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PREDATORY PRICING FOR E-COMMERCE BUSINESSES FROM A BUSINESS COMPETITION LAW PERSPECTIVE

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ABSTRACT

Purpose: Predatory pricing is a business strategy where prices are cut by a lot to get rid of competitors and take over the market. With the digital economy growing so quickly, this method is becoming more and more important for e-commerce companies. The goal of this study is to look at the problem of unfair pricing in e-commerce businesses from the point of view of business competition laws.

Theoretical framework: This study will look at the problems with predatory pricing practices in E-Commerce companies and E-Commerce businesses.

Method: In this study, a conventional legal method is used, and a literature review is used to look at secondary sources of data.

Result: The results of the study show that when it comes to e-commerce in Indonesia, predatory pricing strategies like giving big discounts might help consumers right away by making prices very low. But this can make business competition unfair by causing other businesses to leave the market and stopping new businesses from coming in. Law No. 5 of 1999 forbids trading practices at a loss that hurt the public interest, especially if they are done dishonestly, against the law, or in a way that hurts business competition.

Conclusion: Because of this, predatory pricing methods like these need to be closely controlled, and anyone who feels like they've been cheated should be able to tell the right people. This group has the power to punish businesses that break the rules with administrative or criminal penalties. This ensures that the Indonesian e-commerce business ecosystem is healthy and fair.

Keywords: predatory pricing, e-commerce business, business competition law, unfair competition, dominant position.

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PREÇOS PREDATÓRIOS PARA EMPRESAS DE COMÉRCIO ELETRÔNICO DO PONTO DE VISTA DO DIREITO DA CONCORRÊNCIA EMPRESARIAL

RESUMO

Propósito: Preços predatórios é uma estratégia de negócios em que os preços são cortados em muito para se livrar dos concorrentes e assumir o mercado. Com a economia digital crescendo tão rapidamente, este método está se tornando cada vez mais importante para as empresas de comércio eletrônico. O objetivo deste estudo é analisar o problema da tarifação desleal em empresas de comércio eletrônico do ponto de vista das leis de concorrência empresarial.

Estrutura teórica: Este estudo analisará os problemas com práticas de preços predatórias em empresas de comércio eletrônico e negócios de comércio eletrônico.

Método: Neste estudo, utiliza-se um método legal convencional e uma revisão da literatura é utilizada para examinar fontes secundárias de dados.

Resultado: Os resultados do estudo mostram que quando se trata de comércio eletrônico na Indonésia, estratégias de preços predatórias, como dar grandes descontos, podem ajudar os consumidores imediatamente, fazendo preços muito baixos. Mas isso pode tornar a concorrência das empresas injusta, fazendo com que outras empresas abandonem o mercado e impedindo a entrada de novas empresas. A Lei nº 5 de 1999 proíbe práticas comerciais com prejuízo ao interesse público, especialmente se forem feitas desonestamente, contra a lei, ou de forma a prejudicar a concorrência empresarial.

Conclusão: Por causa disso, os métodos de preços predatórios como esses precisam ser controlados de perto, e qualquer um que se sinta enganado deve ser capaz de dizer às pessoas certas. Esse grupo tem o poder de punir empresas que violem as regras com penalidades administrativas ou criminais. Isso garante que o ecossistema de negócios do comércio eletrônico indonésio seja saudável e justo.

Palavras-chave: preços predatórios, comércio eletrônico, direito da concorrência comercial, concorrência desleal, posição dominante.

1 INTRODUCTION

E-commerce businesses have experienced explosive growth in recent years, changing the way consumers shop and companies operate (Maury & Klener, 2002; Barkatullah, 2018). This growth is closely related to technological advances, changes in consumer behavior, and increasingly easier access to the internet (Huang & Li, 2019; Sumanjeet, 2010). E-commerce refers to a multifaceted process involving the exchange of goods, services, and information through internet technology. It encompasses various activities such as buying and selling, as well as collaborating with business partners and conducting electronic transactions, all with the aim of serving customers effectively. The study of transactions within an organization has been explored by Chaffey (2007) and

Todd (2017). The advancement of technology remains in progress in relation to the internet of things, big data, and artificial intelligence.

