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THE IMPORTANCE OF BRAND REGISTRATION TO REDUCE UNFAIR COMPETITION IN THE WORLD OF TRADE

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ABSTRACT

Objective: The purpose of this study is to find out the legal solution to the importance of trademark registration to reduce the occurrence of unfair competition in the world of trade and provide sanctions for parties who imitate and copy marks.

Method: The Research methods carried out in a systematic way in carrying out analysis and data collection activities in striving for certain goals to be achieved are definitions for research, For the realization of this research, the method applied is the analytical descriptive method. The purpose of this method is intended to be able to deliver a bright picture as a whole, carry out an assessment of positive legal norms and dig deeper into legal facts. The type of research that is then also applied in this research is normative juridical.

Results: With a multitude of product brands in the market, it often confuses consumers when making choices. Sometimes, consumers choose products based on their budget, leading to the circulation of many counterfeit brands with significantly lower prices but identical names and appearances to genuine products. This is what is referred to as a violation of trademark rights. Therefore, for a trademark to be valid, it needs to be registered. Registration is carried out to provide valid proof of ownership of the trademark, to challenge counterfeit brands in circulation, and to reject trademarks with identical appearances registered by others. Thus, trademark registration is conducted to obtain protection and legal certainty for a brand.

Keywords: product, business, trademark, commerce.

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A IMPORTÂNCIA DO REGISTRO DE MARCA PARA REDUZIR A CONCORRÊNCIA DESLEAL NO MUNDO DO COMÉRCIO

RESUMO

Objetivo: O objetivo deste estudo é descobrir a solução jurídica para a importância do registro de marcas para reduzir a ocorrência de concorrência desleal no mundo do comércio e prever sanções para quem imita e copia marcas.

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Método: Os métodos de pesquisa realizados de forma sistemática na realização de atividades de análise e coleta de dados na busca por determinados objetivos a serem alcançados são definições para a pesquisa. Para a realização desta pesquisa o método aplicado é o método analítico descritivo. O objetivo deste método é ser capaz de fornecer uma imagem brilhante como um todo, realizar uma avaliação das normas jurídicas positivas e aprofundar os fatos jurídicos. O tipo de pesquisa que também é aplicado nesta pesquisa é jurídico normativo.

Resultados: Com uma infinidade de marcas de produtos no mercado, muitas vezes confunde os consumidores na hora de fazer escolhas. Por vezes, os consumidores escolhem produtos com base no seu orçamento, o que leva à circulação de muitas marcas contrafeitas com preços significativamente mais baixos, mas com nomes e aparência idênticos aos dos produtos genuínos. Isso é chamado de violação dos direitos de marca registrada. Portanto, para que uma marca seja válida, ela precisa ser registrada. O registro é realizado para fornecer prova válida de propriedade da marca, para contestar marcas falsificadas em circulação e para rejeitar marcas com aparência idêntica registradas por terceiros. Assim, o registro da marca é realizado para obter proteção e segurança jurídica para uma marca.

Palavras-chave: produto, negócio, marca, comércio.

1 INTRODUCTION

In Indonesia, business activities are increasingly developing along with increasingly developing globalization. It cannot be denied that the existence of a business will always be associated with the business people and the products they produce. In order to achieve profits and strengthen their position in the business market, business people will continue to strive to build the profile of their business.

Along with an increasingly good business profile, a "trust" can be born among the public to be able to use the products that business people have produced. Meanwhile, business people will also create products with high quality or superior products which will ultimately be in demand by consumers.

Business actors are not only limited to a business venture in the form of a factory, which in its production involves machines or technology and is mass produced, but businesses can also take the form of art, writing, music, education, photos, books, and others which constitute creativity.

The results of factory production in the form of a product, as well as products from art, literature, education, as well as all products produced with high creativity and intellectual power, at the expense of time, energy or relatively high costs must be given protection, because there will be value high economic value from the form of these works, thus the producers of these works are very deserving of enjoying the results of these works, and worthy of experiencing the economic benefits of using the products they have produced for use by other people.

With the success of a product from a company that has developed and is well known, both their name and product among the public, then the letters, words and images that exist to symbolize the company will also have high economic value. This distinctive symbol can be offered for use by other parties, of course in exchange for economic value.

Thus, everything that has been produced and can be useful for other people, the person or producer or creator of the product or art will be given the right to be able to protect their product, and be able to enjoy the results of the product they have produced.

2 METHOD

Research methods are a stage for answering the question of how to make research a reality. In the discussion of research methods, research implementation is reviewed through procedures.A way of working that is related to a scientific activity, in order to obtain an understanding that will be given to research material in the form of objects or subjects, in an effort to obtain an answer and be given scientific accountability for the answer, including a validity known as a method. Meanwhile, the process carried out in a systematic way in carrying out analysis and data collection activities in seeking certain goals to be achieved is the definition for research (Efendi & Ibrahim, 2016: 2-3).

In order to realize this research, the method applied is the analytical descriptive method. The aim of this method is to provide a clear picture as a whole, carry out an assessment of positive legal norms and dig deeper into legal facts. The type of research that is then applied in this research is normative juridical,All legal materials in the form of various types of regulations that apply in Indonesia are the things that are focused on the analysis in this research, as well as being the main basis for this research.

3 RESULT AND DISCUSSION

3.1 THE IMPORTANCE OF THE EXISTENCE OF INTELLECTUAL PROPERTY RIGHTS IN A WORK

PowerHigh intellectuals who produce works of high quality and economic value need to receive protection, as a form of providing a sense of justice to the owners or producers of these works. Thus, so that the owners of works can be given protection to obtain a sense of justice, in this situation the law is present to provide fulfillment of this protection (Donandi, 2019: 2).

The results of these intellectual works are provided by law with a place where they

can be further utilized and receive assistance and protection. As time goes by, the rights to intellectual work results are formulated with the term intellectual property rights or "IPR".

RightIntellectual property is defined as a right that can arise as a result of ideas from human thought patterns which ultimately result in processes and products that can benefit human life.

Intellectual property rights (HKI) is a term for improvement or revision of intellectual property rights, in the Decree of the Minister of Law and Legislation of the Republic of Indonesia Number M.03.PR.07.10 of 2000 and the Approval of the State Minister for Administrative Reform, in letter Number 24/M/PAN/1/2000, the term "Intellectual Property Rights" (without "above") can be shortened to "HKI", which has been formalized for use (Atsar, 2018:2).

Since the beginning of intellectual works being created, these works have had to receive protection, and need to be protected by business actors. If at any time there is negligence and delay caused by business actors in order to provide protection for their intellectual work, this could inadvertently cause large potential profits to be lost (Donandi, 2019: 3).

ForA company's most valuable and valuable assets are intellectual property rights or IPR. Where IPR can provide economic compensation in the form of profits of large value. In fact, in a company the existence of IPR can have a big influence on the company's position in being able to compete in the world of business markets it is entering (Donandi, 2019: 3).

The existence of intellectual property carries the potential for it to be misused, which in the end can cause a number of losses to the owner. Thus, in order to enforce violations of IPR, it is necessary to have strict regulations. Bearing in mind that the use of IPR is global in nature, efforts to enforce such violations are the responsibility of the international community. From a situation like this, awareness has emerged from several countries in the world to work together to provide protection for IPR (Donandi, 2019: 4).

InIn terms of IPR protection, the thing that is protected is not an idea that is in the mind, but rather an idea that has been channeled in the form of a work, both two-dimensional and three-dimensional. There are two forms of IPR whose protection exists in Indonesia, the first is IPR which is communal in nature, where this IPR is given to people who live in groups in a certain area by residing in that place, with the scope of

rights consisting of: knowledge from the community in the form of traditional knowledge, traditional cultural expressions (folklore), geographical indications, and biodiversity. Furthermore, the second type is personal IPR,

With the existence of IPR, it is not only aimed at providing high economic value to the owners of works, but also in order to provide motivation to be able to produce other intellectual works for artistic artists.

Basically it is stated that, in economic growth, IPR plays a very important role. In relations between people and between countries, the existence of IPR is something that cannot be avoided. In general, there are various benefits in the existence of an IPR, which include:

1) Can help improve a position in trading and investment activities;
2) Can help develop technology;
3) Can provide encouragement to be able to compete internationally for a company;
4) Can provide assistance to an invention in terms of commercialization;
5) Can develop social culture and in the interests of exports international reputation can be maintained (Atsar, 2018: 6).

The characteristic of an IPR system is that it is characterized by private rights. In order to submit an IPR application, a person has the freedom to register or not in relation to the results of their intellectual work. Apart from that, IPR has a system to be able to support the provision of a good documentation system for all forms of human creativity, so that it can prevent the possibility of the resulting works and technology being similar to existing ones (Damian, 2019:2) .

