(1) Financial institutions operating in Aceh shall be based on sharia principles, (2) any contract agreement in financial in Aceh uses sharia principles". Hence, the *Qanun* LKS has imposed the obligation for all financial institution that operate within the territory of Aceh province shall be based on Islamic principles. In other words, any non-shariah operating system of financial institutions is not permitted to running their business in the region.

Moreover, Article 65 of the *Qanun* LSK also implies the due date to convert or to adopt the principle of Islamic principles in conducting their business in Aceh. The norm states that any financial institutions operate in Aceh province shall adopt the principles contained in the regulation no later than three years after the regulations that was enacted. Indeed, there is no direct prohibition of conventional banking institutions to run their business in the region, but the rule requires all non-sharia model shall convert their business scheme to the sharia based principles. Consequently, banking financial institutions that do not mutate to the sharia system do not obtain legality to conduct business in the Aceh region.

Furthermore, the *Qanun* LKS is implemented based on the principle of personality, whereby every Muslim must comply with the provisions, in carrying out transactions in the financial sector and must use sharia banking facilities. It means that all Muslim have no right freely to select services in banking system except merely with Islamic banks. On the other hand, non-Muslim have the right to submit, either they become customers of Islamic banking or remain customers of conventional banking. However, when there is no longer conventional banking in Aceh, there is no other option for non-Muslim either, except to use Islamic

banking facilities. This provision is mentioned in Article 5 of the Qanun LKS, as follow:

"This Qanun applies to…"

(1) every person of Muslim residing in Aceh or a business company conducting financial transactions in Aceh;
(2) any person who is not a Muslim conducting transactions in Aceh can submit himself to this *Qanun;*
(3) Any non-Muslim person, business entity and/or legal entities conducting financial transactions with the Government of Aceh, district or city within the Aceh province.
(4) Sharia financial institutions running business in Aceh;
(5) Sharia financial institutions outside Aceh which have head office in Aceh.

Based on the provisions above, it can be understood that all banking institutions and any person who are living or those conducting a business transaction in Aceh shall refer to the provisions contained in the *Qanun*. The obligation to imply the sharia principle for business companies is stated in Article 14, that: "Sharia bank business activities include among others:

(1) Collecting funds in the form of savings and investments with contracts that do not conflict with sharia principles;
(2) Distributing financing based on profit sharing, buying and selling, leasing, services, and non-interest loans; and
(3) Marketing financial products from sharia financial institutions that are regulated in accordance with statutory provisions.

In short, the difference between sharia banking system and conventional banking system is only in the contract model used. The conventional uses a contract of loan or debt based on interest rate, so that it is categorized as usury practice in Islamic perspective. In contrast, Islamic banking uses a buying and selling scheme, or profit sharing as a form of financial transaction, particularly in financing products.

3. The Impact of the Enactment of *Qanun* LKS towards Monopolistic Practices in Banking Industry in Aceh region

The ratification of the *Qanun* LKS 2018 emphasizes that the financial business including the banking sector in Aceh shall be based on sharia principles. This obligation is stated in Article 2 in conjunction with Article 6 of the *Qanun* LKS, which states that "all business entities in the financial sector shall apply sharia principles". In addition, every person who is Muslim who will carry out financial transactions shall comply with the *Qanun* LKS. This norm explains that business actors who run the banking institutions are not justified to run their business in the region unless refer to the sharia principles. As a result, several conventional banks decided to close their business in the region, including Bank Panin, Bank Rakyat Indonesia (BRI), Bank Negara Indonesia (BNI), Bank Mandiri, and Bank CIMB Niaga. Then, the market share of the banking sector in Aceh is controlled hundred percent by Islamic bank institutions, and more than seventy-five percent alone is controlled by Bank Syariah Indonesia (BSI) and Bank Aceh Syariah (BAS). The BSI itself has 205 offices in all districts in Aceh region, which considered the largest branch of BSI within the

provincial level in the Indonesian archipelago (Ramadhan, 2022). Meanwhile, BAS, which is a regional government-owned bank, has 26 branch offices and 96 sub-branch offices in throughout Aceh. In contrast, private sharia banking, such as Bank Muamalat Indonesia (BMI) only has five branch offices across the region, BCA Sharia has 3 branch offices, Bank Mega sharia has merely one branch office, BTN Sharia has five branch offices and BTPN Sharia also has merely one branch office.

Based on the total area control and market share of the sharia banking business, especially BSI and BAS, it is certainly that these state-owned Islamic banking companies have controlled more than seventy-five percent of the banking market share in Aceh. This phenomenon is contrary to Article 4 paragraph 2 of the Anti-Monopoly Law which expressly stated that "Business actors should be suspected or considered to be jointly controlling the production and or marketing of goods and or services, as referred to in Para 1, if two or three business actors or groups of business actors control more than seventy-five percent of the market share for one type of certain goods or services". As a result, it can be argued that the enactment of *Qanun* LKS along with the merger policy to consolidate state-owned Islamic banking has resulted in monopoly practice and unfair business competition in banking sector in the Aceh province, Indonesia.

In addition, this finding also based on the meaning of anti-monopoly and unfair business competition, in which the state-owned banking institutions have concentrated of economic power by merely one and two business actors in marketing banking service. This argument is

reflected from the phenomena, in which there are four elements fulfilled, namely:

(1) There is a concentration of economic power;
(2) The concentration of power is in one or more economic business actors;
(3) The concentration of the economy creates unfair business competition;
(4) The concentration of economic power is detrimental to the public interest.

