

## **Structural Market Distortions in Indonesia's Aviation Industry: Evidence of Monopolistic Practices, Price Discrimination, and Cartel Activities by the Lion Air Group**

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### **Keywords**

Monopoly;  
Discrimination;  
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Unfair Business Competition;  
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### **ABSTRACT**

There is an indication of market dominance through a cooperation agreement that has the potential to limit the access of other business actors and cause discriminatory treatment. One of the cases of monopoly practices is market control through a cooperation agreement by Lion Air Group in ICC Decision Number 07/ICC-I/2020 and Cassation Decision Number 1811K/Pdt.Sus-ICC/2022. The research method employed is doctrinal legal research using a library research and statute approach, by examining legal regulations on monopoly, discrimination, and cartel practices, which are then analyzed alongside material facts and judicial ratio decidendi. The results of the study show that the monopoly practice in ICC Decision Number 07/ICC-I/2020 is reflected in the granting of exclusive rights to use cargo capacity to PT Lion Express which has an impact on limited access for other business actors and fulfills the elements of violation of Article 19 letter d of Law No.5/1999. In addition, indications of cartel pricing and practices were also found through the uniformity of flight fare policies by the Lion Air Group in Cassation Decision Number 1811K/Pdt.Sus-KPPU/2022. Although, the evidence of alleged cartel practices was not met, the Panel of Judges still affirmed the existence of cartel violations as intended in Article 5 of Law No. 5/1999. Therefore, this study emphasizes that monopoly practices can trigger unfair business competition, so strict supervision by ICC is needed to ensure the achievement of healthy, fair, and efficient business competition in the aviation industry.

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### **INTRODUCTION**

The aviation industry is a transportation industry that is developing very quickly and has a crucial role in terms of transporting both goods and passengers that are has experienced dramatic growth over the past two decades, driven by increased demand for air travel and globalization. This growth includes increasing the number of flights, developing aircraft technology, and modernizing airport infrastructure (Alkan, 2026). The aviation industry supports about \$2.7 trillion of the world's GDP and creates millions of jobs. In addition, the sector is a major driver of international trade, tourism, and global connectivity (Noronen-Juhola et al., 2025). The rapid growth is certainly inseparable from the high demand and increasing market needs. Moreover, Indonesia is an archipelagic country that relies on aircraft transportation as the fastest mobility from island to island (D.C., 2025). Height Market demand inherently opens up space for competition, one of which is through monopoly practices.

Monopoly is defined as the exclusive control over the production or sale of a good or service, which prevents the entry of new competitors into the market (Peden, 2017). Practice Monopoly is the concentration of economic power that leads to the control of the production and/or distribution of certain goods and/or services that cause unfair business competition and have the potential to harm the public interest as referred to in Article 1 paragraph (2) of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (hereinafter referred to as Law No.5/1999). Meanwhile, business actors as referred to in Article 1 paragraph (5) of Law No.5/1999 are any person or business entity that carries out economic activities in Indonesian territory, either alone or through agreements. Based on the provisions of Article 17 of Law Number 5 of 1999, a business actor should be suspected or considered to have mastered the production and/or marketing of goods and/or services if one of three conditions is met. First, the related goods and/or services do not have a substitution or corresponding substitute. Second, these business actors block the access of other business actors to be able to enter into business competition in the same market. Third, there is market dominance by one business actor or group of business actors who control more than 50% of the market share of a certain type of goods or services.

The practice of monopoly in the Indonesian legal system is basically not completely prohibited, considering that Article 51 of Law No.5/1999 provides an exception for SOEs to control strategic sectors related to the lives of the people, as long as they are regulated by law and implemented in accordance with the mandate of Article 33 of the Constitution of the Republic of Indonesia of 1945 (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia).(Anggraini et al., 2025).Nevertheless, Law No.5/1999 still stipulates a prohibition on the practice of controlling certain shares as stipulated in Article 19, Article 20, and Article 21. Although the interpretation of the magnitude of market share control is not very explained, it can be ascertained that business actors who control the market must have a dominant position in the market. One of the concrete manifestations of this control is the discriminatory practice regulated in Article 19 letter d, which is characterized by the existence of exclusive relationships or different treatment of certain business actors, thereby creating distortions of competition (Tariq Hidayat Pangestu, 2021).