There is an agency that was formed specifically to handle IPR issues internationally, namely the World Intellectual Property Organization (WIPO) which is a UN specialized agency. Indonesia is a member based on the ratification of the Convention Establishing the World Intellectual Property Organization (Damian, 2019: 3).

In the eyes of the international world, the position of IPR has become a theme that is considered very essential and has received attention both nationally and internationally. The World Trade Organization which received approval to be established in 1994 was a sign that a new era of IPR development throughout the world would begin. Currently, the world of trade and investment is something that is always related to issues relating to IPR. IPR, which has an important role in economic development and trade activities, has

spurred IPR to begin its new era in international and national regulations which include participating countries that have agreed to the WTO with Trade Related Aspects of Intellectual Property Rights (TRIPs), which in this case is Appendix IA to the WTO Agreement (Damian, 2019: 3).

3.2 LEGAL PROTECTION FOR INFRINGEMENT OF A BRAND

The scope of an IPR is very broad, where it is not only limited to one form, but consists of various forms, where these forms generally include copyright and related rights as well as industrial property rights which include other forms, such as one of them is brand.

In this case, in particular, the right to a trademark is a right delegated to the registered trademark owner to be able to utilize their trademark in carrying out trade and service activities, as well as granting permission to use the trademark to other people, of course with a license.

Nowadays in Indonesia, various types of trading practices start from small traders such as street vendors to supermarkets which provide many products with well-known brands, even though it is known that these brands are counterfeit brands. In Indonesia, cases regarding brands are dominated by violations of well-known brands, but this does not mean that there are no local brands that are used by other parties unlawfully (Faradz, 2008: 1).

As international business transactions grow more rapidly, there is a need for a global or international regulation, which can provide guarantees for legal protection and certainty, especially in the field of brands. Until finally, in 1883, the Paris Convention was agreed upon, where the convention contained regulations regarding brand protection. Meanwhile, improvements and changes have been made to Law No. 19 of 1992 in matters relating to brands, so that they can adapt to the Paris Convention (Faradz, 2008: 1).

Furthermore, the law on brands continues to undergo changes and additions to become Law Number 12 of 1992, and then undergoes further changes to become Law Number 15 of 2001, with ongoing changes indicating that brands have a very essential role. (Semaun, 2016:2).

Along with the rapid development of the business world, a more flexible arrangement is now needed. Brands are valued as prestigious. In certain circles, people place their prestige on the goods they use or the services they use. Often, there are several

reasons put forward, such as for quality, then bona fides, or investment. Sometimes a brand can also become a lifestyle. A person can be more confident with a brand, not only that, even a person's social class can be determined by the brand they use. Consumers who can use goods with well-known brands will be proud of themselves,

However, nowadays brand violations often occur among businesses, business actors will act dishonestly, with the aim of ensuring that no losses are suffered by them. They will make products by copying existing brands and then market them at much lower prices, sometimes also with lower quality. However, as a result, people will be more tempted by fake brand products because the selling price is lower than original brands.

Businesspeople who commit fraud will market products with fake brands to the public without having to spend large amounts of money on the grounds that the products being offered are already well-known among the public. In this way, these business people will reap maximum profits.

Fraud committed by these business people will cause losses to the original brand owner. As a result of the low prices offered by counterfeit product businesses, businesspeople who produce genuine products are hampered in marketing, and people who are economically hampered will definitely not buy genuine products. On the other hand, brand counterfeiting activities can also result in a decrease in transaction turnover, so that the benefits of original brands that are more well-known will decrease. Not only that, it can even cause a decline in public confidence in the brand's products, this is because people feel that the product used to have good quality until finally the quality decreased drastically.

Business competition law can be defined as the legal framework governing all aspects pertaining to competition within the business sector (Pitofsky, 2017).

Violation of brand rights not only harms the original brand producer, but can also present various losses for buyers, where the quality of labor and products that buyers will receive is lower compared to the original brand which is a well-known and first brand, not only that. These counterfeit products can also endanger buyers both in terms of health and life (Prameswari, et al. 2021: 279).

With so many brands of a product on the market, ultimately people are confused about choosing. Sometimes people choose products according to their economy, resulting in many fake brands circulating on the market at a much cheaper selling price, but the name and shape are exactly the same as the original product. This is what is called a

violation of brand rights.

Thus, in order for a trademark to be valid, it is necessary to register the trademark. Registration is carried out so that it can become valid evidence against the brand owner and can refute counterfeit marks in circulation, as well as reject marks with the exact same form registered by other people. Thus, trademark registration is carried out to obtain legal protection and certainty for a trademark.

To register a brand, it must be done at the Directorate General of Intellectual Property Rights. Registration is carried out in accordance with the regulations contained in the Law. The purpose of registration is so that the registrant can obtain status as the first registrant until there is proof to the contrary from someone else. Because, if someone can provide proof that there is a registered mark and with that he obtains a brand certificate indicating that he has the rights to the mark, then other parties are prohibited from using the same mark for similar goods (Semaun, 2016: 4).

Basically, in the literature there are two types of trademark registration, including the constitutive (attributive) system and the declarative system. The constitutive system means that rights to a trademark can be obtained and granted through registration. In other words, trademark registration in the constitutive system is an absolute must. A new brand will receive legal protection if it is registered. Meanwhile, the declarative system does not require registration of a mark, so it is not mandatory. In this declarative system, registration is carried out solely for validation purposes, that the trademark registrant is the first user of the trademark in question. So the registration is not intended to be able to issue a right, but only to be able to provide legal allegations or presemption iuris, namely the party who has authority over the mark and as the first user is the party whose mark is registered. Initially, trademark registration activities were carried out using a declarative system, based on Law no. 21 of 1996. However, as the Trademark Law developed, it became Law no. 20 of 2016, since then trademark registration has implemented a constitutive system, because the costitutive system is considered to provide more guarantees of legal certainty when compared with the declarative system (Uktolseja & Yosia: 2021, 58-59). Initially, trademark registration activities were carried out using a declarative system, based on Law no. 21 of 1996. However, as the Trademark Law developed, it became Law no. 20 of 2016, since then trademark registration has implemented a constitutive system, because the costitutive system is considered to provide more guarantees of legal certainty when compared with the declarative system

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By registering a brand, at that time the owner of the brand will be given responsibility for the name of their brand. In this way, other parties who are interested in seeing a mark that has not been registered and registering it, will get a legal guarantee, so that the main party who wants the mark will be hampered, but will not be able to take action because the mark has not been registered.

However, if it is indicated that the mark could cause the entire population to be injured, then the mark will not be able to be registered. In other words, the registration will be terminated if the mark could harm other parties. Or it can be said clearly that a mark whose registration cannot be carried out is a mark that is deemed not to be suitable for use. Business actors who do not register their brand means that the brand does not have valid insurance. Where, there is an important role of legal insurance, which aims to provide guarantees for the brand so that it cannot be imitated and misused by other parties, and that other demonstrations do not occur that could violate the law (Prameswari, et al.

Against business people who have committed violations against brand names, apart from being based on the Trademark Law, it can also be based on exploitative competition which is subject to criminal demonstration in accordance with Article 382 bis of the Criminal Code. Material demonstrations are threatened with a sentence of 1 (one) year and a maximum fine of Rp. 900,000,000.00 (900,000,000 rupiah), is carrying out fraudulent demonstrations to deceive the general public or someone in particular. Then, the use and copying of a trademark by another party, when the trademark has just been registered by the owner of the rights to the trademark, can have legal consequences as a form of criminal action, as intended in Article 200 paragraph (2) of the Law on Marks and Geographical Indications which regulates that every person who is not entitled to chooses to use a mark which is basically the same as a registered mark which has a place with another party for comparable work and similar products. made or exchanged, will be rejected with detention for a period of 4 (four) years. long time and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah) (Prameswari, et al. 2021:280).

Furthermore, the parties who have caused losses to the first party, the owner of the brand referred to, can file a lawsuit. It is stipulated in Article 1365 of the Civil Code that a lawsuit can be filed by the main owner of a brand, to an authorized court, especially a business court, in the same way as a non-lawsuit (Prameswari, et al. 2021: 280 - 281).

Thus, a trademark that has been registered must be directly used by the trademark owner. As for the use of a mark that is indicated to be in conflict with and exceeds the provisions of the applicable laws and regulations, the mark will be immediately cancelled.

4 CONCLUSION

As globalization and technology develop, many businesses are growing in society. The business can be in the form of services and goods. The development of this business has created a lot of competition among business people. Various competitions occur in the form of healthy and unhealthy competition. The occurrence of unhealthy competition is caused by a lot of fraud in doing business.

