

CHAPTER I

INTRODUCTION

1.1. Background

Valve was founded in 1996 by Gabe Newell and Mike Harrington. Newell briefly attended Harvard University, although he never finished his studies. He then worked at Microsoft for 13 years. Under the leadership of Bill Gates, he learned a lot about the software business. During his time at Microsoft, he managed to amass a fortune of over US\$1 million, which he would use to build Valve. Just like Newell, Harrington also managed to become a billionaire thanks to working for Microsoft. Together, the two founded Valve.

When it was founded, Valve was an LLC (Limited Liability Company), a corporate structure in the United States commonly used by small companies. When compared to corporations, LLCs offer several advantages, such as lower taxes and flexible management. Valve is headquartered in Kirkland, Washington, just eight kilometers from Microsoft's offices in Redmond.

Now, Valve is probably better known for its digital game distribution platform, Steam. However, at first, Valve was a game developer. They then

modified id Software's game engine, Quake engine, to make their first game, Half-Life.¹

Then Valve started the development of its first game, Half-Life was his first work, Valve had big ambitions in making the game. Therefore, it is not surprising that they have difficulty finding publishers who are willing to release their first game. Fortunately, Sierra On-Line finally gave Valve a chance and agreed to launch Half-Life. In November 1998, Half-Life was launched. The game was so successful, millions of Half-Life units were sold. Until now, Half-Life is known as a legendary game.

After the success of Half-Life, Valve is in no rush to create a new game. They prefer to take advantage of the momentum they get to develop the Half-Life world. They asked Gearbox Software — now known as the developer of the Borderlands series — to launch two expansion packs of Half-Life, namely Half-Life: Opposing Force in 1999 and Half-Life: Blue Shift in 2001. Valve continues to support the gamer community. However, from a business perspective, there have been some changes. In 2000, Harrington left Valve, leaving Newell the only surviving founder at the company. Meanwhile, in 2003, Valve changed to Valve Corporation, no longer in the form of an LLC.

¹ Thomsen Michael, *Ode to Source: A History of Valve's Tireless Game Engine*, IGN, Accessed from, <https://www.ign.com/articles/2009/09/22/ode-to-source-a-history-of-valves-tireless-game-engine> Accessed at June 2021

One of the things that differentiates an LLC and a Corporation is that if the LLC is owned by one or more owners, the ownership of the corporation is in the hands of the shareholders. In addition, Valve has also moved its office to Bellevue, Washington. In the midst of all this, Valve is continuing their two important projects, namely the development of the Source game engine and the Steam digital game distribution platform. These two projects will change the fate of Valve so that they are not only known as game developers.

Steam was first introduced at the Game Developers Conference in 2002. One year later, Valve officially launched Steam. Initially, Steam was created with the aim of making it easier for players to download patches and updates from online games. However, Valve has other plans for Steam, namely to make it a digital game distribution platform on PC.

Valve then began to provide a number of features such as online authentication, game launcher, and DRM (Digital Rights Management). In 2004, Valve announced that going forward, all of their games could only be played via Steam. This decision made many people angry. One of the reasons, because at that time, Steam still had a lot of bugs, which often made the game crash. Not only that, the Steam interface is also not as good as it is now.

Even so, Valve did not give up. They continue to improve Steam and address various bugs and issues that exist on the platform. In 2005, Valve began to enter into partnership agreements with other developers to distribute their games through Steam. The game catalog on Steam is also getting bigger.

The Steam business continues to grow as more developers switch to a digital distribution model.

Steam's source of revenue comes from the deductions they take from the revenue of games sold through Steam. Initially, Steam set a 30 percent discount on all games. However, at the end of 2018, they changed the terms of the discount they took. When the game launches, Steam will still apply a 30 percent discount. However, after sales of a game reach US \$ 10 million, then the discount obtained by Steam will be adjusted, to 25 percent. Meanwhile, if game sales reach US \$ 50 million or more, the discount from Steam will be even smaller, which is 20 percent.²

For small developers whose game sales can't reach US\$10 million, Steam will take a bigger cut. Because, Valve provides many conveniences for these developers by providing a payment system and allowing games to be discovered by millions of Steam users. Indirectly, Steam acknowledges that small developers will need Steam more while Steam will have no problems without the presence of small developers, according to a Polygon report.

For popular games whose sales reached more than US \$ 50 million, Steam is willing to reduce the discount they take to only 20 percent. The reason, because the game must already have its own audience. So, if the game

² Kuchera Ben, *Valve now rewards successful games with a larger cut of Steam revenue*, Polygon, Accessed from, <https://www.polygon.com/2018/12/3/18123649/valve-steam-revenue-sharing> Accessed at June 2021

goes to Steam, it will also popularize Steam. It is possible that Steam can get new users. Because of this, the chunk that Steam applies is smaller.

The great thing about Valve is how the company has evolved. At first, Valve was a game developer.³ They reaped success with their first game, Half-Life. After that, they decided to expand the world of Half-Life by launching expansion packs. They also continue to encourage the modding community to create mods for the game. There were several mods which were later launched as standalone and successful games, such as Counter-Strike. In addition, Valve also created a game distribution platform, Steam, which just broke the record for the number of concurrent users.

A new lawsuit has been filed against Valve Corporation, accusing the game developer and Steam founder of abusing its dominance in the PC gaming market. Developers who collaborate with Steam must offer their games at the same price on other storefronts, thereby eliminating any competition these shops may have had otherwise. Valve has also been able to keep Steam game prices high as a result of this.