Along with the increasing use of e-commerce transactions, the concept of business competition among e-commerce business actors becomes increasingly competitive (Hornle, 2002; Coppel, 2000). On the basis of increasingly competitive business competition, many e-commerce business actors are encouraged to always compete in marketing strategies, especially to attract consumers (Buccirossi, 2015; Carloni et al, 2015). One of these marketing strategies is the practice of predatory pricing. This practice involves drastically reducing the price of a product or service with the aim of dominating the market or excluding competitors (Williamson, 1977; McGee, 1980).

Law no. 5 of 1999, also known as the Prohibition of Monopolistic Practices and Unfair Business Competition Act, aims to establish a conducive business environment by implementing fair competition arrangements that guarantee equal opportunities for businesses of all scales (Juwana, 2002). This legislation governs a range of prohibited behaviors that have the capacity to undermine the integrity of competition and impede its healthy functioning. In relation to the proscription of monopolistic activities and unfair competition, one of the proscribed behaviors encompasses the implementation of a pricing tactic that is prejudicial to rival firms, sometimes referred to as predatory pricing (Asmah, 2022). According to Zaid (2022), Article 20 of Law no. 5 of 1999 stipulates that business entities are prohibited from engaging in practices such as selling goods or services below cost or setting excessively low prices with the intention of eliminating or driving out competitors in the same market. These actions can lead to monopolistic practices or unfair competition in the business sector.

One of the main challenges faced in predatory pricing practices in the e-commerce business is the practice of unhealthy business competition, caused by the form of e-commerce platform service business activities and the open market nature of the business, making it difficult to monitor the business activities carried out (Wibowo et al., 2022). The challenge of unfair business competition practices on e-commerce platforms comes in the form of alleged practices of selling at a loss or predatory pricing because there are no regulations regarding pricing of goods and/or services sold on the platform (Graef, 2019). Apart from that, challenges also come through the practice of abusing a dominant position because there are no limits on capital or economic power, thus providing opportunities for business actors with large economic power to dominate the relevant

market even though there is an open market nature which means there are no limitations to business actors who can enter the market. concerned e-commerce (Parsheera et al, 2017). It is also important to understand how current regulations governing business competition practices can be applied in the changing e-commerce context. Existing business competition laws may not fully consider digital business dynamics and pricing strategies used in e-commerce (Sidak & Teece, 2009). Therefore, there needs to be a careful assessment of the impact of these practices on consumers and whether there is a need to strengthen consumer protection in e-commerce businesses.

2 THEORETICAL FRAMEWORK

Finally, in an era of increasingly globally connected e-commerce, it is also important to consider developments in business competition law in various jurisdictions. Predatory pricing practices may have different implications in different countries, and an understanding of the competition laws applicable in different regions can provide additional insight into addressing this issue. Thus, this research will dig deeper to understand how predatory pricing practices in e-commerce businesses affect competition, consumers, and the existing regulatory framework. It is hoped that the results of this research can provide better guidance for policy makers, regulators and e-commerce business players in facing the challenges that arise in this dynamic era of online commerce.

3 LITERATURE REVIEW

3.1 PREDATORY PRICING

The definition of predatory pricing is the illegal act of setting low prices in an effort to eliminate competitors (Leslie, 2013). Determining predatory pricing makes the market more vulnerable to monopolistic practices. Accusations of predatory pricing practices are difficult to prove because it is possible that business actors will deny carrying out predatory pricing practices by lowering prices and considering it as part of normal competition rather than admitting to a deliberate attempt to damage the market (Yamey, 1972). Predatory pricing practices are also not always successful because there is a possibility that business actors will experience difficulties in recovering lost income and competitors who are not successful in being eliminated (Telser, 1996).

The concept of predatory pricing, as stipulated in Article 20 of Law no. 5 of 1999, is the practice of deliberately providing goods or services at a financial loss or significantly reduced rates, with the explicit aim of removing or undermining the viability of competitors operating within the same market (Juwana, 2002). According to economic theory, selling at a loss refers to the situation in which commercial entities establish the selling price of their goods and/or services below the average total cost. According to Telser (1966), within this legal framework, it is impermissible for any entrepreneur to establish excessively cheap pricing with the intention of eliminating rivals or competitors.

In Guideline Article 20 Concerning Selling at a Loss (Predatory Pricing) it is stated that in general business actors who apply predatory pricing is an incumbent business actor who does not want competitors in the business he carries out (Zaid et al, 2022) . The method used by incumbent business actors is to set prices for goods and/or services below the costs they incur so that competitors cannot survive in the same market share. In the short term, this will certainly be very profitable for consumers because the prices of goods are very cheap, but if business actors succeed in controlling the market, business actors will increase their prices very high in order to cover the losses suffered when setting low prices (Bolton et al., 1999).