The context is similar to the perspective of economic law, the more unequal the supply and demand between sellers and buyers, the more profitable the profits, so it is not a coincidence that business actors want monopoly practices, either explicitly done to become the sole player in the market, or even in a covert form (MariNews, 2025). Studies show that competition between large airline groups in Indonesia, such as Lion Air Group and Garuda Indonesia Group, often involves complex business strategies, including the use of full-service airlines (FSCs) and low-cost airlines (LCCs) to expand market coverage.(Wang et al., 2024) The phenomenon of monopoly practices in the case of Lion Air Group proven to have committed discriminatory practices by the Business Competition Supervisory Commission of the Republic of Indonesia (ICC) through case Number 07/ICCU-I/2020 related to cooperation in the sale of cargo capacity in goods transportation services from Hang Nadim Airport to Soekarno-Hatta Airport, Halim Perdana Kusuma, Juanda Airport, and Kuala Namu Airport. In fact, indications of monopoly practices by Lion Air Group did not occur only once, but were re-identified by ICC in 2022, through Cassation Decision Number 1811K/Pdt.Sus-KPPU/2022 related to alleged cartel practices in determining flight fares carried out simultaneously. On the

basis of monopoly, discrimination, and cartel practices carried out by Lion Air Group, this journal research is to answer how the forms and characteristics of indications of monopoly, discrimination, and cartel practices by Lion Air Group in the Indonesian aviation industry? and how is it consistent with the provisions of Law No.5/1999.

This research is expected to provide benefits both theoretically and practically. Theoretically, this study enriches the literature on competition law, especially in understanding the forms of monopolistic practices, discrimination, and cartels in the aviation industry that are still rarely studied in depth. This research also integrates normative juridical analysis with the *per se* illegal approach and rule of reason, thereby contributing to the development of research methodology on competition law in Indonesia. Practically, this study provides input for the Business Competition Supervisory Commission (ICC) in strengthening supervision of monopoly practices in the aviation industry, especially related to the granting of exclusive rights and the practice of setting air ticket prices. For policymakers, the results of this research can be used as evaluation material in formulating more effective regulations to prevent market distortions and protect consumers from unfair business competition practices. For business actors in the aviation industry, this study provides an understanding of the legal limitations in cooperating with competitors so as not to violate the provisions of business competition laws. For the general public and academics, this research is a reference to understand the dynamics of business competition in the Indonesian aviation industry and the importance of business competition supervision in creating a healthy, fair, and efficient market.

## **METHOD**

In this study, the method that used by the author is doctrinal legal research which uses the library research approach and the statute approach by examining and analyzing various legal regulations related to monopoly, discrimination, and cartel practices which will then be analyzed by the researcher with material facts and Consideration of the Panel of Judges (*Ratio Decidendi*)

The type of data used in this study is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials are binding legal materials, including Law No. 5/1999, ICC Decisions, and Supreme Court Decisions. Secondary legal materials are legal materials that will help analyze and understand primary legal materials, which are in the form of legal literature, scientific journals, research results, and expert opinions relevant to the research topic. The tertiary legal materials include dictionaries and other supporting legal sources.

The technique of collecting legal materials will be carried out through literature studies by searching, inventorying, reviewing, and analyzing various legal documents and literature relevant to the object of research. Furthermore, the legal materials that have been collected will be analyzed using a qualitative research method, with an analytical descriptive approach, namely by describing the applicable legal norms by relating them to the facts in the case being studied, as well as conducting legal interpretations to draw conclusions about practices that occur based on legal provisions.