Fraud that occurs among business people occurs due to brand imitation. This imitation results in fake products with the same brand, but of course of lower quality. Counterfeit products tend to be marketed at relatively lower prices, so people will choose these products, considering that genuine products are difficult to obtain because they are expensive. This imitation will actually result in a decline in the original product of the brand in question, the original product will be hampered in the market.

Meanwhile, counterfeit products marketed with low quality will cause people to lose trust in the brand and of course will have a big impact on genuine products. To avoid this from happening, a brand must be registered. After the trademark is registered by the trademark owner, the owner obtains the rights to the trademark in question. By registering a brand, it will be legally valid and can provide sanctions against people who have violated the brand.

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LINK POINT OF ELEMENTS OF CORRUPTION IN THE PERSPECTIVE OF CRIMINAL LAW AND ADMINISTRATION

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Abstrack
The government in carrying out its duties and functions to achieve goals certainly has the authority to do or not do something. The authority that gives rise to power can be exercised either properly or arbitrarily, as Lord Acton stated "Power tends to corrupt, and absolute power corrupt absolutely", So that there is an intersection between discretion in the administrative realm and abuse of power in the perspective of criminal acts of corruption. This research is a legal research with a normative juridical approach, The nature of this research is descriptive analytical with data collection methods through literature studies which will then be analyzed through qualitative juridical methods. The results showed that an action and/or policy that is considered discretionary and not a criminal act of corruption is if it does not violate Article 24 of Law Number 30 of 2014 concerning Government Administration and is carried out in good faith to achieve goals according to the authority given or in other words there is no malicious intent (mens rea).
***Key Words**: Discretion, Abuse of power, Administrative Law, Corruption.*

I. Introduction

The purpose of the Indonesian state is expressly contained in the Preamble to the 1945 Constitution. The state as an organization that has the highest authority and power, has the authority to manage, manage or administer government that is not spared from the accountability mechanism by state administrators.

The government in carrying out its duties and functions certainly has the authority to do or not do something. An authority needs to have a clear source, the Government gets the power or the authority comes from the power given by law, it aims to determine accountability as the principle *geen bevoegheid zonder verantwoordelijkheid* or *there is no authority without responsibility*.[1]

Authority is the ability to perform certain legal actions, there is a principle related to authority, namely the principle of speciality (*specialiteitsbeginsel*) which has the meaning that authority is given to certain legal subjects with a specific purpose. In addition to adhering to the principle of speciality, the exercise of authority to achieve goals effectively and efficiently government administrators are also given discretion power or *freies ermessen*.[2] Discretion is defined as actions determined and/or carried out by Government Officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear.[3]

The authority that gives rise to power can be exercised either properly or arbitrarily, as Lord Acton stated "*Power tends to corrupt, and absolute power corrupt absolutely*" which means that power tends to corrupt and absolute power tends to corrupt absolutely.[4] Corruption and power are likened to two sides of a coin, namely corruption always goes hand in hand with power.[5]

In the realm of criminal law there is a special crime, one of which is corruption. In Indonesia, corruption has elements against the law and abuse of power. The concept of unlawful elements and abuse of power is in the territory of *grey area*, There is an intersection between criminal law norms and administrative law norms. In the perspective of State Administration Law, the parameter that limits the free movement of State Administration authority is abuse of power, while in Criminal Law,

[1] Ridwan H.R., *Hukum Administrasi Negara*, Raja Grafindo, Jakarta, 2002.
[2] D.J. Galligan, Discretionary Power, Oxford Press University, New York, 1990, hlm. 2.
[3] Marchelino Christian Nathaniel, *Penerapan Asas Kekhususan Sistematis Sebagai Limitasi Antara Hukum Pidana dan Hukum Pidana Administrasi*, Jurnal Lex Crimen, Vol. VII No. 8, Oktober, 2018, hlm. 159
[4] Sanusi, *Relasi Antara Korupsi dan Kekuasaan*, Jurnal Konstitusi, Vol. 6 No. 1, 2013, hlm. 83
[5] *Ibid*

the parameter that limits the free movement of state administrative authority is in the form of elements of unlawful acts and abuse of power.

Often acts of abuse of power are equated with acts of corruption, especially when these actions cause state losses. Based on Article 1 number 22 of Law Number 1 of 2004 concerning the State Treasury, defines State/Regional losses as a real and definite lack of money, goods, and securities as a result of unlawful acts either intentionally or negligently. The provision formulates the existence of an element of real and definite deficiency as a result of unlawful acts or negligence as a cause. Thus, state losses are not only caused by an unlawful act, but exist due to negligence of an administrative nature.

In practice, law enforcement officials often interpret the terms "unlawful act" and "state losses" as elements of criminal acts. This is certainly the opposite (*opposite*) with the meaning of state losses contained in Law Number 1 of 2004 concerning State Treasury, that when a case has fulfilled the elements of state losses, it can be said that state losses have occurred, which needs to be carried out immediately procedures for settling compensation (administrative).

Based on Article 35 paragraph (1) and paragraph (4) of Law Number 17 of 2003 concerning State Finance, basically states that every state official and non-treasurer civil servant who violates the law or neglects their obligations that harm state finances is required to compensate the state, the settlement of state losses is regulated in the state treasury law. Furthermore, based on Article 59 paragraph (3) of Law Number 1 of 2004 concerning the State Treasury. The disharmonization of laws and regulations is also a problem in determining accountability, so that often the actions of government officials of an administrative nature become a criminal act of corruption.

II. RESEARCH METHODS

This research is a legal research with a research normative juridical approach, research that focuses on law as a system building norms that include principles, rules, laws and regulations, and doctrines related to the topic of discussion.[6] The nature of this research is descriptive analytical, which is research that aims to provide a systematic picture of the facts and / or laws and regulations that apply comprehensively then associated with legal theories regarding the topic of discussion.[7] Data collection is carried out through literature studies by collecting secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data obtained are then analyzed by qualitative juridical methods, namely research that is carried out in depth as a whole and then poured into a descriptive sentence narrative.[8]

III. DISCUSSION

A. The Link Point of Elements of Corruption in the Perspective of Criminal Law and Administration

Power is often simply equated with authority, power usually takes the form of a relationship in the sense that "there is one party who governs and another party governs".[9] Power can occur because of things that are not related to law, power that is not related to law by Henc van Maarseven is referred to as blote match, while power related to law by Max Weber is referred to as rational or legal authority, namely authority based on a legal system is understood as a rule that has been recognized and obeyed by the government apparatus and even strengthened by the state.[10]

Power is at the core of the administration of the state in a state of movement (*de staat in beweging*), So that the country can take part, work, excel in serving its citizens. Therefore, the state must be given power. Power according to Miriam Budiardjo is the ability of a person or group of human beings

[6] Bambang Sunggono, *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta, hlm. 93.

[7] Soerjono Soekanto, *Pengantar Penelitian Hukum*, Universitas Indonesia, hlm. 10.

[8] Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Alfabeta, Bandung, 2009, hlm. 216

[9] Budihardjo, *Dasar-Dasar Ilmu Politik*, Gramedia Pustaka Utama, 1998, hlm. 35

[10] Mulosudarmo, *Kekuasaan dan Tanggung Jawab Presiden Republik Indonesia Suatu Penelitian Segi-Segi Teoritik dan Yuridis Pertanggungjawaban Kekuasaan,* Universitas Airlangga, Surabaya, 1990, hlm. 30

to influence the behavior of another person or group in such a way that the behavior is in accordance with the wishes and goals of the state.[11]

The wheels of government are sometimes faced with many situations, one of which is when government officials are faced with situations where the authority to act is not regulated through laws and regulations. However, there is an urgent need for the government to act to achieve certain objectives and it is required to decide on that course of action in order to meet the needs of the people. Such acts in administrative law are known as *freis ermessen* or discretion, it's means that provides space for government officials or state administrative bodies to take action without having to be fully bound by the law.[12]

Discretionary exercise is expected to remain in accordance with the final objectives set by the state and must be present *conditio sine quo non* on which discretion is based is exercised. *Conditio sine qua non* at least it is the absence and/or vagueness of a regulation that will be used to solve problems that arise in emergency and compelling circumstances.[13] The exercise of discretion by Government Officials cannot be carried out arbitrarily, among others, it must be based on principles *fairplay*, precision (*zorgvuldigheid*), goal oriented (*zuiverheid van oogmerk*), balance or equal (*evenwichtigheid*), legal certainty (*rechts zekerheid*)[14]. Meanwhile, according to Article 24 of Law Number 30 of 2014 concerning Government Administration, basically states that discretion is carried out by fulfilling the requirements oriented to government goals, not contrary to laws and regulations, in accordance with the general principles of good governance, based on objective reasons, does not create a conflict of interest, and is done in good faith.

