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# Tackling Predatory Pricing Practices in the Electric Motorcycle Trade in Denpasar

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**ABSTRACT:** The current frequent cases of monopoly are caused by market imbalances, which allow business actors to gain a dominant position. Many factors can cause monopolistic practices, one of which is the lack of supervision of existing regulations from the government. This study discusses the legal arrangements to deal with predatory pricing by business actors, which are based on Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition which regulates the interaction between business actors or companies in the market by considering the actions of a business actor or company in interacting which are driven by economic motives. Business actors or companies are prohibited from making an agreement by requiring buyers or customers to pay unequal prices for a similar product or service, this is regulated in Article 6. However, Article 7 also regulates the prohibition for entrepreneurs to make agreements with their competitors who determine market prices that are cheaper than the prices determined in the market which will later lead to unfair business competition. Efforts to prevent predatory pricing practices in the electric motorbike market in Denpasar show that this practice is still often found, both in online and offline businesses. Therefore, there is a need for more comprehensive regulations so that business actors can be supervised or monitored effectively by KPPU. Business actors are also prohibited from setting selling prices below the average for products currently sold.

**KEYWORDS:** Prevention, Predatory Pricing, Buying and Selling

## I. INTRODUCTION

In the business world, unhealthy business practices are often encountered, where business actors or companies seek to increase their revenue to gain market power and control over prices. In creating market power, various harmful actions against competitors are often practiced as part of efforts to run businesses in the market. In an attempt to develop market power, entrepreneurs employ a variety of strategies that can cause losses to competitors, such as market restriction, creating barriers to entry, making collusive agreements in price setting, limiting production, establishing market rules, and engaging in practices that do not align with the principles of healthy competition.

Legal regulations in Indonesia are essential to ensuring that economic activities are balanced. The regulatory framework, which plays a crucial role in overseeing and providing legal certainty for all business actors in Indonesia, is reflected in the regulation of competition, as outlined in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unhealthy Business Competition (Mantili et al., 2016, p. 125)

Monopoly cases that often occur today are caused by market imbalances, allowing business actors or entrepreneurs to achieve dominance. One factor influencing the implementation of monopolistic practices is the government's lack of supervision over existing regulations. These regulations can also lead to the monopolization of trade in certain goods or services. One practice that may arise is predatory pricing, which, based on the Rule of Reason principle, is considered illegal. This principle allows courts to consider competitive factors, determine whether a trade barrier is justifiable, and understand the barriers that arise in healthy business competition.

Therefore, it is important to review the practices prohibited under competition law, particularly those related to the determination of offered prices, to minimize the occurrence of predatory pricing. Boycotting attempts to organize a group to sever business relations with another party or avoid interactions with competitors, such as suppliers or specific consumers. In simple terms, a boycott is a collective action by resellers who agree not to buy or resell products from other business actors for unacceptable reasons. A collective boycott is a significant obstacle as it can prevent competitors or consumers from transacting with certain products or services. This sales barrier can threaten the freedom of both current and potential buyers' freedom in choosing suppliers and suppliers' freedom to choose available buyers (Siswanto, 2002, p. 45).

Predatory pricing is a strategy business actors use to market products at a price lower than the cost of production or average costs. According to Areeda and Turner, a price cannot be classified as predatory pricing if it is equal to or higher than the marginal cost of producing the good. Competition provides benefits both to entrepreneurs and consumers. As a result of business competition, entrepreneurs are motivated to improve the quality of products or services offered to consumers. Competition also drives production or service provision efficiency, ultimately benefiting consumers (Gifford & Raskind, 1998, p. 438).

Consumers can choose products or services with better quality and affordable prices. Law enforcement against business competition practices is still far from the concept of a "rule of law" state (resistant). This reflects the process of enforcing legal norms that should serve as guidelines in social interaction and legal relations in society and the state. Oil is a primary need in Indonesia and is used as fuel. This is reflected in the habits of people using motor vehicles fueled by oil for transportation, whether for short or long distances. The use of fuel oil in Indonesia is influenced by market demand, which increases in line with the growing number of vehicles (Jayani et al., 2022, p. 82).

