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The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia

Chairul Fahmi
Faculty of Sharia and Law, Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia

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

Chairul Fahmi
Faculty of Sharia and Law, Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia
Contributor Email: chairul.fahmi@ar-raniry.ac.id

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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 institutions, 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 merge three state-owned Islamic banks, namely BNI Syariah, BRI Syariah, and Mandiri Syariah, to become Bank Syariah Indonesia (BSI). These policies have potentially violated Law on Antitrust, especially in Aceh Province. This article aimed to analyze whether the local Government's policy in enacting the Qanun LKS and consolidating the BSI is part of monopoly practices and unfair business competition in the banking sector in the Aceh region. This research was classified as normative qualitative research, where data was obtained from secondary sources, such as laws, books, journals and related studies. The results showed that the enactment of Qanun LKS has restricted conventional banking from expanding its business in the region. In addition, the Government's policy to consolidate three state-owned Islamic banks, which control more than seventy-five of the market share in Aceh province, was considered contrary to the law on the Prohibition of Monopolistic Practices and Unfair Business Competition Number 5 of 1999.

Keywords: *Aceh; Islamic Banking; Monopoly; Qanun LKS.*

A. Introduction

Aceh is one of the special autonomous regions in the Republic of Indonesia (Damanik et al., 2010; Salim, 2015). This recognition has been adopted into several laws. First, the Government adopted Law Number 44 of 1999 concerning implementing Special Rights for the Aceh Province. In 2001, the Government issued a new law number 18 of 2001 concerning the Special Autonomy Region of Aceh to revise the previous one. However, after the Helsinki peace agreement, the Government finally adopted Law Number 11 of 2006 on the Government of Aceh (LoGA). The law has provided broad rights and authority for the local Government of Aceh.

The most absorbed special right recognized by the Government is the local Government's right to implement Islamic law in all aspects, including economics (Fahmi, 2012; Salim, 2015). Article 155 of 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" (2006).

In order to implement the norms practically, the local Government adopted several local regulations (namely *Qanun*) related to implementing 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, most popular called *Qanun Lembaga Keuangan Syariah* (Hereafter abbreviated with *Qanun* LKS).

The main purpose of the *Qanun* LKS is to implement 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 elements of *riba* (usury), *gharar* (obscurity), *maisir* (gambling), fraud, and other things or acts that are prohibited in Islam (El-Gamal, 2006). As a result, non-Islamic banking institutions are only permitted to conduct business within the region if the banking system is converted to the Islamic system.

Following the enactment of the *Qanun* LKS, Unintendedly, the Central Government merged 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 intersection that leads the state-owned Islamic banks to become the most dominant business player in the 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. This domination has been supported by *Qanun* LKS, which prevents the conventional banking industry from running their business or competing with government-owned bank institutions fairly and competitively. As a result, it has potentially violated 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 the production and or marketing of goods and or over the use of certain services by one business actor or a group of business actors.

This paper examines whether the enactment of *Qanun* LKS and the consolidation of three state-owned Islamic banking institutions have violated the law on Antitrust in the 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 the Aceh region, Indonesia. It means that *Qanun* LKS has provided a special right to the Islamic banking institutions to monopolize all financial transactions and industrial banking business in the region. In contrast, conventional (non-Islamic) banking institutions are not permitted to operate or run their business unless under the Sharia platform.

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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, BSI has controlled more than seventy-five percent of the banking market share, from urban to rural areas across the region. Furthermore, the customers of banking services in the Aceh region have only one choice except for Islamic banking facilities. Consequently, this policy has led to monopolistic practices and unfair competition in the banking industry in the westernmost region of Indonesia.