Juridically, discretion is regulated in Article 22 paragraph (2) of Law Number 30 of 2014 concerning Government Administration, basically stating that the use of discretion aims to:

a. Streamlining governance;
b. Filling legal vacuum;
c. Provide legal certainty; and
d. Overcoming stagnant government in certain circumstances for the benefit and public interest.

Furthermore, the form of discretion based on Article 23 of Law Number 30 of 2014 concerning Government Administration, among others::

a. Making decisions and/or actions based on the provisions of laws and regulations that provide a choice of decisions and/or actions;
b. Making decisions and/or actions because laws and regulations do not regulate;
c. Making decisions and/or actions due to incomplete or unclear laws; and
d. Decision and/or action making due to government stagnation for the wider benefit.

Discretion is an act in the realm of administrative law, but in the point of view of criminal law it is often considered an abuse of power. According to Jean Rivero and Waline, abuse of power is categorized:[15]

a. abuse of power to commit acts that are not in the public interest or for personal, group or group interests;
b. abuse in the sense that the official's actions are rightly intended for the public interest, but deviate from the purpose for which such authority is conferred by law or other regulations;

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[11] Budihardjo, *Dasar-Dasar Ilmu Politik*, Gramedia Pustaka Utama, 1998, hlm. 35

[12] Minarno, Nur Basuki, *Penyalahgunaan Wewenang dan Tindak Pidana Korupsi dalam Pengelolaan Keuangan Daerah*, Laksbang Mediatama, Palangkaraya, 2009.

[13] Nur Kumalaningdyah, *Pertentangan Antara Diskresi Kebijakan Dengan Penyalahgunaan Wewenang Dalam Tindak Pidana Korupsi*, Jurnal Ius Quia Iustum, Vol. 26 No. 3, September, 2019, hlm. 483

[14] Sumeleh, Elisa J.B., *Implementasi Kewenangan Diskresi dalam Perspektif Asas-asas Umum Pemerintahan yang Baik (AUPB) Berdasarkan Undang-Undang No.30 Tahun 2014 tentang Administrasi Pemerintahan*, Jurnal Lex Administratum, Vol. 5 No. 9, November, 2017, hlm. 130-137.

[15] Ridwan, *Diskresi & Tanggung Jawab Pemerintah*, FH UII Press, Yogyakarta, 2014. Lihat pula Nur Kumalaningdyah, *Pertentangan Antara Diskresi Kebijakan Dengan Penyalahgunaan Wewenang Dalam Tindak Pidana Korupsi*, Jurnal Ius Quia Iustum, Vol. 26 No. 3, September, 2019, hlm. 485.

c. abuse of power in the sense of abusing procedures that should have been used to achieve a particular goal, but have used other procedures to be carried out.

Based on the opinion of Jean Rivero and Waline which are also often used by the view of criminal law, the exercise of authority and the achievement of objectives can only be carried out based on applicable procedures, this often causes problems. The actions of government officials of an administrative nature are actually seen as a criminal act of corruption. The provisions of Article 3 of Law Number 31 of 1999 as amended into Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, state:

"Any person who, with the aim of benefiting himself or another person or a corporation, abuses of power, opportunity or means available to him because of a position that harms state finances or the country's economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)."

The provisions of Article 3 of Law Number 31 of 1999 as amended into Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, contain elements of "abusing of power, opportunity, or existing means because of position" so that it has the meaning of actions carried out by public officials or officials who carry out government functions. Article 17 of Law Number 30 of 2014 concerning Government Administration basically prohibits Government Agencies and/or Officials from abuse of power.

Based on Article 18 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, it basically states that Government Agencies and/or Officials are categorized as exceeding authority if the actions and/or decisions exceed the term of office, exceed the limits of the area of enactment of authority, and/or contradict laws and regulations.

Based on Article 18 paragraph (2) of Law Number 30 of 2014 concerning Government Administration, it basically states that Government Agencies and/or Officials are categorized as mixing authority if the actions and/or decisions are carried out outside the scope of the field and/or contrary to the purpose of granting authority.

Based on Article 18 paragraph (3) of Law Number 30 of 2014 concerning Government Administration, it basically states that Government Administration Agencies and/or Officials are categorized as acting arbitrarily if the actions and/or decisions are carried out without a basis of authority and/or contrary to Court Decisions with permanent legal force.

To understand the concept or term abuse of power (*detournement de pouvoir*), It must first be understood what is mean authority/power (*bevoegdheid*). In the legal sense, authority is *"The entirety of rights and obligations explicitly granted by the framer of the law to the subjects of public law".*[16]

Problems regarding discretion that are often associated with acts of abuse of power or arbitrary actions are not necessarily caused by public officials who use discretion. However, discretion is often justified as a criminal act in the form of abuse of power that leads to corruption because of the understanding of law enforcement officials who are very positivistic so that they view discretion as an act without legal basis. Belinfante argued that Judges when giving consideration to the actions of the state administration in the form of policies, should respect the policies of the administration of the country. So that the Judge may not judge again the consideration of the interests of state administrative power or in other words the policy cannot be discriminated against or punished.[17]

According to administrative law with regard to such matters are: "doing the right thing and is doing this in the right way" which means doing something right the right way. The *Ultra Vires* doctrine consists of 2 (two) types. First, *Substantive Ultra Vires* which mean doing the wrong thing, such as the authority to buy ships, but in the exercise of buying aircraft. Second, *Procedural Ultra Vires*

[16] P.Nicolai, Bestuursrecht, Amsterdam, 1994, hlm. 4

[17] Belinfante, *Kort Begrif van het Administratief Recht,* Samson Uitgeverij, Alphen aan den Rijn, 1985, hlm. 109

which mean doing the right thing but it is doing it in the wrong way.[18] In case a Government Official or State Administration does something wrong or in the wrong way can be categorized as an act that abuses of power as stipulated in the criminal act of corruption. Therefore, actions and/or policies that are considered discretionary and not criminal acts of corruption are those that do not violate Article 24 of Law Number 30 of 2014 concerning Government Administration and are carried out in good faith to achieve goals according to the authority given or in other words there is no malicious intent (*mens rea*).

B. Settlement of State Financial Losses and Abuse of Power in the Perspective of Administrative Law

There is a link point between Administrative Law and Criminal Law, namely the special criminal law in this case is the criminal act of corruption. This can be seen in the formulation of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended into Law Number 20 of 2001 concerning the Eradication of Corruption. The main element in Article 2 paragraph (1) of Law Number 31 of 1999 as amended into Law Number 20 of 2001 concerning the Eradication of Corruption is unlawful acts and state losses, while the main element of Article 3 of Law Number 31 of 1999 as amended into Law Number 20 of 2001 concerning the Eradication of Corruption is abuse of power and state losses. The concept of unlawful elements and abuse of power is in the territory of "grey area", There is an intersection between criminal law norms and administrative law norms. In the perspective of State Administration Law, the parameter that limits the free movement of State Administration authority is abuse of power, while in Criminal Law, the parameter that limits the free movement of state administrative authority is in the form of elements of unlawful acts and abuse of power.

There is a problem when government agencies and/or officials commit acts that are considered abuse of power and against the law, whether the authority of the Administrative Court or the Criminal Court has the authority to examine, prosecute, and decide the case. Often law enforcement officials use a frame of reference in the form of a criminal law mindset, this mindset has distorted the essence of criminal law as a last resort (*ultimum remedium*).

The Corruption Eradication Law, which came before the State Finance Law, the State Treasury Law, and the Government Administration Law, caused law enforcement officials to focus more on the Corruption Eradication Law in resolving state financial losses.

Based on Law Number 17 of 2003 concerning State Finance, what is meant by state finance is all state rights and obligations that can be assessed with money, as well as everything both in the form of money and in the form of goods that can be made state property in connection with the implementation of these rights and obligations. Furthermore, based on Law Number 1 of 2004 concerning the State Treasury, what is meant by the state treasury is the management and accountability of state finances, including investment and separated wealth, which are stipulated in the National Revenue and Expediture Budget and Regional Revenue and Expediture Budget.

The drafting of the Corruption Eradication Law at that time as a whole was drafted in an atmosphere of spiritual reform that demanded the eradication of corruption to its roots, thus making the criminal law as *lex talionis* or the law of revenge. Use of criminal law as *lex talionis* It is no longer in accordance with the modern criminal law paradigm that prioritizes benefits.[19] Absolute punishment theory which means punishment as an attempt to retaliate for a mistake committed by someone who committed a criminal act,[20] has shifted to the theory of combined punishment which means punishment is prular, Because it combines the absolute principle (revenge) and the relative principle (purpose) or leans towards modern absolute penal theory which emphasizes a person should be punished only for having committed a criminal offense for which the punishment has been provided

[18] David Stott and Alexandra Felix, *Principles of Administrative Law*, Cavendish Publishing Limited, Sidney, 1997, hlm.81-82

[19] Keterangan Ahli Prof. Dr. Eddy O.S., Hiariej, S.H., M.Hum. pada Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016

[20] Andi Hamzah, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 2005, hlm. 31.

by the state.[21] In other words, the purpose of punishment is not just revenge but must contain beneficial value.[22]

Law is not a means of revenge, therefore there are 3 (three) purposes of law, including justice, expediency, and certainty. In realizing the objectives of the law, Gustav Radbruch stated that it is necessary to use the principle of priority of three basic values that are the objectives of the law.