## RESULT AND DISCUSSION

### **What are the forms and characteristics of indications of monopoly, discrimination, and cartel practices by Lion Air Group in the Indonesian aviation industry?**

Regulations regarding market dominance are a central issue in various countries, including Indonesia, which seeks to prevent the dominance of business actors that have the potential to cause distortions of market structures through unilateral pricing that can harm other business actors and consumers. Therefore, Law No. 5/1999 acts as a strategic legal instrument to control this practice, while ensuring the creation of healthy, fair, and efficient business competition (Mudawaroh, 2022).

Where business actors in carrying out their business activities are required to be able to apply the principles of economic democracy by paying attention to the balance between the interests of business actors and the public interest, especially to maximize consumer welfare by improving two aspects, namely *Allocative Efficiency* which means ensuring the distribution of goods and/or services in accordance with consumer preferences, and *productive efficiency* which emphasizes the production process of goods and/or services at the minimum possible cost through optimal use of resources. Conceptually, monopoly is dominated by a market structure dominated by one business actor as a producer, the absence of adequate substitution products, and the existence of barriers to entry (*barrier to entry*) that are structural or regulative. Unfair competition often arises from monopolistic practices, pricing, market sharing, and abuse of dominant positions by companies. These practices are driven by companies' efforts to gain a competitive advantage, often at the expense of fair market conditions. (Ramadhan et al., 2023) In addition, unfair business competition practices are not only influenced by government policies, the granting of exclusive rights by the government, investment policies, and interventions in pricing (Thalia M. A. Lengkong, 2021).

In ICC Decision Number 07/ICC-I/2020, there is a report on the alleged discriminatory practice of Article 19 letter d of Law No.5/1999 related to cooperation in the sale of cargo capacity in freight transportation services by PT Lion Mentari, PT Batik Air Indonesia, and PT Wings Abadi, using the services of PT Lion Express. The provisions of Article 19 letter d of Law No.5/1999 state that "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/or unfair business competition in the form of: (d) engaging in discriminatory practices against certain business actors". As determined in Article 1 number (10) of Law No.5/1999, the market concerned is a market related to a certain range or marketing area by business actors for the same or similar goods and services or the substitution of the goods and or services, where market size is an important aspect in identifying how much control of certain products in the market by business actors.

The determination of the market concerned is a fundamental step in assessing the existence of monopoly practices that can be determined based on two aspects, namely the product *market* and the geographic *market*. The product market is determined based on the level of supply of goods and/or services in meeting consumer needs, while the geographical market is determined from the area of competition where business actors have the ability to set and control prices without competitive pressure from potential competitors (Sudiarto, 2021). In this case, the product market was identified as a scheduled commercial air transportation service for the transportation of packages and/or cargo by PT Lion Mentari and PT Batik Air

Indonesia, with the geographic market covering operational routes from Hang Nadim Airport to Soekarno Hatta Airport, Halim Perdanakusuma Airport, Juanda Airport, and Kualanamu Airport based on a cooperation agreement since July 1, 2018.

In the cooperation agreement, PT Lion Mentari, PT Batik Air Indonesia, and PT Wings Abadi are termed as Lion Air Group providing air transportation services for the delivery of packages and documents by giving exclusivity to PT Lion Express to use a cargo capacity of 40 tons/day for the flight route that has been determined and there is evidence that there is an increase in the price/tariff of SMU set by PT Lion Mentari. In addition, the cooperation substantively creates access barriers for other business actors in utilizing package and/or cargo delivery services. In addition, the exclusivity aspect is also reflected in the granting of the right to PT Lion Express to sell the remaining cargo capacity to other parties if it is not fully used, as well as the right to issue SMU for the flights of PT Lion Mentari, PT Batik Air Indonesia and PT Wings Abadi both for its own interests and for other parties.

The arrangement regarding SMU is stipulated in the agreement between PT Lion Mentari and PT Batik Air Indonesia in the *Interline Special Prorate Agreement Cargo* Number: 392/JT-DZ/PKSC/X/2015 which is valid since October 1, 2015 by regulating the agreement for the transportation of goods, namely SMU on Lion Air aircraft can fly on Batik Air aircraft, and the pricing refers to the existing price. Based on this agreement, all operations of receiving and selling goods, both packages, cargo, and postal goods carried out by PT Lion Mentari, PT Wings Abadi, and PT Batik Air Indonesia, are carried out jointly in one management, namely Lion Air Group.