Following the introduction, this article will examine the basic concept of monopoly practices, its legal basis and case analysis of monopoly practices in Indonesia, which can be used as jurisprudence in understanding monopoly practices of Islamic banking institutions in Aceh region, Indonesia. Then, the authors will also examine the concept of Islamic banking and the rights of the local Government in Aceh in implementing the regulation on the *Qanun* LKS, which some scholars assume have 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 that readers can use them as a basis for further analyzing 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 understanding the existing legal provisions from the textual interpretation of legal doctrines (Musson & Stebbings, 2012). The concept of legal doctrinal will be used to analyze the phenomena of the law's implementation and the contestation of its application. The primary data will be gathered from legal texts, such as laws and jurisprudence. The author also will use secondary data, mainly from books, journals, articles, and other related resources, to the topic. All data will be analyzed qualitatively and overall 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 *"monopolies"*, meaning a single seller (H.L, 2016). In the United States of America (USA), the term monopoly is called "antitrust" (Ezrachi, 2021), while in Europe, it is well-known as "domination" (Ramos, 2020). Several other terms are called or related to the word "monopoly", such as oligopoly, monopsony, oligopsony, cartel, and dan trust (Djolov, 2014).

In terms 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 is also defined as a privilege right 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 control the production, distribution and services or procurement of goods and or services controlled by one entrepreneur or several entrepreneurs, which causes the concentration of power in the economic sector. 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. The VOC was assumed to be the epitome of the successful monopolizing company on earth (Balk et al., 2007).

During the New Order era, led by President Suharto, there were no specific rules 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 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 was influenced by several aspects, including (1) Indonesian's political and 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 Indonesian economy (Hastiadi & Nagara, 2023). The Government's policy to pass the post-reform antitrust law is inseparable from the influence of the international organizations' effort to encourage market liberalism in Indonesia (Jiuhardi, 2022). From a liberal 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 strong economy in the nation shall be based on an economic system that promotes fair competition (Mosca, 2018).

However, practices of monopoly in the business sector are not always illegal. In some cases, the state even legalizes monopolistic practices and unfair business competition in terms of national economic interests. According to Aziz (2019), monopolistic practices can be categorized into three forms: firstly, monopoly by law – this type of monopoly is desired and legalized by law. In this context, government issues such as laws or

regulations stipulate that certain business sectors may only be controlled by one business institution. In Indonesia, monopoly by law occurs in the context of state control in important 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 is established and grows naturally due to perseverance, 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 controlling market share creates unfair competition with other small companies. Thirdly, monopoly by license is a type of monopoly obtained through a formal license relying on mechanisms and channels of power, statutory procedures, and or government bureaucracy. This type of monopoly often disrupts unfair competition and causes market turbulence. This practice has occurred since the VOC regime. It remains until now, where certain corporate powers are granted monopoly rights by the rulers due to having 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 the economic sector. This aspect is inseparable from the nation's interests in the economy. The state considers controlling the economic system part of the state sovereignty, especially controlling all lands and natural resources within the territory. Second, the Government believes that the sovereign state has a right to claim as the only producer of all goods and services. This concept shows that state companies fully control certain products in a nation's economy, such as electricity, water, gas, etc. Hence, the state becomes the sole producer of such goods and services. Third, the state is a regulator, in which the rules made by the state are always aimed at the interests of the state, and political and economic factors influence these interests. Finally, the state is an economic policy maker. In this context, state officials issue legal policies in the economic sector to develop the national economy and achieve the people's prosperity (Aziz, 2019; Nuraini, 2016).

Hence, the state has the power and right to adopt and implement any policies relevant to obtain the state's interests.

Furthermore, the antitrust law has formulated several economic activities that can be categorized as a form of monopoly activities and unfair business competition, namely.

a. Oligopoly practice is an agreement among the business actors in controlling the production and or marketing of goods and or services that control over seventy-five percent of the market segment of a certain type of goods and or services;
b. Fixing of Price. This type of monopoly occurs when one business actor agrees with his competitors to fix the price of certain goods and services payable by customers in the same relevant market;
c. Third, the Dividing of market territory. It means a business actor agrees to share territory with other entrepreneurs about marketing products or services, resulting in unfair competition and monopolistic practices;
d. Boycott practices. This type of monopoly is carried out by agreeing that business actors block other business actors or refuse to sell or buy a product from certain entrepreneurs so that it results in harm to other business actors, which is illegal;
e. Cartel practices aim to influence prices by regulating goods and or services' production and or marketing;
f. Trust is an agreement in which a business actor enters into an agreement with other business actors by forming a combined company to become larger to control the production of goods and or services resulting in monopolistic practices and unfair business competition;
g. Oligopsony is an agreement between a company with other companies that aims to jointly control the purchase or acquisition of supplies to control prices of goods and or services in the relevant market, which may result in monopolistic practices and unfair business competition;
h. Vertical integration practices involve an agreement between business actors at different but interrelated stages of production, operation,

and distribution. The agreement occurs as a combination of some or all of the successive operating activities in a production series. 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;

i. A closed/ exclusive Agreement is an agreement in which one business actor as a buyer and another as a seller enters a closed agreement which may cause other business actors to enter 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 contradicts the principle of freedom of contract.