The existence of Law Number 17 of 2003 concerning State Finance, Law Number 1 of 2004 concerning State Treasury, and Law Number 30 of 2014 concerning Government Administration have provided a new view on the settlement of state financial losses. So that the principle can thus apply *lex posterior derogat legi priori* pricipel which means that the new rules override the old rules.

After the Constitutional Court Decision Number 003/PUU-IV/2006, The framer of the law promulgated Law Number 30 of 2014 concerning Government Administration, so that administrative errors resulting in state losses and elements of abuse of power by government officials are not always subject to criminal acts of corruption. So it can be said that in the settlement of state losses, based on Law Number 30 of 2014 concerning Government Administration, it wants to emphasize that the application of criminal sanctions is a last resort (*ultimum remedium*).

Based on Article 35 paragraph (1) and paragraph (4) of Law Number 17 of 2003 concerning State Finance, basically states that every state official and non-treasurer civil servant who violates the law or neglects their obligations that harm state finances is required to compensate the state, the settlement of state losses is regulated in the state treasury law. Furthermore, based on article 61 paragraph (1) of Law Number 1 of 2004 concerning the State Treasury, it basically states that every state/regional loss must be reported by the direct supervisor or head of the work unit to the Governor/Regent/Mayor and notified to the Audit Board no later than 7 (seven) days after the state/regional loss is known.

Based on Article 59 paragraph (3) of Law Number 1 of 2004 concerning the State Treasury, it basically states that every state ministry/institution/head of a work unit can immediately make a claim for compensation. Furthermore, based on Article 63 paragraph (2) of Law Number 1 of 2004 concerning the State Treasury, basically states that compensation claims are regulated by Government Regulations. The regulation is Government Regulation Number 38 of 2016 concerning Procedures for Claiming State/Regional Compensation Against Non-Treasurer Public Servants or Other Officials.

Government Regulation Number 38 of 2016 concerning Procedures for State/Regional Compensation Claims Against Non-Treasury Public Servants or Other Officials, basically regulates that when state/regional losses occur, they are resolved through administrative mechanisms through the establishment of State/Regional Loss Settlement Teams, so that the State/Regional Loss Settlement Officer can immediately resolve state/regional losses by carrying out compensation claims.

With regard to the calculation and determination of state losses is the authority of the Audit Board, this is in accordance with the provisions of Article 10 paragraph (1) of Law Number 15 of 2006 concerning the Audit Board. If state losses have been known and determined by the Audit Board, then the claim for compensation becomes grounded and State/Regional Loss Settlement Teams can prepare a Certificate of Absolute Responsibility.

Settlement of state financial losses starting from administrative acts containing abuse of power through administrative law is more oriented towards the return of state/regional financial losses as victims, so as to provide value for expediency and justice. Different from the settlement of state financial losses through criminal law which is oriented towards punishing perpetrators rather than providing benefits to victims and is carried out without the determination of state financial losses by the Audit Board or in other words, not all formal laws are implemented properly. Furthermore, by putting in place a mechanism for resolving state financial losses through administrative law, it will provide legal certainty and realize criminal law as a last resort (*ultimum remedium*).

[21] Mahrus Ali, *Dasar-Dasar Hukum Pidana*, Sinar Grafika, Jakarta, 2011, hlm. 190

[22] Irfan Alfieansyah, Angrahatana Informasi Hukum: *Mengetahui Restorative Justice Di Indonesia*, APMC FH UNPAS, Bandung, 2022, hlm. 74.

IV. CONCLUDING

A. Conclusions

1. Problems regarding discretion that are often associated with acts of abuse of power or arbitrary actions are not necessarily caused by public officials who use discretion. However, discretion often gets justification as a criminal act in the form of abuse of power that leads to corruption because the understanding of legal practitioners is very positivistic so that they view discretion as an act without legal basis. This situation has resulted in the emergence of legal uncertainty in the field of state administrative actions which ultimately disrupt the performance of public officials for fear that their discretionary actions are considered criminal offenses. An action and/or policy that is considered discretionary and not a criminal act of corruption is if it does not violate Article 24 of Law Number 30 of 2014 concerning Government Administration and is carried out in good faith to achieve goals according to the authority given or in other words there is no malicious intent (*mens rea*).
2. The drafting of the Corruption Eradication Law was prepared in an atmosphere of spiritual reform that demanded the eradication of corruption to its roots, thus making the criminal law as *lex talionis* or the law of revenge. Use of criminal law as *lex talionis* It is no longer in accordance with the modern criminal law paradigm that prioritizes benefits. Juridically, there has been material law in resolving state financial losses and there are elements of abuse of power through the administrative realm, the settlement of state financial losses starting from administrative acts containing abuse of power through administrative law is more oriented towards the state/region as a victim, so that it can provide the value of expediency and justice. Different from the settlement of state financial losses through criminal law which is oriented towards punishing perpetrators rather than providing benefits to victims and is carried out without the determination of state financial losses by the Audit Board or in other words, not all formal laws are implemented properly. Furthermore, by putting in place a mechanism for resolving state financial losses through administrative law, it will provide legal certainty and realize criminal law as a last resort (*ultimum remedium*).

B. Suggestions

1. Government Agencies and/or Officials in taking an action and/or Decision should have good calculations and be based on good faith in order to achieve the objectives set in accordance with their authority. In addition, law enforcement officials should better understand the limitations of discretion with abuse of power, so that not all actions that are not in accordance with procedures are made criminal offenses; and
2. The government and law enforcement officials should have the same perspective on resolving state/local financial losses oriented towards benefit and justice or in other words focusing on the return of state/local financial losses rather than focusing on punishment through criminal mechanisms to realize criminal law as a last resort (*ultimum remedium*) through socialization and training on administrative settlement of state/regional financial losses.

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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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STUDY OF BUSINESS COMPETITION LAW IN THE INCREASINGLY COMPLEX DIGITAL MARKET ERA

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Abstract

The digital economy era has encouraged online business and purchasing, influencing the dynamics of business competition. Even though Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition applies, this regulation does not fully accommodate the impact of the digital economy. Therefore, this research examines changes in the legal paradigm of business competition in an increasingly complex digital market era. This research uses normative legal analysis methods. In adapting competitive analysis tools to digital markets, several vital characteristics are to consider, including network effects, cross-platform externalities, rapid changes in the competitive landscape, non-price competition, and broad geographic coverage. Efforts to improve business competition law in the digital market era must combine flexibility in regulation, cooperation between sector regulators, a deep understanding of the dynamics of digital market demand, and adaptation of methodology and assumptions in business competition analysis. Law Number 5 of 1999 needs to be adapted to the continuously developing digital market by improving merger control, creating clear guidelines, increasing digital expertise for KPPU officials, closer international cooperation, and using comprehensive market studies. This aims to maintain fair competition innovation and protect consumer interests in a dynamic global digital ecosystem.

Keywords: Business Competition Law, Business Competition Supervisory Commission (KPPU), Digital Market, Digital Economy

A. INTRODUCTION

The era of the digital economy, which has penetrated various aspects of life, has brought about an extraordinary transformation in people's economic activities worldwide. Information and communication technology advances have fundamentally changed how we interact, shop, do business, and communicate (Picht, 2019). The era of economic digitalization has brought about a drastic transformation in the way we interact with the economy. Economic digitalization refers to the concept where almost all aspects of economic life, including transactions, payments, promotions, and other business interactions, shift to digital and online platforms (Aravantinos, 2021). This covers various sectors, such as electronic commerce, fintech, online business, and internet-based applications that present new solutions for customers and businesses (Podszun & Bongartz (2021).

Apart from that, the most striking changes are related to the flow of goods and services traffic. In the past, business activities generally focused on a local and national scale, but with the presence of digital markets, geographical boundaries are increasingly fading (Buiten, 2021). Now, local businesses compete with local competitors and face competitors from foreign countries who can quickly sell their products or services via digital platforms. The era of economic digitalization is understood when the economy is entirely digital or online, starting from transaction patterns (Li et al., 2020). The dramatic changes in economic activity brought about by the digitalization era bring very complex challenges in business competition and law enforcement (Teece, 2018).