Business competition law supports the market economy system, protecting business actors from exploitation. Business competition is typically the responsibility of the business actors, with specific regulations in place to address predatory pricing practices, such as selling electric motorcycles in Denpasar. One type of vehicle that has seen significant growth is motorcycles. The public favors motorcycles because they are practical and serve as an efficient means of transportation to support various activities (Anggreni, 2023, p. 436).

## II. METHODS

The type of research applied is Empirical Juridical Research, which combines a theoretical approach to law with the analysis of existing norms (das sollen) and the facts that occur in society (empirical). This research aims to analyze and evaluate how legal rules are applied in practice on the ground, examine how the law operates in society (das sein), and how the community or involved parties interact with the law. This research uses primary and secondary legal materials to address the studied issues. In empirical juridical research, the main focus is on primary data. The problem approach used in this thesis includes a sociological juridical approach, a statutory approach (statute approach), and a conceptual approach (conceptual approach). The data sources in this research are obtained directly from the community (empirical) and library materials. The data collection techniques used are field research and library study techniques.

## III. RESULT AND DISCUSSION

### *A.* Regulation in Tackling Predatory Pricing Practices by Business Actors

Predatory pricing is a long-standing theory in business practice. It refers to the abuse of power within competition law in various countries (Petzold, 2015, p. 437). In the economic field, the mandate of the 1945 Constitution, which aims for the achievement of widespread prosperity for society, not just for individuals, mandates that the role of the government in the economy is to reduce the negative impacts caused by market failure and price inflexibility (Rokan, 2010, p. 12).

According to Mohammad Hatta, the provisions in Article 33 of the 1945 Constitution aim to achieve the welfare of society, not just individual welfare as determined by the capitalist system. The explanation regarding economic democracy emphasizes collective prosperity, not individual prosperity, which means eliminating economic inequalities and realizing economic justice in society (Soediro, 2017, p. 216).

The government plays a significant role in developing the economic sector to reduce the negative impacts of market failure and price inflexibility. Indonesia experienced drastic economic development in the 1970s, with industrial development advancing rapidly due to the government's role in responding to the economy. However, the assistance was provided by offering ease, facilities, and regulations that supported businesses in practicing monopolies.

As a result, in the past 30 years, many entrepreneurs have engaged in activities not aligned with healthy business competition. On the other hand, they have not been introduced to the culture of healthy competition, even though competition is common in business (Rachmadi, 2022, p. 55). The government can be said to play a significant role in the economy, even though it sometimes tends to be biased. This central role is evident in its intervention in regulations, where the government facilitates business actors in conducting monopoly practices in their business activities (Rachbini, 2004, p. 80).

Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unhealthy Business Competition is an example of regulation created in response to the International Monetary Fund's (IMF) demands. This regulation was a mandatory requirement for the Indonesian government to receive support from the IMF in dealing with the economic recession in Indonesia. Generally, society and the authorities responsible for creating regulations in Indonesia believe that the close relationship between a group of business actors and political elites causes the current market inefficiencies or disruptions. As a result of this relationship, they gain priority and special facilities to carry out their business. This leads to the formation of conglomerates that dominate the market and have the power to control it (Clarissa, 2023, p. 222).

The KPPU Decision No. 05/KPPU/Kep/IX/2000, which regulates procedures for filing reports, initial investigations, further investigations, and KPPU decisions, was later replaced in April by KPPU Regulation No. 01/KPPU/Per/IV/2006 concerning Case Handling in KPPU. This new regulation replaced KPPU Decision No. 05/KPPU/Kep/2000. This competition law includes provisions regarding prohibited acts, potential legal consequences, and provisions related to enforcing laws concerning business competition practices. In general, competition law aims to manage competition and prevent monopolies for mutual benefit. If understood more broadly, competition law not only regulates competition but also determines whether monopolies can be used as a public policy tool to manage specific sectors that can be managed by private parties (Sitorus, 2017, p. 23).