It should be noted that predatory pricing does not necessarily aim to stop competing business actors, so it is not easy to determine business actors who carry out predatory pricing practices (Hemphill, 2000). Based on the Implementation Guidelines for Article 20 concerning Sales at a Loss (Predatory Pricing) by the KPPU, it is said that there are generally 5 main objectives of predatory pricing practices, namely:

a) Shutting down competing business actors in the same relevant market,

b) Limiting competitors by imposing a loss selling price as an entry barrier,

c) Obtain big profits in the future,

d) M reducing losses that occurred in the past, or

e) This is a promotional price in an effort to introduce new products as a marketing strategy tool

Predatory pricing can disrupt market stability. The following are some of the impacts of predatory pricing.

a) Price War in the Market. This is an initial impact that can be said to benefit consumers because they can get cheap prices in a short period of time. Usually, consumers will take advantage of this moment to buy these products in large

quantities. At this stage, other brands will try to lower the prices of their products to compete.

b) The Occurrence of Monopoly. When competitors can no longer compete, the potential for monopoly will arise when a single producer has eliminated rivals, which will then increase product prices. At this time, of course consumers will be greatly disadvantaged. Because the product is needed and used every day, for example, consumers have no other choice to continue buying from the party carrying out the monopoly, regardless of the price set.

The advantage of predatory pricing for consumers is that in the beginning when this activity is carried out, consumers can get products that are much lower than the market. This can be a motivation for competitors to create better products to compete with sellers who use predatory pricing (Khushmurodova & Komil, 2023). However, the drawback is that if this predatory pricing scheme is successful, competitors will be completely eliminated. At that time, sellers will start to raise prices, usually above the normal price. If a monopoly occurs, the ones who will be harmed are consumers because buyers no longer have a choice of brands and buy from the monopolist, no matter what the price or quality. Meanwhile, the disadvantage for other sellers is that it becomes difficult for them to enter a market that is already in the form of a monopoly (Edlin, 2010). With very low selling prices, only those who have large capital are able to compete with these monopolists.

3.2 E-COMMERCE

Raport and Jaworski (2001) define e-commerce as a digital platform accessible through computers, utilized by both business professionals for conducting commercial operations and consumers for acquiring information with the aid of computer technology. This process commences with the provision of information services to consumers to facilitate decision-making. Laudon and Traver (2017) define e-commerce as the transactional process involving the purchase, sale, and promotion of goods and services facilitated by electronic technologies, including radio, television, computer networks, and the internet. It can be inferred that e-commerce encompasses a dynamic assemblage of technology, applications, and business procedures that facilitate the interconnection between companies, consumers, and specific communities. This interconnection enables the exchange of goods on a large scale between retailers and consumers across various

commodities through electronic transactions. Additionally, this process involves the transportation of goods from retailers to consumers across different regions. The resulting relationship between these parties is characterized by mutual benefits.

According to Laudon and Traver (2017) there are six types of e-commerce as follows:

a) Business to Consumer (B2C) is the type of e-commerce that is talked about the most. It is where businesses sell directly to customers. B2C includes buying retail goods, going on trips, and getting online material. The most common type of e-commerce that people use is business-to-consumer (B2C).

b) Business to Business (B2B) is an e-commerce model where the business actor is a company, so the transaction process and exchanges are between two companies. Several e-banking sites that help companies do business with each other are examples of this type of e-commerce.

c) Consumer-to-Consumer (C2C) is a type that lets consumers sell to other consumers with the help of online market makers, also known as platform providers. In C2C, people sell things or services to other people, businesses, or organizations that act as consumers over the internet.

d) Mobile e-commerce, or "m-commerce," lets people use their phones or computers to connect to the internet and make online purchases using cellular networks or WiFi.

e) Social e-commerce is e-commerce that uses social networks and social media, like Facebook, Twitter, Instagram, and others. Then, social e-commerce is often linked to m-commerce. This is because more and more people are using their phones to access social networks like WhatsApp, Line, and others. This makes it easier for sellers and buyers to talk to each other.

f) Local e-commerce is a type of online shopping that focuses on connecting with customers based on where they are right now. Local ecommerce is a mix of m-commerce, social ecommerce, and local ecommerce. It is growing because people are becoming more interested in on-demand services in their own area.