One of the main challenges is determining the relevant market in cases of business competition violations (Ma & Ma, 2020). Traditionally, market concepts can often be identified in a geographic context. However, trade and business interactions have transcended geographical boundaries in the digital era, making them limitless (Sheth, 2020). For example, a consumer in

Indonesia can now easily make purchases from online retailers based abroad. This creates a dilemma when there are allegations of business competition violations in such transactions.

The debate surrounding determining the relevant market has become increasingly complicated in the context of the globalization of the digital economy. There is an urgent need to develop a clear and internationally applicable legal framework to address this problem (Lianos, 2019). International organizations such as the World Trade Organization (WTO) and cooperation between countries are essential to reach fair and sustainable agreements in determining jurisdiction in business competition cases involving cross-border digital transactions (Ahmed, 2019).

The process of digitalization poses issues for both business entities and law enforcement agencies. Capobianco and Nyeso (2018) state that business entities must demonstrate adaptability in response to emerging market mechanisms, particularly in digital markets. This entails a careful consideration of the associated risks and opportunities. In the context of digital-based trade, it is imperative to comprehensively evaluate legislative tools to regulate and manage the dynamics of this domain effectively. This evaluation is crucial to address issues related to unhealthy business rivalry and safeguard the interests of the business actors involved. The current regulatory framework should carefully consider many features and strategic variables that contribute to facilitating digital market mechanisms (Widjaja, 2022).

The field of law serves as a regulatory mechanism that establishes boundaries between permissible and impermissible actions, intending to mitigate the occurrence of unanticipated unfair competition (Gerber, 1998). It is imperative to consider that the functioning and dynamics of digital markets differ significantly from those of traditional marketplaces. Establishing a business competition necessitates cultivating a conducive environment that promotes the well-being of all participants, encompassing both individual entrepreneurs and corporate entities. According to Kagermann (2014),

The concept of the "digital market" is not explicitly delineated under the provisions of Law Number 5 of 1999. Law Number 5 of 1999 stipulated that a market is a physical or virtual space where individuals or entities engage in commercial exchanges of goods and/or services through direct or indirect means (Wahyuningtyas, 2023). The terminology must adequately capture the complexities of monitoring unfair business rivalry inside the digital market. Digital markets can potentially yield benefits for both consumers and companies alike. Nevertheless, this situation can potentially yield negative consequences without well-defined parameters. According to Wahyuningtyas (2019), the legal framework will ensure that corporate actors and consumers have well-defined obligations and rights. This will include implementing rules and regulations that explicitly ban unfair economic rivalry within the digital market.

Business competition in the digital market requires legal provisions that comprehensively suppress unhealthy competition. Law is needed to control social life in all aspects, including social, political, and cultural, and its impact on economic growth during trading activities (Park, 2012). Law is fundamental to prevent disputes between economic resources due to limited economic resources on the one hand and endless demand or needs on the other hand. Law is essential to economic growth to produce social welfare (Petersmann, 2002).

Based on the background above, the problems that will be studied in this article include how to adapt business competition analysis tools to digital markets and how to improve business competition law in the digital market era. Furthermore, finally, how to adapt business competition law policies to the digital market. This research examines changes in the legal paradigm of business competition in an increasingly complex digital market era. We will also assess the relevance of current business competition law in dealing with digital markets and identify the challenges that business competition law will face in the future. This research will provide a deeper understanding of the impact of the digital economy, help improve existing regulations, and design more adaptive legal solutions to face the ever-growing digital market.

B. LITERATURE REVIEW

1. Business Competition Law

commercial competition law is a legal framework that governs the conduct of corporations or commercial entities inside the marketplace, wherein their interactions are driven by economic incentives (Gabor, 2013). The legal delineation of business competition is consistently linked to competition within a market-oriented economy, wherein business entities, encompassing corporations and sellers, autonomously strive to attract consumers to accomplish the objectives of their respective business ventures (Coates & Middelschulte, 2019). The significance of business competition law in Indonesia is a fundamental requirement for effectively operating a democratic economic system grounded in Pancasila. The enactment of Law Number 5 of 1999 is closely tied to the underlying aspirations of fostering national economic progress (Sirait, 2009).

The establishment of business competition legislation was intended to facilitate the development of a market-based economic framework, thereby ensuring the continuity of rivalry among corporate entities to promote overall societal well-being (Jones, 1926). The primary objective of business competition law is to deter monopolistic practices and mitigate unfair competition within the business sector. Implementing corporate competition legislation is anticipated to result in attaining economic efficiency, hence fostering the promotion of overall public welfare (Pitofsky, 2017).

Various forbidden actions that hurt market competition include monopoly, monopsony, market control (such as predatory pricing, price war, price competition, and fraudulent manipulation of production costs), and conspiracy (Leslie, 2013). When examining the concept of Prohibited Agreements, it becomes evident that it involves the presence of at least two parties engaged in an agreement. Conversely, Prohibited Activities pertain to actions that can be undertaken by a single party or business actor (Hillgenberr, 1999).

Perfect business competition means that: a) there are many buyers and many sellers; b) the goods being bought and sold are the same from the consumer's point of view; c) anyone can start or close a business; d) production sources can move anywhere; and e) buyers and sellers know each other and know the goods being bought and sold (Waterson, 2003). Unfair business competition, on the other hand, is when businesses compete by making and/or selling goods and services in a way that is not honest, is against the law, or hurts business competition. Unfair business competition is marked by the following: a) there are few buyers and few sellers; b) the goods being bought and sold are different in the eyes of consumers; c) there is no freedom to start or end a business; and d) buyers and sellers do not know each other and do not know what is being bought and sold (Duch-Brown, 2017).

2. Digital Market

The increasingly rapid development of technology, information, and communications (ICT) has become the main driver in the development of the Digital Market. With the increasingly widespread spread of the internet, people have more comprehensive access to the online world, creating new business opportunities and transformations in how consumers interact with products and services (Desai & Vidyapeeth, 2019). Innovations in technology such as e-commerce, mobile applications, and online platforms have opened the door for companies to reach a global audience and enable consumers to shop, communicate, and share information digitally. Additionally, technological developments such as artificial intelligence and data analysis have enabled companies to understand consumer preferences better and improve their experience in the digital world. This marks the beginning of the Digital Market era, which continues to develop rapidly (Van Loo, 2018).

To initiate an analysis of competition in digital markets and evaluate the necessity of modifying the current competition policy framework, it is imperative to define specific fundamental characteristics of digital markets (Qi et al., 2023). The attributes above, which contribute to the formation of competitive dynamics, may encompass:

1) Diverse consumer groups are brought together in multi-sided markets where digital items serve as a platform. A digital content platform, for example, might have content providers on one side, content viewers on the other, and marketers on the third.
2) Strong network effects mean that as the number of users grows, so does the product's value to the consumers. This network impact can cause the market to "fall" into a monopoly in the extreme.
3) Many digital marketplaces have significant fixed costs and minimal or nil variable costs, resulting in significant economies of scale and scope. As a result, a company can rapidly scale, expand geographically, or employ assets in one market to enter another.
4) Relying on enormous amounts of user data can be difficult to recreate and costly to analyze.
5) Costs of switching For example, a user may have spent time and effort developing a profile on a social network or establishing a reputation as a supplier on an exchange platform, both of which may be lost if they transfer.
6) Patents, which grant the owner limited-term control over a technique or procedure, are frequently essential intellectual property rights.
7) Low or no pricing is connected with company strategies that generate revenue via gathering consumer data, selling advertising, or selling "premium" or other paid products through customer connections. This business model is becoming increasingly important: Seven of the top 10 global corporations offer free products and services in digital markets.
8) Disruptive technologies that drastically lower transaction and intermediary costs and may be supplied outside of legal frameworks that constrain incumbent competition.
9) Vertically integrated and conglomerate business models may generate concerns about anti-competitive activity. If they benefit their downstream operations, digital platforms that operate as "gatekeepers" between downstream enterprises and their clients may face competition difficulties. Furthermore, a firm may strive to transfer its market power from one market to another, for example, by merging and tying together techniques that stifle competition within an "ecosystem" of digital products.

The attributes under consideration, such as network effects and invaluable business models, have been previously acknowledged but are currently garnering heightened scrutiny in digital marketplaces. This increased focus carries substantial implications for the dynamics of these markets. This phenomenon has the potential to lead to the formation of concentrated markets, characterized by the establishment of expansive digital conglomerates that operate across many market sectors. This phenomenon can also give rise to a dynamic characterized by a "competition for market" paradigm when enterprises use competitive strategies to establish themselves as the dominant entity inside a specific market.

C. METHOD

The research employed the normative juridical approach as the chosen methodology. The author conducted research in this study by utilizing secondary data sources such as library materials and thoroughly reviewing relevant bibliographic resources. Ali (2021) defines the normative juridical approach as a method of legal research that examines library materials or secondary data as the primary sources for doing research. This technique entails conducting searches on laws, regulations, and literature relevant to the subject under study.