The existence of monopoly practices also occurred again in 2022 by the Lion Air Group, which can be seen through Cassation Decision Number 1811K/Pdt.Sus-KPPU/2022 on ICC Decision Number 15/ICC-I/2019 which stated that PT Lion Mentari, PT Wings Abadi, and PT Batik Air Indonesia allegedly violated Article 5 and Article 11 of Law No.5/1999. The initial allegation was due to Lion Air Group's non-compliance with the Supreme Court's decision to report every change in flight fare policy to ICC, for this non-compliance ICC suspected monopoly practices so an in-depth investigation was carried out. Prior to the cassation decision, ICC had decided case No. 15/KPPPU-I/2019 regarding violations of Article 5 and Article 11 of Law No.5/1999 so as to impose sanctions in the form of an order to Lion Air Group to notify in writing to ICC of any policy that could affect the business competition map and ticket prices paid by consumers for two years (Kompas Daily Team, 2024).

The prohibition on price fixing in Article 5 paragraph (1) of Law No.5/1999 is essentially aimed at preventing the practice of price *fixing* of goods and/or services that have the potential to damage the market mechanism. These provisions cover various forms of prohibited pricing, including:

1. Deals to raise or lower prices
2. Agreement on standardization of price formulas as a basis for calculation
3. A certain ratio agreement between the price of the competition and the other products
4. Discount elimination or standardization agreement
5. Agreement on the regulation of credit terms to consumers
6. Low-cost product restriction agreement to maintain market price levels
7. An agreement to comply with the announced price
8. Refusal of sale agreement if the price does not match the agreement

## 9. Agreement on the use of uniform prices as a reference for negotiations

A pricing practice cannot be assessed without being supported by evidence showing that there is an agreement between business actors to regulate and set the agreed price, either in the form of direct evidence (*hard evidence*) or indirect evidence (*circumstantial evidence*) (Samuel Apollos Pratomo & et.all, 2024). When direct evidence is hard to find, indirect evidence can be used. This evidence includes market behavior patterns, analysis of market structure, or data performance that suggests collusion. In certain cases, the approach *rule of reason* used to direct the impact of such practices on competition. (Hartono et al., 2021) Then, the provisions of Article 11 of Law No.5/1999 construct cartels as a form of agreement between business actors and their competitors consciously aimed at controlling production, sales, and prices. The determination of the existence of cartel practices is not only based on the similarity of price movements (*Price parallelism*), unless *Price parallelism* can only be qualified as a cartel practice if the business actor is unable to provide economic justification for the similarity (Yuniar Hayu Wintansari, 2020).

Article 11 of Law No.5/1999 contains objective and subjective elements, namely, the subjective element emphasizes the existence of inherent intentions in business actors, including everything contained in their hearts and intentions, either in the form of intentional or accidental (*dolus* or *culpa*). Meanwhile, the objective element refers to concrete actions taken by business actors and on the basis of these actions will have an impact, such as the existence of an agreement with a competitor business actor that will affect the market price in question (Ahmad Sofian, 2025).

### **How is it in accordance with the provisions of Law No.5/1999?**

According to Aristotle, a good state is a state that is run based on the constitution, where the law has the position of the supermajority of the law in the administration of the state. Indonesia as a country of law places legal superpowers to ensure justice, and accountability of power. In the business realm, this principle is realized through legal protection for business actors by creating healthy business competition. The parameters of healthy business competition can be identified through (Defril Hidayat, 2022):

1. There is no monopoly: there is no domination by certain business actors that has the potential to create economic inequality.
2. Response of business actors to consumer preferences: the increasing demand for a product encourages business actors to increase the production of goods and/or services competitively.
3. Innovation stimulation: a high level of competition encourages business actors to continue to innovate to increase the added value of goods and/or services.
4. Economic efficiency: competition is an incentive to reduce inefficiency in the use of resources
5. Continuous quality improvement: competitive competition encourages business actors to improve the quality of goods and/or services to maintain competitiveness.