Huang & Benyoucef (2022) suggest that there are several advantages that can be taken from using E-commerce, namely:

a) Electronic commerce allows customers to shop or carry out other transactions 24 hours a day throughout the year from almost any city.

b) Electronic commerce offers more choices to customers, they choose various products from many vendors.

c) Electronic commerce provides cheap products and services to customers by visiting many stores and making quick comparisons.

3.3 BUSINESS COMPETITION LAW

Business competition law can be defined as the legal framework governing all aspects pertaining to competition within the business sector (Pitofsky, 2017). The implementation of legal frameworks is essential for governing various parts of individuals' lives and has a significant impact on economic progress, particularly in endeavors aimed at attaining economic efficacy to promote societal well-being (Menell, 2005). The regulation and execution of business competition law, a component of economic law, must align with the fundamental principles of the state constitution, namely the 1945 Constitution, particularly Article 33 paragraph (4). The article suggests that the attainment of economic development objectives should be grounded in the principles of popular democracy, specifically the establishment of social justice for the entire Indonesian population.

The establishment of business competition law was intended to facilitate the development of a market-based economic framework, thereby ensuring the preservation of competition among commercial entities in a sound way. This legal framework aims to safeguard the interests of the general public, particularly consumers, by preventing any potential abuse by businesses. The realm of business rivalry primarily involves interactions among business entities, with limited necessity for government intervention. However, governmental intervention becomes imperative in establishing a regulatory framework to safeguard consumer interests within the context of business competition (Usman, 2004). This measure is implemented in order to prevent collusion or conspiracy among business entities, which can lead to economic inefficiencies. As a result, the community may experience a reduced availability of funds or may be compelled to purchase goods or services at higher prices and of substandard quality. According to Maarif (2001).

The implementation of a company Competition Law, which aims to prevent monopolistic behaviors and unfair company competition, is an essential legal component in an economy that operates under market processes. This law has the dual purpose of

facilitating unhindered competition in the economy and serving as a deterrent against detrimental economic practices (Dunne, 2015). Opting for a market economic system without implementing appropriate regulatory mechanisms can be likened to permitting the economy to operate on the principle of the strong overpowering the weak. This is due to the inherent nature of the business realm, which is driven by the pursuit of maximizing profits, even if it entails resorting to any means necessary. Consequently, the establishment of rules becomes imperative in order to govern and regulate such a system (Black & Kraakman, 1996).

The primary objective of business competition legislation is to foster robust and efficient competition within a certain market, thereby motivating corporate entities to enhance their efficiency and competitiveness vis-à-vis their rivals. The presence of a Business Competition Law grounded in economic democracy necessitates careful consideration of the equilibrium between the concerns of business entities and the welfare of society. Consequently, this legislation assumes a pivotal and strategic function in fostering a robust climate of fair business competition within Indonesia.

4 METHODOLOGY

This study employs a normative legal methodology. Normative legal research use normative case studies, such as the examination of legal behavioral products such as legislation, to analyze and evaluate legal norms. The primary focus of examination pertains to the field of law, which is defined as a conceptual framework comprising norms or regulations that govern societal conduct and serve as a guiding principle for individuals' actions. Normative legal study is primarily concerned with examining many aspects of positive law, including legal principles, doctrines, case-specific legal discoveries, legal systematics, levels synchronization, legal comparisons, and legal history (Abdulkadir, 2004). The research methodology employed in this study is the statutory regulation technique. Normative research typically employs a statutory approach as it investigates legal rules that serve as the primary focus and key issue of the research. Normative legal research involves the utilization of secondary data sources, specifically the analysis and examination of documents and literature. Researchers collect and scrutinize these sources to obtain the necessary information required for their study. Secondary data sources play a crucial role in academic research endeavors. These sources refer to existing data that has been collected by someone else for a different purpose.

Researchers utilize secondary data sources to gather information and insights without having to conduct primary data collection themselves. This The subject matter can be categorized into two distinct types: primary legal materials, exemplified by the 1945 Constitution and Law no. 5 of 1999 pertaining to the Prohibition of Monopolistic Practices and Unfair Business Competition, and secondary legal materials, encompassing books, literature, articles, and other sources that offer interpretations and elucidations of primary legal materials. The data collected in this study were subjected to qualitative analysis. Specifically, a data analysis approach involving the grouping and selection of data obtained from field research based on their quality and accuracy was employed. The data were then systematically organized and examined using a deductive reasoning method, which involved connecting them with relevant theories derived from a literature review (secondary data). Ultimately, conclusions were drawn from this analysis that contribute to addressing the research problem. The findings of the analysis are given in a descriptive manner.