The methodologies employed in this study encompass the legislative approach and the conceptual approach. The statutory approach comprehensively examines all relevant laws and regulations about the specific legal matter under analysis (Benuf & Azhar, 2020). The objective of the Law Approach is to analyze the coherence and appropriateness of a given law concerning other laws, the 1945 Constitution, or the regulations outlined in Law No. 5 of 1999, which pertains to the Prohibition of Monopolistic Practices and Unfair Business Competition.

The methodology for collecting data in this legal research project is library research, specifically focusing on utilizing papers and materials available within library resources. The process of data collection involves the acquisition of written material that is relevant to the specific subject

under investigation. This research employs deductive reasoning to analyze legal materials, specifically examining many legal premises to derive a conclusion that effectively addresses the earlier problem formulation.

D. RESULTS AND DISCUSSION

1. Adapting Business Competition Analysis Tools to digital markets

The unique attributes inherent in digital markets pose a significant analytical challenge for the Business Competition Supervisory Commission, henceforth referred to as KPPU. While the underlying economic principles of conventional competition analysis remain valid, it is necessary to modify the application of analytical methods (Drexl, 2012). This trait is not novel, as many competition authorities have prior expertise in performing assessments in multilateral marketplaces. Nevertheless, it is imperative to thoroughly scrutinize the methodology and assumptions inherent in current analytical tools due to the prevalence of these features in digital marketplaces and their significant influence on market dynamics. (List, 2004) is a citation indicating the source of information. There are several areas where the analysis must be adapted to the digital market, namely:

a) Network Effects

A comprehensive analysis of competition in digital markets must include a careful assessment of the importance of network effects. Network effects are a phenomenon where the more people or users who join a digital platform or service, the more valuable the platform becomes for each new user. These network effects can result in significant consumer benefits, such as more excellent choices, competitive prices, or better experiences. However, on the other hand, network effects can also be a significant barrier to entry, as established platforms have advantages that are difficult for new competitors to catch up to. In some cases, strong network effects can even create the risk of monopoly, where one or a few companies dominate the market without fair competition. In particular, when network effects and associated data collection create mutually reinforcing feedback cycles, this can seriously threaten healthy competition and innovation in digital markets (Lemley & McGowan, 1998). Therefore, a deep understanding of network effects and careful monitoring of digital markets is essential to balance consumer benefits, fair competition, and preventing potential monopoly risks.

b) Multi-sided Platform Marketplace

Cross-platform network externalities, which refer to the benefits acquired by one side of the platform from higher involvement on the other side of the market, are frequently created by complicated relationships between different sides of a digital platform. In the context of an online marketplace, for example, consumers profit when more sellers join and offer their products or services, while sellers benefit when more consumers utilize the platform. When studying corporate competitiveness, it is critical to consider these cross-platform network externalities when their function is so prominent in a given market, particularly in pricing. Failure to account for these externalities might lead to incorrect assumptions about market demand response (Menell, 2019). In the case of commercial rivalry, for example, the SSNIP (Small but Significant Non-transitory Increase in Price) test should be amended to include a better understanding of the interaction between demand on different sides of the platform. This includes thinking about how price hikes or service changes on one side of the platform may affect participation on the other and vice versa.

c) Rapid Changes in the competitive landscape

Analysis in the context of digital markets must be carried out with caution, mainly because these markets tend to experience rapid and constant change. This speed of change can change competitive dynamics quickly, so assessments must constantly be updated and adapted to current conditions. In addition, in digital markets, product market boundaries can become blurred. While a product may not be a perfect functional replacement for another, the relevant question is whether it still competes directly for consumers' valuable time, attention, and data. Competitive analysis should also consider the potential for new competitors to enter the market. In the digital era, entry has become easier for new companies with innovative ideas. Therefore, it is essential to assess the

innovation capacity of companies in this context (Czepiel, 2020). Sometimes, existing players in the market may focus too much on existing strategies, while new innovators may develop products or services that shake up the market. Therefore, in competitive analysis, it is necessary to consider potential new product development paths that may open up, providing a different picture of the product market than what is currently visible. It is also a reminder that existing competitors may be limited in innovation, while new competitors could be serious disruptors in a rapidly growing market.

d) Non-price competition

Many digital markets exhibit competitive characteristics that are much more complex than just price, so an analysis that focuses too much on price factors can produce a minimal picture. This is especially relevant when many digital products or services are offered to consumers at zero or meager cost. In this context, it is essential to recognize that competition can occur across various non-price dimensions involving product features, service quality, user experience, technological innovation, and other factors influencing consumer preferences. Analysis of business competition in digital markets is critical to reveal relevant non-price dimensions of competition. This includes an assessment of how competitors within a market compete for attention and users from the same market segment (Esayas, 2019). Additionally, in the case of corporate actions or mergers, the analysis should consider the potential impact of such actions on these non-price dimensions. For example, could the action reduce product variety, harm the level of innovation, or hinder consumer choice? These questions must be answered to understand the consequences of business actions in a highly dynamic digital marketplace.

e) Wide geographic market coverage

Digital markets have the unique characteristic of not being bound by physical territorial boundaries so that individuals worldwide can access products and services in these markets. However, digital market analysis remains essential to reveal geographic coverage limitations (Johnson & Post, 1996). These limitations can stem from various factors, such as differences in regulations in different countries or the languages used by users. First, the regulations and laws in force in various countries can influence how a digital platform operates. Data privacy requirements, taxes, e-commerce regulations, and other laws may vary significantly between countries, limiting a platform's ability to operate uniformly worldwide.

Second, language is also an essential factor that influences the geographic coverage of digital markets. Some platforms or digital content may only be available in specific languages, limiting appeal and accessibility among users who do not speak those languages. For example, in conducting digital market analysis, it is essential to consider how regulations and language may limit or influence participation and growth in a particular market. This also impacts business and marketing strategies and decision-making related to international expansion in this diverse digital market.

2. Efforts to improve business competition law in the digital market era

This paper examines the distinctive characteristics of digital markets that may lead to competition concerns and the distinct manifestations of merger violations and resulting harm within these markets. The distinctiveness of this characteristic also presents difficulties when it comes to choosing appropriate treatment methods. The emergence of enduring market dominance exhibits distinct characteristics compared to historical natural monopolies, mainly due to the influence of dynamic competition, innovation, and complex product ecosystems. Hence, it is imperative for the relevant authorities, specifically the KPPU, to reconsider their stance towards remedial measures. There exist three primary domains for enhancement within the realm of corporate competition law.

First, structural improvements and business line restrictions have long been effective in dealing with business competition issues, especially in corporate mergers or anti-competitive behavior. This approach is simple to understand and implement, as it involves splitting up companies or restricting business activities that could hinder competition. However, when we move into the context of highly dynamic and complex digital markets, this approach often does not fit the platform business model typical of the industry. To create a flourishing ecosystem, digital platforms depend on collaboration and interaction between various parties, including users, content creators, and

advertisers. Implementing structural improvements in this context may be impractical or stifle innovation at the heart of digital market development. Another challenge is assessing the complex sources of market power in digital markets. Extensive data collection and market domination by a few large platforms are clear examples of this source of power. However, taking action, such as forcing a company to spin off or curtail business lines in such cases, often requires conclusions based on solid evidence and in-depth analysis that fully understands the dynamics of digital markets. Mistakes in determining whether a practice or condition is detrimental to fair competition can have negative impacts, hinder economic growth, and reduce benefits for consumers. Therefore, while structural improvements and business line restrictions remain necessary instruments in business competition law, there is a need for a more flexible and contextual approach to dealing with them in an ever-changing digital market.

Second, improving behavior in facing competition problems in digital markets requires careful design and supervision. Due to digital markets' complex and dynamic nature, companies are incentivized to look for loopholes in existing rules and regulations. Therefore, effective policy design is needed to prevent behavior that harms competition. To achieve this, close cooperation and coordination with sector regulators and other supervisory authorities may be a significant step. By sharing information and supervisory authority, joint authorities can better understand and address the challenges in digital markets. Additionally, it is essential to remember that no behavioral solution can be the sole solution to all competitive problems in digital markets. These markets are very diverse, and market conditions must be considered for measures such as data portability or interoperability to be effective. Each regulatory measure must be adapted to market characteristics, and solutions that work in one sector may not be fully applicable in another sector. Flexibility in regulatory design and the ability to respond quickly to market changes is critical in maintaining healthy competition in the ever-evolving digital era. Thus, improving company behavior in digital markets must be part of a broader strategy to create an environment that supports fair competition, innovation, and consumer benefits.

