ULRev

UNRAM Law Review is licensed under a Creative Commons Attribution 4.0 International License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. p-ISSN: 2548-9267 | e-ISSN : 2549-2365, Open Access at : http://unramlawreview.unram.ac.id/index.php/ulr

"Burning Money" By E-Commerce Platform Businesses And The Relationship With Selling Loss Based On Business Competition Law In Indonesia

Jozu Kenjiro
Universitas Padjadjaran
Email: kenjiro.jozu.22@gmail.com

Sudaryat
Padjadjaran University

Helza Nova Lita
Padjadjaran University

ABSTRACT

"Burning money" is one of the marketing strategies carried out by e-commerce platform business actors to introduce their internet products and change consumer habits. The effective discount program on the e-commerce platform currently popular in the community is "burning money". This program is carried out within a certain period to attract many customers and achieve high traffic. The existence of "burning money" activities has concerns that it will lead to unfair business competition. The significant price discount from one form of "burning money" is suspected to be related to predatory pricing or selling at a loss. The research method is normative juridical, namely research that uses statutory regulations, legal theories, and opinions of scholars related to business competition law and e-commerce. The data obtained will then be analyzed using descriptive analytical methods that describe specific symptoms in detail and detail,. Four aspects examine the"burning money" of a significant discount program based on Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and related laws and regulations. As a result, the discount program carried out by e-commerce platform business actors can cause unfair business competition. Still, e-commerce platform business actors' impact helps people switch to the digital era through e-commerce services.

Keywords: "burning money"; e-commerce; selling at a loss; business competition; platform

INTRODUCTION

The rapid development of the telecommunications and information fields has brought people to the era of the industrial revolution 4.0. Industry 4.0 products such as *Big Data, cloud, Artificial Intelligence, Internet of Things* and soon provide convenience and comfort for humans and have fundamentally changed every way industry works, the business operates, and how we live and communicate [1]. The *Internet of Things* is one form of the use of? Humans use the internet to carry out their lives in various fields, including trade. *Electronic Commerce* or *E-commerce* is a trade that prioritizes paperless or *paperless aspects* and buying and selling

[1] Mohammad Dastbaz, (2019), *Industry 4.0 and Engineering for a Sustainable Future,* Switzerland: Springer, p. 15

DOI : https://doi.org/10.29303/ulrev.v6i1.222

transactions that can do without face-to-face or *face-to-face,* so itself can be said to be a driver of a new economy that is based on and prioritizes technology. [2]

E-commerce requires a platform or *platform* that connect to the internet as a *virtual place* that connects buyers and sellers. The role of third parties is needed to provide *the e-commerce platform*. Therefore, business actors provide *e-commerce platform services* as parties that provide services and facilitate the seller and the buyer. In its development, *e-commerce platform* business actors can act as sellers themselves.

The Indonesian people's need for *e-commerce* has increased. In April 2021, *We Were Social* explained that 88.1% of internet users in Indonesia aged 15-64 years had used internet services to carry out *e-commerce activities.* This vast number surpassed the UK and the Philippines, which ranked second and third with percentages of 86.9% and 86.2%, respectively.[3] The extensive use *of e-commerce* in Indonesia is cause by many business actors providing large *e-commerce platforms* such as Tokopedia, Shopee, Bukalapak, Blibli, and Lazada.

The development of *e-commerce cannot be separate from the business strategy used by e-commerce platform* business actors, namely *"burning money"*. It is an initial stage carried out to introduce an internet product by attracting a large number of consumers where *e-commerce platform business actors* invest in large amounts with to provide attractive benefits for consumers, changing consumer habits to "spend" money on internet products and make it difficult for competitors to enter the same market.[4] One of the attractive advantages that e-commerce platform businesses offer is a considerable discount on a product. A survey conducted by Jakpat shows that 64% of correspondents who are *e-commerce users* explain the reason they use *an e-commerce platform* is that the products have meager prices.[5] Many discount programs carry out by *e-commerce platform* businesses to attract consumers' attention. Tokopedia with the Indonesia Shopping Time program, Shopee with the *flash sale program, and* Blibli with the Hysteria program are examples of this *"burning money*." Even in the community, the National *Online Shopping Day or Harbolnas know is where e-commerce platform* business actors compete to give discounts on a product on their respective *platforms.*