5 RESULTS AND DISCUSSION

5.1 CHALLENGES OF PREDATORY PRICING PRACTICES IN E-COMMERCE

As explained in the introduction, the challenges in carrying out predatory pricing practices are not small. Starting from unhealthy business competition practices caused by the form of e-commerce platform service business activities and the open market nature of business, making it difficult to monitor business activities that are carried out healthily, abuse of dominant positions because there are no limits on capital or economic power, changes in core business activities. very dynamic, not balanced by appropriate regulatory adjustments, and an understanding of business competition laws that apply in various different countries considering that e-commerce business is a cross-border business and there are no geographical boundaries. Below is an explanation of each.

a) Unfair business competition practices

Predatory pricing practices in e-commerce raise various challenges, and one of the main challenges is related to unhealthy business competition. This occurs when large e-commerce companies significantly lower the prices of their products with the aim of creating an unfair competitive advantage and eliminating competitors. This kind of action creates an imbalance in competition, which in turn can be detrimental to the business ecosystem as a whole (Sukarmi & Liemanto, 2020).

One of the direct effects of predatory pricing practices is the ability of large companies to sell products or services below their own production costs. This forces smaller competitors to deal with unfair competition because they cannot offer the same low prices. As a result, small competitors may have difficulty surviving or entering the market, which could potentially create a monopoly or oligopoly, where only a few large companies dominate the market. This unhealthy competition can also harm consumers in the long term. Although predatory pricing practices may provide initial benefits in the form of lower prices, once competitors have been eliminated, large firms may have less incentive to keep prices low or improve product quality. This has the potential to reduce consumer choice and stifle innovation in the long term (Salim & Yulasmi, 2023).

Business competition law regulations are very important in overcoming this challenge. Regulators need to ensure that practices that harm competition and consumers are identified and appropriately addressed. In addition, cooperation between countries and sharing information about predatory pricing practices can help identify trends that harm competition at the global level. In the context of rapidly growing e-commerce, protecting fair competition is important to ensure that consumers have access to a wide choice of products and fair prices. Therefore, a better understanding of these challenges and effective regulatory efforts are necessary to maintain a healthy and sustainable business ecosystem in the digital era.

b) Abuse of a dominant position because there are no limits on capital or economic power.

The abuse of a dominant position is prohibited under the provisions of Articles 25 to 29 of Law no. 5 of 1999, which governs business competition law. From an economic standpoint, the dominating position refers to the position held by an economic actor who possesses the biggest market share, hence granting them market power. In the realm of law, a dominant position can be understood as a state wherein a business entity operating within a pertinent market lacks substantial competitors or holds the foremost position within said market. This position is distinguished by factors such as financial standing, capacity to access and engage in transactions, and ability to effectively compete with offers presented by others. Sales demand in the context of business actors has a higher degree of qualification compared to other entities.

Abuse of a dominant position in e-commerce business is another serious challenge that arises due to the absence of capital constraints or economic power that can control

the market significantly. When e-commerce companies, especially those with large financial resources, achieve a dominant position in the market, they have significant power to control competitive dynamics (Wu et al., 2021). Some of the negative impacts of abusing a dominant position in this context are as follows:

a) Discrimination against Competitors: Companies that dominate a market may use their position to disadvantage their competitors. For example, they can prioritize their own products on their e-commerce platforms or hinder the visibility of competitors' products. This creates inequality in competition and reduces competitors' opportunities to compete fairly.

b) Inflated Prices: Dominant companies may exploit their position to raise the price of a product or service above a reasonable level, because consumers may not have many alternatives. This can harm consumers by paying more for the same product.

c) Lack of Innovation: Companies that have achieved dominance may have little incentive to innovate or improve their products because they do not feel pressured by competition. This can hinder technological development and better product offerings for consumers.

d) Barriers to New Competitors: Companies that dominate the market can create high barriers to new competitors seeking to enter the market. They can use their resources to control access to infrastructure or resources necessary to compete.

e) Potential Monopoly: Abuse of a dominant position can create a monopoly situation where only one large player dominates the market. This can harm consumers by reducing choice and eliminating healthy competition.