According to the lawsuit provided by The Hollywood Reporter,⁴ the Most Favored Nations clause of the Steam Distribution Agreement "has the effect of keeping prices to consumers high, as price competition by platforms

³ Lee James, *The last of Independents?*, Gamesindustry, Accessed from <https://www.gamesindustry.biz/articles/the-last-of-the-independents-> Accessed at July 2021

⁴ Gardner Eriq, *Popular Gaming Platform Accused of Abusing Market Power Through Contracts*, Hollywood Reporter, Accessed from <https://www.hollywoodreporter.com/business/business-news/popular-gaming-platform-accused-of-abusing-market-power-through-contracts-4124057/> Accessed at June 2021

would cause the prices of PC games sold to consumers to decrease." The game prices on Epic Games Store or Microsoft Store as the only competitor against Steam must be the same as they are on Steam, presumably leaving virtually no room for competition. The lawsuit seeks to prove that Valve is hindering competition and illegally monopolizing the digital PC game market.

This exceptional case may as well be a fascinating case as it is clearly shown that Valve as a company single-handedly hold the entire gaming distribution market, with the risk of them having monopoly opportunity at their doorstep with the threat of violating the Sherman Antitrust Act 1890 of The United States of America (15 U.S.C. 2) that prohibit any type of market monopoly in the interstate commerce.⁵

1.2. Legal Issues

1. What are the Characteristics of Monopoly in the gaming distribution?
2. Can competition law reach and cover the monopolization aspect of the gaming distribution?

1.3. Research Purpose

1. To analyze and understand the characteristic of monopoly in a huge growing market of the gaming distribution to tell if it's a monopoly practice or not but rather anything different of a new concept.

⁵ The Sherman Antitrust Act 1890 of The United States of America

2. To analyze and understand whether undertaker of the electronic application marketing industry on Steam through the Valve company can be suspected of monopoly, can it be classified as one and be covered by competition law.

1.4. Research Benefit

The research results are expected to be useful for theoretical and practical interests, namely:

1. Theoretical Benefit

- a. The results of the research are expected to produce benefits for the development of science, especially the science of Business Competition Law related to monopoly.
- b. The research results are expected to produce benefits for further legal research in the near future.

2. Practical Benefit

- a. The results of the research are expected to produce benefits for the world of business competition, especially in the scope of Gaming distribution or Technology Development.
- b. This research is expected to produce benefits in the form of input for legal practitioners in handling problems related to business competition, especially the problem of monopoly in digital market which is an activity that is expanding day by day. In addition to generating benefits for legal practitioners, the results of the study This is expected to be useful for the

public and academics in order to increase knowledge related to monopoly in digital market, as well as the legal consequences of monopoly which have been proven to be carried out by undertaker to avoid further act of monopoly on digital market.

1.5. Research Method

1. Research Type

Scientific research with the title "Monopolization of Undertaker in the Game Industry on the digital market" in the context of writing a thesis is included in the type of legal research. According to Peter Mahmud Marzuki, Legal Research is a know-how activity in legal science, not just know-about. As a know-how activity, legal research is carried out to solve legal issues faced.⁶

a. Legal Approach

In this scientific research entitled "Monopolization of Undertaker in the Game Industry on the digital market", it will use the approach to laws and regulations also will be using a real life case, a comparative approach, case approach, conceptual approach, and statute approach.

b. Legal Basis

There are two types of legal materials to collect which is the main and secondary legal resources. In competition law, legal standards regulating

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media, Surabaya, 2019, p.60

monopoly are included in the fundamental legal material. In the meantime, the secondary legal content consists of legal opinions that are related to the core legal material.

The primary source of legal material from scientific research entitled "Monopolization of Undertaker in the Game Industry on the digital market " is Legal Literature or books mainly about digital market and antitrust. Meanwhile, Law Number 5 of 1999, KPPU guidelines and legal journals regarding monopoly are secondary legal materials. All legal materials, both primary and secondary, are collected through library research.

c. Legal Basis Analysis

The collection of all legal materials in this legal research will be sorted or classified based on the formulation of the problem to be studied. After sorting based on the formulation of the problem to be studied, then an analysis of each legal material will be carried out. In conducting a content analysis of legal materials, an article by article analysis is first carried out on the laws and regulations to find articles that are relevant to the research.

If there is monopoly on the matter of the subject, then the principle of preference will be applied, but if there is no monopoly, an interpretation will be made.

1.6. Writing Systematic

Systematics in this study is divided into 4 (four) chapters. Each chapter consists of several sub-chapters that explain the following:

Chapter I as an introductory chapter which consists of background, problem formulation, research benefits, and research methods.

Chapter II discusses the concepts of monopoly, digital market, natural monopoly and the gaming distribution according to experts and regulations from the multiple Literature and then analyzed again through the prevailing laws on Indonesian business competition.

Chapter III discusses if the competition law cover the case of Valve Monopoly on gaming distribution how an undertaker should do business explicitly regulated in the business competition law regarding monopolies in Indonesia and its comparison with the laws of the United States of America which have explicitly regulated monopoly.

Chapter IV is the closing chapter which consists of conclusions and suggestions. The conclusion is the answer to the problem formulation that has been discussed in Chapter II and Chapter III. As well as advice for various undertaker and parties related to the legal field such as law makers and law enforcers as well as the community in Indonesia.