ICC has established 2 methods of approach, namely *per se illegal* and *rule of reason*. Direct evidence, such as documents or explicit communication between business actors, is essential to prove the existence of a price agreement. For example, in some cases, direct evidence allows the application of an approach *per se illegal* where the pricing practice is considered illegal without the need for further impact analysis (Anisah, 2020). Approach *per se*

*illegal* is an approach that is able to prove that the correct action on an agreement or business activity is indeed *Illegal* without the need to look at the economic impact or analysis that is caused, while the approach *rule of reason* It is an approach that requires an in-depth analysis of the impact produced, through the market from before and after the agreement, thus an action cannot be immediately found guilty without analyzing the impact of the consequences caused. This understanding is in line with the opinion of Prof. Dr. Ningrum Natasya Sirait, S.H., M.Li who stated that the *per se illegal* against an act or from a legal or economic perspective is declared wrong, while there is an action that is wrong according to the law but in an economic perspective it is a practice that is still accepted that describes the approach *rule of reason* (Dimas Aryadiputra & et.all, 2022).

The monopoly practices carried out by Lion Air Group in ICC Decision No. 07/ICC-I/2020 on alleged violations of Article 19 letter d of Law No.5/1999 need to be reviewed from the evidence and approach, as for the elements in the article, namely:

1. Elements of Business Actors: that PT Lion Mentari, PT Wings Air, and PT Batik Air Indonesia are business materials in the form of legal entities that are regulated and domiciled and carry out air transportation business activities with scheduled flights that are members of one holding, namely the Lion Group.
2. The Element of Doing Both Alone and Together: that PT Lion Mentari, PT Wings Abadi, and PT Lion Express jointly agreed to sell cargo capacity to PT Lion Express
3. Other Business Actors: that PT Lion Express is a business entity in the form of a legal entity in the field of package and document delivery service companies door *to door* throughout Indonesia
4. Elements of Carrying One or More Activities: that PT Lion Mentari and PT Wings Abadi are business actors that provide port-to-port freight transportation services, while PT Lion Express is a door to door package and document delivery service company.
5. Elements of Discriminatory Practices: that PT Lion Mentari, and PT Wings Abadi are proven to have engaged in discriminatory practices that result in the inhibition of other business actors, and PT Lion Express also uses these services

Article 19 of Law No.5/1999 emphasizes that the business actors in question must have the ability to influence the market so that they have substantial market power, by paying attention to actions carried out alone or together. Where the application of the article does not depend on the passing or non-passing of a certain share limit. The understanding of discrimination is also divided into two, namely (Irwan Sugiarto, 2026):

1. Price Discrimination: Applying different prices to different market segments
2. Non-Price Discrimination: actions or treatment in various different forms, and carried out by a business actor against certain business actors.

In non-price discrimination, it is necessary to look at the motive and impact in considering the action as an act of discrimination. When viewed from an economic point of view, market control activities are interpreted as the ability of business actors to influence the formation of prices, or production quantities, or other aspects in a market that are definitely closely related to the dominant position. In market dominance, there are special factors that are not owned by competitors, such as: IPR, government regulations, exclusive rights, distribution networks, financial support, facilities, loyalty, etc. (Irwan Sugiarto, 2026). Thus, the Commission Panel decided that PT Lion Express, PT Wings Abadi, and PT Lion Express were proven and met the

elements of violation of Article 19 letter d of Law No.5/1999, where the fulfillment of these elements was based on the rule of *reason approach*.