To overcome abuse of a dominant position in the e-commerce business, there needs to be strong regulations and effective supervision from regulators. Regulators need to monitor the behavior of dominant companies, ensure that fair competition is maintained, and provide protection for small competitors and consumers. The implementation of strong business competition laws is also important to prevent abuse of dominant positions and maintain a healthy and fair business ecosystem for all parties.

c) Very dynamic changes in the core e-commerce business

The highly dynamic changes in the core e-commerce business include rapid evolution in business models, technologies and operational strategies used by companies

in online commerce. This phenomenon can include the adoption of new technology, changes in consumer preferences, innovative marketing strategies, and various other developments that occur at a very fast pace (Feindt et al., 2002).

However, often the regulations that apply to the e-commerce industry are unable to keep up with this pace of change. Regulations are often designed with slower time frames, and the regulatory change process often takes quite a long time. As a result, when e-commerce businesses experience rapid change and innovation, existing regulations may become outdated or no longer relevant. This can create loopholes through which practices that might harm consumers or competitors can flourish unimpeded.

Regulating new platforms and business models emerging in e-commerce is one of the critical challenges for regulators. E-commerce businesses have created innovations such as online marketplaces and subscription-based businesses that have unique characteristics and can significantly impact competitive dynamics and consumer experiences. Therefore, regulators need to engage in a deep understanding of how these models operate before they can develop appropriate regulations.

For example, online marketplaces, which connect sellers and buyers directly without physical intermediaries, present challenges in terms of consumer protection and law enforcement. Regulators need to ensure that buyers have access to accurate information about the products they purchase and that they are protected from fraud or counterfeit goods. On the other hand, subscription business models, where consumers pay a monthly or annual fee to access a particular product or service, present questions about price fairness and quality.

The imbalance between dynamic changes in e-commerce businesses and slow regulatory adjustments can pose risks to the entire business ecosystem. Therefore, it is important for regulators to continue to monitor developments in this industry and respond quickly through appropriate regulatory adjustments in order to maintain healthy competition, protect consumers, and ensure sustainable growth in this digital era.

d) Understanding of business competition laws that apply in various different countries

Understanding business competition laws that apply in various countries is becoming increasingly important in the context of e-commerce businesses that are cross-border and not bound by geographic boundaries. E-commerce businesses operate on a global scale, facilitating trade and transactions between countries quickly and efficiently.

In this regard, differences in the competition legal framework in various jurisdictions can create significant challenges. Regulations that differ substantially between countries can create significant diversity in the understanding of lawful and illegitimate business practices. Some countries may have stricter and stricter regulations protecting competition, while others may have a looser approach. This creates complexity in navigating the global legal framework (Gadinis, 2008).

This diversity of regulations influences the business strategies of e-commerce companies. Companies must consider differences in competition regulations when designing their business strategies, including pricing, promotions, and expansion into international markets. The legality of certain practices varies across different countries, necessitating organizations to ensure that their operations align with the specific legislation of each area. Moreover, variations in regulatory frameworks can also have an influence on safeguarding the interests of consumers. Tighter regulations have the potential to enhance consumer protection, whereas more lenient restrictions necessitate consumers to exercise heightened awareness of potential risks. Law enforcement in the realm of cross-border e-commerce enterprises presents a complex scenario. In instances where infringements of business competition law take place in a cross-border context, inquiries regarding jurisdiction and authority frequently emerge. Hence, the significance of international collaboration in the enforcement of corporate competition legislation cannot be overstated.

A comprehensive comprehension of business competition rules in many nations is vital for effectively managing a cross-border e-commerce enterprise. E-commerce enterprises must take into account relevant rules, involve legal professionals, and establish partnerships with industry players and regulatory bodies to ensure adherence to the appropriate legal structure in every market they operate in. Furthermore, the significance of international collaboration in the regulation of business competition within the context of the global e-commerce era is progressively escalating, as it plays a pivotal role in upholding fair competition and safeguarding consumers on a worldwide scale.