Based on these four aspects, the adoption of *Qanun* LKS has directly restricted conventional banking business actors to run or operate their business in the region. In addition, the merger of state-owned Islamic banking institutions has also led to a concentration of economic power by one or more sharia-based banking business actors, and there is no competition with either conventional banking or private Islamic banking institutions. Both policies have resulted a detrimental effect both to conventional banking business actors and conventional banking customers.

Moreover, the adoption of *Qanun* LKS has also created an obstacle for conventional banking institutions to be able to do business in Aceh. Following with the merger of state-owned sharia banking institution, it will be difficult for other business actors which operate in the same market to compete with state-owned bank that already control more than seventy-five percent market share, and this tends to lead to monopolistic practices by law and nature. The monopoly practice under

legal justification, as well as by nature has formed the state-owned Islamic banks in Aceh regions to dominate in controlling market share, and this dominant occurs due to having a fully supported by the state organ and regulations.

Furthermore, the *Qanun* LKS has provided a space for state-backed sharia banking as the leader of the market, and causing distortions of perfect market competition. Looking to the legal benefit theory, the enactment of such of law aimed to establish to benefit for people, and its benefit is considered good or bad depending on the impact it produces. Hence, if the enactment of *Qanun* LKS resulting goodness, welfare justice, and happiness, then the law is beneficial to society. Conversely, if the law causes loss, injustice, misery, and suffering, then the law can be categorized as useless for the society.

Indeed, the right to Monopoly by state organ is recognized by Law of Antitrust. Article 51 of Indonesian Anti-Trust law, stated that monopoly rights are recognized by the state and these rights can be granted to state companies formed by the government in which the implementation of monopoly is related to the basic need of people and important matters for the state. Accordingly, it mentioned fully, as follows:

> "Monopoly and or concentration of activities related to the production and or marketing of goods and or services affecting the livelihood of society at large and branches of production of a strategic nature for the state shall be stipulated in a law and shall be implemented by State-Owned Enterprises and or institutions formed or appointed by the Government".

Based on the rules mentioned above, there are several aspects that need to be considered, so that monopoly practices can be legalized, including:

(1) The existence of an element of "monopoly and or concentration of business activities related to the production and or marketing of goods and or services;
(2) There is an element of "controlling the basic need or livelihoods of the people as well as production branches that are important for the nation";
(3) There is an element of "regulated by law";
(4) There is an element of "organized by State-owned enterprise and or an agency or institution formed or appointed by the Government.

Finally, the aspect of legal monopoly shall be regulated by law, and is required for carry out monopolistic practices and or concentrating of business activities either in producing goods or services, which the production aims to meet the main needs of the people, and considered is very important for the state. Thus, monopoly practices and or concentration of activities by state-owned companies can only be carried out after being regulated in law, instead of by lower regulation, such as regional regulations (*Qanun*). In addition, the law shall also clearly stated that the objective of monopoly as well as mechanisms for control and supervision of the state in the implementation of such monopolies.

Based on the description above, the author argues that the implementation of the *Qanun* LKS which give special privileges to Islamic banking business practices is not included in the type of business which aims to provide a basic needs of the people, neither include production branches that are important or essential for the state. Therefore, the

practice of Islamic banking business in the region can be categorized as violating the provision on the prohibition of monopoly practices and unfair business competition, and do not meet the exclusion criteria for monopoly practices as referred to in Article 51 of the Law concerning Antitrust in Indonesia.

E. Conclusion

The ratification of *Qanun* No. 11 of 2018 concerning Islamic Financial Institutions (*the Qanun* LKS) in the special autonomy province of Aceh has provide a special preference right for Islamic banking institutions to control all market share within the region. In contrast, conventional bank system institutions are permitted to run or to operate their business as long as they adhere to shariah corridor as stipulated by Article 2 of the *Qanun* LKS. In other word, if conventional banks are reluctant to alter the system to sharia principles, then they are not allowed to open their banking business in the Aceh region.

On the other hand, the consolidation of state-owned Islamic banking has made BSI becomes the leader market in banking industrial sector in Aceh. As a result, it has led to market distortions towards perfect competition and resulting several negative aspects, including: (1) Competition in banking industry in the region has a negative relationship with market share, due to has been dominated by state-owned Islamic banking institutions (2) The Islamic banking industry is actually not included in the elements that are exempt from the exceptions to the prohibition on monopoly practices and unfair business competition because the elements stipulated in the antitrust law are not

fulfilled, namely "controlling the livelihoods of the people as well as important production branches." for the state"; There is an element of "regulated by law"; and there is an element of "organized by a state owned enterprise and/or body or institution established or appointed by the government". The local government of Aceh basically provides opportunities for other conventional banks to open sharia services in Aceh Province. However, this opportunity was not accompanied by adjustments to market conditions that were contestable at the start so that banking services became concentrated either because of the promulgation of the *Qanun* LKS, calls for migration of banking customer portfolios from conventional to sharia banking institutions, or other matters that could affect the fairness business, therefore, it has resulted to other financial institutions are reluctant to expand and open offices in the province because the financial system has already concentrated by state-owned Islamic banking institutions.

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