In competition law, the relationship between business actors and companies is managed, with company behavior driven by economic motivations. Legally, business competition is always related to competition in the economy, where business actors, both companies and traders, strive freely to attract consumers in order to achieve the goals of the business or company they manage (Fahmi et al., 2022, p. 57). The drafting of Law No. 5 of 1999 concerning Monopolies and Unhealthy Business Competition provides a solid foundation for realizing an efficient economic system free from various distortions. Furthermore, in the current economic crisis, this is an opportune time to improve the economy, change the system that has been dominated by monopolies, oligopolies, and protectionism, and establish a more open economy that supports the market (Rizkia & Rahmawati, 2021, p. 345).

A transparent and fair competition system ensures equal opportunities for every business actor. In this system, no agreements or mergers hinder competition and no deviations from economic power. Thus, every business actor is entirely free to carry out economic activities. Optimization arises from business competition, which encourages innovation in research and development, introduces new methods of production and distribution, and continuously creates or enters new markets to outperform competitors. Moreover, technological advancements allow competitors to test various options, and eventually, the best solution is chosen. Monopolies find it challenging to create open access for new participants with fresh ideas, even though this is essential for technological progress (Anom & Puspita, 2024, p. 220).

High competition among business actors in a market or industry will encourage them to create goods or services that vary in price, quality, and innovation. According to Kasmir, business competition can be understood as competition among entrepreneurs or business people to capture market share by offering goods and services to consumers through various marketing strategies (Kasmir, 2015, p. 84).

### B. Efforts to Prevent Predatory Pricing Practices in the Electric Motorcycle Trade in Denpasar

Agreements that lead to price differences for the same product between buyers are considered price discrimination and can violate antimonopoly laws. This prohibition is intended to maintain fairness in trade and prevent practices that harm consumers, such as one buyer obtaining a lower price. In comparison, another has to pay a higher price for the same product. It also aims to prevent business actors from engaging in practices that could damage healthy competition in the market.

In general, this regulation aims to prevent collusion or agreements that hinder fair and healthy competition in the market, ensuring that prices remain competitive and that no practices harm consumers or disturb market dynamics. The regulations regarding resale price maintenance in the Antimonopoly Law are interpreted using the rule of reason principle. They are understood as allowing business actors to agree that goods will not be distributed in ways that contradict agreements to reduce the likelihood of non-competitive business practices.

Law No. 7 of 2014 concerning Trade illustrates efforts to advance the trade sector with policies prioritizing the public interest. This is reflected in Article 2 letter (a), which states, "Trade policies are formulated based on the principles of national interest." The national interest includes various aspects, such as promoting economic growth, increasing trade competitiveness, protecting domestic products, creating more job opportunities, protecting consumers, ensuring the availability of goods and services, and strengthening MSMEs. From a constitutional perspective, competition regulation is based on Article 33 of the 1945 Constitution of the Republic of Indonesia, which emphasizes that the Indonesian economy must be based on the principles of economic democracy. Thus, the goal of economic democracy is to improve the welfare of society by providing equal opportunities for all business actors to participate in the production and distribution of goods/services in a healthy business environment.

Predatory pricing is a strategy where a company sets the selling price of products or services very low, often below production costs, to drive competitors out of the market. Once these competitors exit, the company applying this strategy can raise prices to achieve higher margins. In predatory pricing, the price of a product is set very low to attract customers from competitors and harm their financial condition, eventually forcing them out of the market. This strategy aims to reduce competition so the company can more easily control the market without strong competitors.