Third, the KPPU must consider and understand the dynamics on the demand side of the digital market. These dynamics can significantly impact the effectiveness of improvement efforts and exacerbate existing competitive problems. One of the key challenges in digital market analysis is identifying the source of problems on the demand side. In some cases, consumer behavior or user decisions can be a factor that influences the level of competition.

While solutions to demand-side problems are often more challenging to design and implement than measures aimed at producers or service providers, they should be noticed. Competition authorities should seek to understand consumers' motivations and behavior and the factors that encourage them to choose one digital platform or product over another. They should also analyze whether there are barriers to switching between platforms or products and whether consumers can access the information needed to make intelligent decisions. By understanding the dynamics on the demand side of digital markets and identifying the sources of problems, competition authorities can develop a more holistic approach to ensuring healthy and fair competition in an ever-evolving digital ecosystem.

3. Adjusting Business Competition Law Policy to the Digital Market

The Asian financial crisis, which caused the Indonesian economy to weaken during the New Order era, apparently contained wisdom, namely the birth of Law Number 5 of 1999. This impacted improving companies regarding business, organizational, financial, and legal aspects. These conditions prove that Legislative Regulations have a very significant role in providing supervision and legal certainty for all actors in economic activities in Indonesia.

The term "digital market" does not have an explicit definition in Law Number 5 of 1999, which regulates business competition in Indonesia. This law focuses more on the definition of a market, which includes physical places or traditional distribution channels where buyers and sellers can carry out commercial transactions. Because this law was created before the digital market phenomenon developed rapidly, no special provisions regulate or refer to the digital market.

The impact of the absence of a specific definition for digital markets is that the law may not fully cover or address business competition issues that occur in the digital ecosystem. Digital markets have unique dynamics, challenges, and characteristics, including competitive issues that may differ from physical markets. Therefore, there is a need to consider improvements in existing regulations or laws to overcome business competition in the ever-growing digital era. This will ensure that the responsible authorities have a solid legal basis for monitoring and regulating fair competition in digital markets. This research proposes several proposals for adapting Law Number 5 of 1999 by containing several business competition law policy frameworks that are adjusted in response to the digital market. Some suggestions include:

a) merger control framework

Increasing the merger notice threshold may aid in identifying more potentially competitive acquisitions, particularly from new competitors who may need more market share. In this way, regulatory authorities can avoid acquisitions that may impede competition more effectively. Furthermore, the emphasis on innovation and dynamic competition underscores the importance of understanding how mergers affect innovation and future market development. In digital markets, innovation is typically the driving force and unsuitable mergers can lower incentives for innovation or impede fair competition. The explicit inclusion of digital considerations in merger legislation, such as data access or intermediation capabilities, recognizes that competition challenges in the digital era necessitate a more specialized approach. The importance of data and control over digital distribution channels must be reflected in merger laws. Finally, putting the burden of proof on the merger parties to establish no adverse competition in particular scenarios promotes transparency and accountability in the merger process. This implies that corporations seeking a merger must demonstrate that their purchases do not hurt competition rather than the opposite, which may push firms to analyze the competitive implications of their merger actions more carefully. Ex-post evaluation of earlier merger choices is crucial because it allows learning from previous experiences. As digital markets continue to grow, this assists in identifying effective policies and adjustments that may be required in the merger control framework.

b) Create clear guidelines

Clear and detailed guidelines are essential to help companies understand situations that may give rise to competitive problems in the digital era and how these problems will be analyzed. In a rapidly changing and complex digital market, companies often face new and diverse challenges in competition. This Code will guide identifying situations that may give rise to competition concerns, whether related to business practices, acquisitions, or other anti-competitive behavior. In addition, the guidelines will also explain in detail the analysis process that will be followed to evaluate whether the issue violates business competition law. This may include explaining the analysis methods, the data collection required, and the criteria used to assess whether an action or behavior violates competition rules. With these straightforward guidelines, companies can ensure that they comply with regulations and follow the principles of fair competition in an ever-changing digital environment. They can also avoid potential sanctions and other adverse impacts of competition law violations.

c) Improving digital skills for KPPU officers

Improving digital capabilities for Business Competition Supervisory Commission (KPPU) officials is a critical step given the complexity of today's digital markets and the conduct that may emerge inside them. Digital marketplaces contain distinct dynamics, such as new technologies, varied business models, and various methods organizations can employ to gain a competitive advantage. As a result, ensuring that KPPU officials have a thorough understanding of the technical and legal components of the digital environment is critical to guaranteeing adequate supervision. Creating a specific staff focused on digital marketplaces is also a sensible move. This team can be equipped with specialized knowledge in data analysis, technology, and digital market trends to aid KPPU in recognizing potential competition issues and developing suitable regulations. Experimenting with new digital tools, such as using artificial intelligence to monitor competition rule implementation, could also be an innovative approach. This technology can aid in analyzing large amounts of data and more

efficiently discover anti-competitive behaviors or conduct undermining competition, allowing for faster and more prompt action.

d) Deeper international cooperation between competition authorities

Deeper international cooperation between business competition authorities is a significant and relevant step in dealing with the cross-border nature of digital markets and the common problems they cause. Digital markets know no geographic boundaries, and companies in this ecosystem often operate in multiple countries at once. Therefore, competition problems in one country can quickly spread and significantly impact other countries. International cooperation allows competition authorities to share information, best practices, and data across borders, which is essential to overcoming competitive challenges in complex digital markets. It also helps coordinate more effective enforcement actions against anti-competitive practices involving multinational companies. Additionally, digital markets raise common problems, such as extensive data collection, the dominance of large platforms, and privacy issues. International cooperation allows business competition authorities to jointly formulate a consistent approach in dealing with this problem in various countries to provide better consumer protection and maintain healthy global competition.

e) Wider use of market studies

The broader use of market studies in taking a holistic view of competition issues in digital markets is a very positive and relevant step. The digital market is a highly complex ecosystem involving multiple players from various sectors, including digital advertising, FinTech, and patent assertion entities. Competition issues often arise in various contexts beyond mergers or enforcement cases. Therefore, comprehensive market studies can help competition authorities better understand digital market dynamics. Extensive market studies enable authorities to identify emerging trends and issues in various sectors and understand their impact on competition. It can also be used to advocate for regulatory changes to suit the ever-changing development of digital markets. For example, an increased understanding of the economics of digital advertising or policies relevant to FinTech could help formulate more effective regulations and support innovation in the digital ecosystem.

These ideas indicate that the current frameworks may only comprehensively address some competition concerns that emerge in digital markets or that the existing enforcement procedures need to be more prompt and efficient in light of the swift evolution of these markets. Moreover, the regulations above also aim to acknowledge that competition concerns in digital markets, which typically arise from long-lasting market dynamics, may intersect with additional policy matters, including equitable trade, safeguarding of data, fostering innovation, and several others. In the future, enhanced collaboration and coordination among competition policymakers in this domain will yield substantial advantages. These benefits encompass heightened efficacy of measures and alleviation of the compliance burden on companies arising from disparate approaches, mainly when innovation incentives entail associated risks.

E. CONCLUSION

Several vital characteristics must be considered when adapting business competition analysis tools to digital markets. First, network effects are essential to digital market dynamics, with potential consumer benefits and monopoly risks. Second, in multi-sided platform markets, it is necessary to understand cross-platform network externalities to understand demand and pricing. Third, rapid changes in the digital competitive landscape require continuously updated assessments and an understanding of the innovation potential of new competitors. Fourth, non-price competition becomes more complex in digital markets that offer products at low or zero prices, making it essential to understand non-price dimensions in competitive analysis. Regulations and language influence fifth, the broad geographic coverage in digital markets and can limit platform operations. Improving business competition law in the digital market era faces unique and complex challenges. Traditional approaches to structural improvements and limiting business lines must be adapted to digital platforms' dynamic and collaborative characteristics. Flexibility in regulatory design and cooperation between sector regulators and supervisory authorities are crucial to addressing behavior that harms competition. In addition, a deep understanding of the dynamics on the demand side of digital markets

is essential, as factors such as consumer behavior, barriers to switching platforms, and access to information play an essential role in maintaining healthy competition. In facing unique digital market challenges, it is necessary to adjust business competition law policies. The current Law Number 5 of 1999 does not fully cover aspects of competition that are developing in the digital ecosystem, so changes and improvements are needed in regulations. Proposals include improving the merger control framework with a focus on innovation and dynamic competition, creating clear guidelines to guide companies in complying with the principles of healthy competition in a rapidly changing digital era, increasing digital expertise for KPPU officials, closer international cooperation to address cross-border issues, and the use of broader market studies to gain a holistic understanding of competitive issues across sectors. With these steps, business competition law can more effectively maintain fair competition, innovation, and consumer benefits in a digital ecosystem that continues to develop.

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