5.2 PREDATORY PRICING PRACTICES IN E-COMMERCE ACCORDING TO LAW NUMBER 5 OF 1999 (BUSINESS COMPETITION LAW)

Internet-based purchasing and selling in Indonesia. This increase in e-commerce buying and selling also occurred as a result of the practice of discount parties or massive discounts instituted by e-commerce services such as Tokopedia, Shopee, Lazada, and other e-commerce services. Providing substantial discounts in e-commerce will have a significant effect on consumer and business behavior. Large discounts can be an indication of predatory pricing (VanDuzer, 2000).

Article 20 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that "business actors are prohibited from supplying goods and/or services by selling at a loss or setting extremely low prices with the intent of eliminating or shutting down the business of their competitors in the relevant market, which could result in monopolistic practices and/or unfair business competition." In accordance with the a quo article, Law no. 5/1999 prohibits the widespread practice of selling at a loss in e-commerce. However, this does not inherently imply that offering substantial discounts via e-commerce is prohibited by the aforementioned article. This is due to the fact that the a quo article states that the in question practice of selling at a loss "results in monopolistic practices and/or unfair business competition." Therefore, we must gain a deeper understanding of the concept of selling at a loss, which can lead to monopolistic and/or unjust business competition.

According to Article 1 number 2 of Law no. 5/1999, the concept of monopoly practice refers to the consolidation of economic power by one or more entities in the business sector, leading to the dominance over the production and/or distribution of specific goods and/or services. This concentration of power creates an unfavorable environment for fair competition and has the potential to adversely affect the welfare of the general public. In accordance with Article 1, clause 6, unhealthy business competition refers to the competitive interactions among business entities in the execution of production and/or marketing endeavors for goods or services. Such competition is deemed unhealthy when it is conducted in an unjust or illegal manner, or when it obstructs the fair operation of business competition. According to the stipulated definition of monopolistic practices and unfair business competition, the actions forbidden in Article 20 pertain to selling at a loss. These practices are deemed detrimental to the public

interest, specifically when they are executed with dishonesty, in violation of legal regulations, or impede fair business competition.

There are several things that can indicate that business actors are carrying out the practice of selling at a loss which is *predatory pricing* , namely that initially the practice of selling at a loss will provide huge profits for consumers, because business actors will set very low prices for their products, so that competitors' businesses will not survive. the same market. When all competitors are no longer able to carry out their business activities, the business actor will raise prices to a high level to cover the losses suffered when the prices were set very low. However, if the practice of selling at a loss does not prevent other business actors from entering a similar market then the practice of selling at a loss is not considered a *predatory pricing practice.*

Thus, selling at a loss which includes *predatory pricing practices* carried out by business actors has the following characteristics:

1) Eliminate other business competitors from similar markets.

The practice of predatory pricing or determining prices detrimental to competitors is a business strategy that has the aim of driving out other business competitors from similar markets. One of the main characteristics of this practice is offering very low prices, often below production or procurement costs, to attract customers and create an inability for competitors to compete. By offering very low prices, companies that employ predatory pricing practices can take significant market share and create obstacles that are difficult for other competitors to overcome. In this practice, business actors who apply predatory pricing are often willing to experience short-term losses because they hope that after their competitors leave the market, they will have control over the market and can raise prices again to gain greater profits.

2) Inhibiting the entry of other business actors as new competitors.

Predatory pricing practices also have a significant impact in preventing the entry of new business actors as new competitors in the market. When an established company in an industry sets very low prices, this creates high barriers to entry for new competitors looking to enter the market. Because prices are already very low, new competitors will face difficulty competing at the same price, while companies that implement predatory pricing can temporarily ignore the losses they experience. This makes it difficult for new businesses to attract customers and build their own market share, which in turn can reduce healthy competition and negatively impact innovation and choice available to consumers.

Therefore, predatory pricing practices can also hinder fair competition and make it difficult for new business actors to enter the market.

3) Setting a price that is a monopoly price or a higher price to cover losses due to previous loss-making practices in the future.

One of the goals that may be pursued by business actors who implement predatory pricing practices is to achieve a monopoly position in the market. Having succeeded in driving out their competitors through extremely low pricing, the company can raise prices significantly to gain greater profits in the future. This means that after establishing market dominance at the expense of competitors, the company can then set higher prices, often at monopoly levels, with no competitors to compete with. In some cases, this can result in huge profits for the company, but also hurt consumers with higher prices. Therefore, these actions are sometimes highlighted by regulatory authorities seeking to prevent abuses of monopoly positions that may occur as a result of predatory pricing practices .