Nevertheless, although several laws prohibit monopolistic practices and unfair business competition, hundreds of cases of monopolistic practices have occurred and been handled by the Indonesian Commission for the Supervision of Business Competition (*Komisi Pengawas Persaingan Usaha*, hereafter: KPPU). Furthermore, the KKPU has 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 aim as an intermediation institution for those with a surplus of funds and lack funds (Sjahdeini, 2018). On the one hand, the state recognizes the existence of conventional banking, and this recognition is based on Law Number 10 of 1998 concerning the Banking Institutions of Indonesia. On the other hand, the Government also recognized Islamic banking institutions based on Law Number 21 of 2008 concerning Islamic Banking Institutions. Hence, Indonesia has adopted and recognized to implement dual banking system within its territory.

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However, these two banking systems also have different viewpoints. The difference is in implementing the form of an agreement or engagement. Conventional banking transaction is mostly based on load agreements or contracts with additional interest. Meanwhile, the Islamic banking system refers to Sharia principles or is 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 prudence. Accordingly, the Sharia aspect principles mean that a contract or agreement signed between creditors and debtors shall be based on Sharia principles. Several forms of contracts or agreements 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), *hawala* (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 has also been implemented in the Islamic banking system, in which Islamic banking also must be a part of realizing democratic principles in developing people's economy in Indonesia. It means that the existence of Islamic banking must aim to achieve prosperity together with Islamic bank owners, shareholders, and customers. It means that customers are also considered owners or shareholders of capital, and they must become an inseparable part of developing the people's economy and achieving Indonesia's welfare state.

The third aspect is the prudence principle. This aspect emphasizes that Islamic banking must also prioritize the prudence principle in carrying out its business activities, raising funds and channeling funds to the public. Accordingly, the Financial Services Authority (*Otoritas Jasa Keuangan*, OJK) of the Republic of Indonesia has issued several regulations to implement

prudence in serving the banking sector. As a business institution, Islamic banking must also comply with several rules issued by Bank Indonesia and the OJK to run its business sustainably.

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 establishing 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. Article 125 of the Law 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 terms of economic manners. For instance, Article 21 regulates Islamic Financial Institutions and explains that as follows.

a. Financial institutions that will operate in Aceh shall be based on Sharia principles;
b. Conventional financial institutions already operating in Aceh shall open a Sharia business unit;
c. The financial transactions with the Aceh Government and regency governments shall use Sharia principles and or go through the process of Islamic financial institutions;
d. Further provisions regarding Islamic financial institutions are regulated in the *Qanun* of Aceh.

Article 21 Para 2 of the *Qanun* Number 8 of 2014 shows that the conventional banks that have existed in Aceh are merely required to open Islamic business units platform, instead of closing their business ultimately in the region. This means that this provision reflects implementing 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 a conventional to a Sharia basis. This requirement is stated in Article 2

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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 institutions operating within Aceh province's territory to be based on Islamic principles. In other words, any non-shariah operating system of financial institutions is not permitted to run their business in the region.

Moreover, Article 65 of the *Qanun* LSK also implies the due date to convert or adopt Islamic principles in conducting their business in Aceh. The norm states that any financial institutions operating in Aceh province shall adopt the principles contained in the regulation three years after the enacted regulations. Indeed, conventional banking institutions have no direct prohibition from running their business in the region. However, the rule requires all non-sharia model shall convert their business scheme to 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 Muslims have no right to freely select services in the banking system except merely with Islamic banks. On the other hand, non-Muslims have the right to submit whether 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-Muslims either, except to use Islamic banking facilities. This provision is mentioned in Article 5 of the *Qanun* LKS as follows.