Meanwhile, in Cassation Decision Number 1811K/Pdt.Sus-KPPU/2022 against ICC's decision on alleged violations of Article 5 and Article 11 of Law No.15/1999. In Article 5 paragraph (1) of Law No.5/1999 it is explained that "Business actors are prohibited from making agreements with their competitors to set prices for the quality of goods and or services that must be paid by consumers or customers in the same market". The reading of the article uses *an approach per se illegal*, because what is considered is the element of his actions without reviewing other consequences (Bramantya Bimo Ramadana, 2025). There are two types of *price fixing*, namely (Yoel Christian, 2024):

1. *Horizontal Price Fixing* : occurs when more than one company is at the same stage of production, so that actually one company and another company are competitors to determine the selling price of their products at the same level.
2. *Vertical Price Fixing* : occurs when a company that is in a certain stage of production to determine the price of products that must be sold by other companies that are in a lower stage.

In the ICC's decision, Lion Air Group was found guilty based on Article 5 paragraph (1) of Law No.5/1999 by punishing the airline to provide written notice to ICC on all policies that will affect the business competition map, ticket prices paid by consumers, and the public for a period of 2 years. Where these considerations are based on *concerted action/parallelism* so that there is an agreement between business actors in the form of an agreement to eliminate discounts or make uniformity of discounts, and an agreement to eliminate products offered at low prices in the market which has an impact on limited supply and high prices for scheduled commercial air transportation services for economy class passengers in Indonesian territory. In addition, *concerted action* or *parallelism* is carried out through the reduction of *subclasses* at low prices through unwritten agreements and causes an increase in ticket prices (Andi Saputra, 2020).

Meanwhile, cartels as stipulated in Article 11 of Law No.5/1999 are explained "Business actors are prohibited from making agreements, with their competitors, that intend to influence prices by regulating the production and/or marketing of goods and or services that result in the occurrence of monopolistic practices and/or unfair business competition". Cartel practice is one of the strategies applied among business actors to influence prices by regulating the amount of their production. The alleged cartel practice is suspected since the end of the *peak season* in January 2019, where people feel that airline ticket prices are high enough to cause unrest among consumers. Moreover, in November 2018, there was an operational cooperation agreement between Sriwijaya Group and Garuda Group which triggered the existence of suspected cartels. In the case process, the Commission Panel uses indirect evidence as one of the evidence as it has fulfilled the provisions of the Regulation of the Non-Business Competition Supervisory Commission Number 1 of 2019 concerning Procedures for Handling Monopoly Practices and Unfair Business Competition, especially in Article 57 (Andi Saputra, 2020). Proving cartel practices is carried out using *a rule of reason approach* that requires proof of the impact of competition substantially and relies on *indirect evidence*, such as economic analysis, and rarely is there a written agreement proving cartel regulation. As decided by the Panel of Judges, the alleged cartel practice was not proven either through *direct evidence*

or *indirect evidence*. However, the Panel of Judges accepted ICC's appeal and declared the cancellation of the first decision and affirmed the violation of pricing as stipulated in Article 5 of Law No.5/1999 by the Lion Group.

## CONCLUSION

Monopolies in the Indonesian aviation industry can occur through a form of market domination through discriminatory practices. In ICC Decision Number 07/ICC-I/2020, Lion Air Group was proven to have given exclusive rights to PT Lion Express over cargo capacity, thus limiting the access of other business actors in using air cargo services. This action reflects the existence of discriminatory practices as stipulated in Article 19 letter d of Law No.5/1999. This practice is evidenced by the increase in tariffs, priority of cargo capacity, and distribution control through one business management that strengthens the dominant position of Lion Air Group. On the other hand, the alleged cartel practice in setting airline ticket prices identifies that business competition in the aviation sector is still vulnerable to coordination between business actors that have the potential to harm consumers. This practice is evidenced by violations by Lion Air Group in Cassation Decision Number 1811K/Pdt.Sus-KPPU/2022. Although the allegation of violation of Article 11 of Law No. 5/1999 was not fully proven, the Panel of Judges still affirmed the violation of the pricing of Article 5 of Law No.5/1999 through uniformity of tariff policy and reduction of ticket subclasses. Thus, this study confirms that ICC supervision has an important role in maintaining market mechanisms to remain competitive, preventing abuse of dominant positions, and ensuring the creation of healthy, fair, and efficient business competition in the Indonesian aviation industry.

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