By setting extremely low prices, the company also creates a barrier for new entrants to the market, as they have to compete with unrealistic prices. After eliminating competitors, the company can raise prices and achieve higher margins, even exceeding their profits before using this strategy. Predatory pricing is implemented by setting low prices, often even below the cost of production, to eliminate competitors and obtain a monopoly in the market. This strategy can be applied by offering low prices for a short period, creating difficulties for competitors to compete in the business and ultimately driving them out of the market. When business actors apply predatory pricing in marketing their products, it can lead to bankruptcy for other similar product businesses and eventually make the product the only choice in the market. This is one of the causes of creating monopolies or market domination, where the business actor who dominates the market can control the market price for both products and services available (Bhakti, 2018, p. 17).

Law No. 5 of 1999 aims to provide legal certainty and equal protection for all business actors. Its main goal is to prevent monopolies and unhealthy competition practices, thus creating a competitive and conducive market where each business actor has the same opportunity to compete fairly and healthily. In terms of procedures, there are two main theories in competition law: the per se illegal approach and the rule of reason approach (Meyliana, 2013, p. 16). The Business Competition Supervisory Commission introduced the Competition Policy Checklist as a tool for the government to independently adjust existing policies to the principles of healthy business competition. Using the DPKPU, the government can adjust policies that may lead to unhealthy business competition practices or monopolies (Fadhilah, 2019, p. 72).

Predatory pricing consists of steps designed by business actors where entrepreneurs or business actors set product prices lower than production costs (both average and marginal costs). According to Areeda and Turner, this practice is not considered predatory pricing if the price applied is equal to or higher than the marginal cost of production. The target of predatory pricing activities is to drive competitors out of the market and prevent new competitors from entering the market. Once competitors are eliminated and barriers to new entrants are applied, the company can raise prices and maximize margins. To implement this strategy, business actors must have a significant market share and the ability to endure temporary losses during low prices.

In Denpasar, government efforts to counteract predatory pricing practices are still hindered by the lack of alignment between policies and the principles of healthy business competition in the electric motorcycle trade. Meanwhile, business actors, in this case, strive to minimize production quantities and continue to follow the price standards set by the manufacturers. However, sellers often find it difficult to determine the appropriate selling price that complies with the standards. Law No. 7 of 2014 concerning Trade describes efforts to develop the trade sector through policies prioritizing national public interests. The provisions in Article 2 letter (a) state, "Trade policies are formulated based on the principles of national interest."

This encompasses various things, including driving economic growth, increasing business competition, protecting domestic production, creating more job opportunities, protecting consumers, ensuring smoother availability of goods and services, and strengthening MSMEs. To create a healthy and fair business climate, the government realizes the importance of regulations to regulate and monitor business competition. This trade law creates a balanced market to ensure fair competition among all business actors. This regulation includes prohibitions on anti-competition practices such as monopolies and cartels, as well as provisions on information transparency, protection for small and medium-sized enterprises, and strict law enforcement against violations of business competition.

With this law, business competition is expected to become more competitive, innovative, and transparent. If business competition is carried out according to existing regulations, consumers will eventually benefit from products or services of good quality and offered at reasonable prices. This trade law is crucial in creating a healthy business climate where fair competition can drive economic development and benefit society more significantly.

## IV. CONCLUSION

The legal regulation related to predatory pricing practices by business actors is governed by Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unhealthy Business Competition, which regulates the relationship between entrepreneurs in the field, where economic motives influence their behavior. Legally, business competition is always related to competition in the market economy, where business actors freely attract consumers to achieve their desired objectives. Article 6 regulates the prohibition of business actors from collaborating in such a way that they create agreements causing consumers to pay different prices for the same goods and/or services.

The government in Denpasar has yet to show sufficient efforts to prevent predatory pricing practices through regulations that align with the concept of healthy business competition in the electric motorcycle trade. Meanwhile, entrepreneurs are striving to maintain production and keep prices stable by following the price standards set by manufacturers. However, sellers often find it challenging to determine the appropriate selling price that complies with the established standards.

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