"This *Qanun* applies to…".

a. Every person of Muslim residing in Aceh or a business company conducting financial transactions in Aceh;
b. Any person who is not a Muslim conducting transactions in Aceh can submit himself to this *Qanun;*
c. Any non-Muslim person, business entity and legal entities conducting financial transactions with the Government of Aceh, district or city within the Aceh province;

d. Sharia financial institutions running a business in Aceh;
e. Sharia financial institutions outside Aceh have head offices in Aceh.

Based on the provisions above, it can be understood that all banking institutions and any person living or 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.

a. Collecting funds in the form of savings and investments with contracts that do not conflict with Sharia principles;
b. Distributing financing based on profit sharing, buying and selling, leasing, services, and non-interest loans; and
c. Marketing financial products from Sharia financial institutions that are regulated by statutory provisions.

In short, the difference between the Sharia and conventional banking systems is only in the contract model used. The conventional uses a contract of loan or debt based on the interest rate to categorize it as a usury practice from an 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 the Banking Industry in the 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 and will carry out financial transactions shall comply with the *Qanun* LKS. This norm explains that business actors who run the banking institutions are only justified to run their business in the region if they 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 a 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 the Aceh region, which is considered the largest branch within the provincial level in the Indonesian archipelago (Ramadhan, 2022). Meanwhile, BAS, a local government-owned bank, has 26 branches and 96 sub-branch offices, BTN Sharia has five branch offices, and BTPN Sharia has merely one branch office throughout Aceh. In contrast, private Sharia banking, such as Bank Muamalat Indonesia (BMI), only has five branch offices, BCA Sharia has three branch offices, and Bank Mega Sharia 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 certain 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 states 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, 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 the banking sector in Aceh province, Indonesia.

In addition, this finding is also based on the meaning of anti-monopoly and unfair business competition, in which the state-owned banking institutions have concentrated economic power by merely one or two business actors in marketing banking services. This argument is reflected in the phenomena, in which there are four elements fulfilled, namely.

a. There is a concentration of economic power;
b. The concentration of power is in one or more economical business actors;
c. The concentration of the economy creates unfair business competition;
d. 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. There is no competition with either conventional banking or private Islamic banking institutions. Both policies have initially resulted in a detrimental effect on conventional banking business actors and customers.

Moreover, adopting *Qanun* LKS has also created an obstacle for conventional banking institutions to do business in Aceh. Meaning that there is a legal inhibition of market share by justifying regional regulations. Following the merger of a state-owned Sharia banking institution, it will be difficult for other business actors who operate in the same market to compete with a state-owned bank that already controls more than seventy-five percent market share, which tends to lead to monopolistic practices by law and nature. The monopoly by law and nature of state-owned Islamic banks in Aceh regions due to its domination in controlling market share and the dominance of its roles due to having 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, causing distortions of perfect market competition. Looking at 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 results in goodness, welfare, justice, and happiness, then the law benefits society. Conversely, if the law causes loss, injustice, misery, and suffering, the law can be considered useless for society.

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Indeed, the rights of the State to Monopoly are recognized by the Law of Antitrust. Article 51 of the Indonesian Antitrust law states that the state recognizes monopoly rights. 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 is 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, several aspects need to be considered so that monopoly practices can be legalized, including.

a. 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";
b. 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";
c. There is an element of "regulated by law";
d. 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 carrying out monopolistic practices and or concentrating business activities either in producing goods or services, which the production aims to meet the main needs of the people and is considered 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 regulations, such as regional ones (*Qanun*). In addition, the law shall clearly state the objective of monopoly and mechanisms for control and supervision of the state in implementing 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 the basic needs of the people, nor include production branches that are 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 does not meet the exclusion criteria for monopoly practices as referred to in Article 51 of the Law concerning Antitrust in Indonesia.

D. Conclusion

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

On the other hand, the consolidation of state-owned Islamic banking has made BSI the leading market in the industrial banking sector in Aceh. As a result, it has led to market distortions towards perfect competition and resulting several negative aspects, including (1) Competition in the 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 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 body or institution established or appointed by the government".

The local Government of Aceh provides opportunities for other conventional banks to open sharia services in Aceh Province. However, this opportunity was separate from market conditions adjustments that were contestable initially. Hence, 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 in other financial institutions being reluctant to expand and open offices in the province because state-owned Islamic banking institutions have already concentrated on the financial system.

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