The practice of selling at a loss through discount parties which is often implemented by e-commerce platforms can be seen as an indication of predatory pricing or setting prices that are detrimental to competitors. In this context, the practice of selling at a loss refers to offering products at very low prices, often below production or procurement costs, to attract consumers and create market dominance. This phenomenon becomes more real when we look at the impact on imported products and MSME business actors in Indonesia. In particular, the practice of selling at a loss in e-commerce can lead to significant negative impacts for domestic business actors, such as MSMEs that sell products such as hijabs. Imported products subject to deep discounts can result in their prices being lower than locally produced products. This has resulted in the inability of domestic businesses to compete on price, resulting in decreased sales and even the closure of their businesses.

If we refer to Article 20 in business competition law, this case can be seen as a form of violation. This article refers to practices that can hinder business competition, including eliminating or shutting down competitors. In the context of selling at a loss in e-commerce, the impact that hinders competitors, especially MSMEs, can be clearly seen. Imported products subject to heavy discounts create inequality in competition, and MSMEs that may not be able to offer comparable prices are forced to close their businesses or face serious difficulties. In this perspective, the practice of selling at a loss through discount parties by e-commerce indicates the occurrence of predatory

pricing. This is because these practices not only affect competitors, but also create unhealthy conditions in the market that can hinder economic growth and fair competition.

Thus, regarding the practice of selling at a loss which is suspected of being *predatory pricing* by a business actor, based on Guidelines Article 20 concerning Selling at a Loss, every person or party who feels disadvantaged and knows of indications of *predatory pricing practices* has the right to report it in writing to the KPPU. If it has been proven by the KPPU that there has been a violation of the provisions of Article 20, then in accordance with Article 47 of Law no. 5/1999, business actors can be subject to administrative sanctions in the form of:

1) Order to stop activities proven to give rise to monopolistic practices and/or business competition;
2) Payment of compensation;
3) Imposition of a minimum fine of 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 25,000,000,000.00 (twenty-five billion rupiah).

Apart from that, based on Article 48, violations of Article 20 can also be subject to basic criminal sanctions in the form of a minimum fine of 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 25,000,000,000.00 (twenty-five billion rupiah), or substitute imprisonment. a maximum fine of 5 (five) months. Regarding criminal sanctions, based on Article 49 additional penalties can be imposed in the form of:

1) Revocation of business license; or
2) Prohibition for business actors who have been proven to have committed violations from holding the position of director or commissioner for a minimum of 2 (two) years and a maximum of 5 (five) years; or
3) Termination of certain activities or actions that cause losses to other parties.

While the frequent discount parties held by e-commerce services can provide immediate benefits for consumers, it is important to remember that these benefits are only temporary. This is because there is hidden potential where business actors can use selling practices at a loss, known as predatory pricing, with the aim of destroying other business competitors. If an e-commerce discount party produces a detrimental impact on other business actors by preventing them from competing fairly, then this actually violates the provisions in Article 20 of Law no. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition .

6 CONCLUSION

Challenges in predatory pricing practices in e-commerce businesses involve unfair business competition practices, abuse of dominant positions by companies without capital restrictions or economic power, very dynamic changes in the core e-commerce business, and an understanding of different business competition laws in various different countries. Predatory pricing practices can disrupt healthy competition, harm small competitors, and have the potential to create monopolies or oligopolies. Slow regulatory adjustments to rapid business changes can create openings for detrimental practices. Additionally, differences in regulations between countries require e-commerce companies to understand and comply with each jurisdiction's regulations, while cross-border law enforcement is becoming increasingly complex. Therefore, protecting fair competition and consumers in cross-border e-commerce businesses requires cooperation between countries and a deep understanding of the legal framework applicable in various countries.

Predatory pricing tactics in e-commerce, particularly through offering significant discounts, have the potential to affect other business players, notably MSMEs and domestic company actors, and to create unfair competition. Trading practices at a loss that impair the public interest are prohibited by Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair company Competition, particularly if they are dishonest, illegal, or restrict company competition. Predatory pricing strategies can make it difficult for new businesses to enter the market and possibly result in one company gaining market dominance. People who feel disenfranchised can submit this case to the KPPU, which can penalize business actors who are found to have broken the law with administrative or criminal sanctions. Discount binges in e-commerce may benefit customers right away, but it's critical to comprehend the dangers of predatory pricing strategies to maintain a competitive marketplace that is fair and healthy.

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