The existence of *"burning money"* is feared to cause unfair business competition. The sale of a product at a meager price can be indicated as *predatory pricing* or commonly known as selling at a loss. *Article 20 of Law Number 5 of 1999 concerning* the Prohibition of Monopolistic Practices and Unfair Business Competition (Law 5/1999) prohibits *predatory pricing activities.* Very meager prices to get rid of or shut down its competitors' business in the relevant market to result in monopolistic practices and or unfair business competition".

A business actor carries out predatory pricing by selling a product at a meager price to eliminate its competitors and form *an entry barrier* for business actors who are already in the market or business actors who want to enter the same market. At first, consumers will feel a benefit from low product prices. Still, when a call is control only by who sell at a loss, these business actors will raise prices very high and make consumers feel disadvantaged. Further analysis is needed to determine whether business actors' "*burning money"* business strategy *on*

[2] Abdul Halim Barkatullah, (2019), *Electronic Transaction Law: As a Guide in Facing the Digital Era of e-Commerce Business in Indonesia,* Bandung: Nusa Media, p. 25

[3] Andrea Lidwina, Katadata, (2021), *"Highest Indonesian E-commerce User in the World",* Available from https://databoks.katadata.co.id/datapublish/2021/06/04/gunakan-e-commerce-indonesia- highest-in-the-world# , [Accessed September 4, 2021]

[4] Can Liu. Jiawen Fu. Miaomio Xia. (2020) "A Literature Review of the "Burning Money" Behavior of Internet Products" *, Journal of Economic Science Research,* 3(3), p. 13

[5] Monavia Ayu Rizaty, Katadata, (2021), " *Free Shipping is the Main Factor of E-Commerce Remaining Popular with Consumers",* Available from https://databoks.katadata.co.id/datapublish/2021/07/30/free-ongkir-jadi-factor-utama-e-commerce-tetap-digemari-konsumen [Accessed September 4, 2021]

e-commerce platforms is a *predatory pricing activity* and results in unfair business competition as regulated in Law 5/1999 and its implementing regulations.

METHOD

The method in this research is normative juridical, namely legal research by utilizing secondary data sources such as legislation, legal theory, court decisions, and opinions of scholars [6]. This research is doctrinal legal research that formulates a research concept by comparing *das sein* and *das sollen* from *"burning money" activities by e-commerce platform* business actors based on the laws and regulations governing business competition in Indonesia. This research is descriptive analytical, which explains anda anylizes a real problem supported by detailed, detailed, and systematic data.

ANALYSIS AND DISCUSSION

Predatory *Pricing* Based on Law Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

Law 5/1999 is one of the laws and regulations in Business Competition Law in Indonesia. Law 5/1999 regulates prohibitions that can lead to unfair business competition. At least in Law 5/1999 it holds prohibited agreements as regulated in Article 4 of Law 5/1999 to Article 16 of Law 5/1999, prohibited activities carry out as stipulated in Article 17 of Law 5/1999 to Article 24 of Law 5/1999 and abuse of dominant position as regulated by Article 25 of Law 5/1999 to Article 29 of Law 5/1999. Approaches to determining a violation of Law 5/1999 can use two theories, namely:

1. Per se Illegal

   This theory is an approach to looking at the certain acts that violated regulated provisions if act in question has fulfilled the elements in law without needing review reasons for justification and there is no need to look back at the impact of the action because the act itself violation [7].
2. Rule of Reason

   This theory is an approach that determines an act that indicates to violate the values of fair business competition by looking at the fulfillment of the elements in the law. Still, if objective reasons, purposes, and objectives can justify the show, then the act is not a violation. Therefore, the *rule of reason theory* requires analyses of other legal sciences such as economics, to determine whether the act in question has negatively impacted the world of business competition. [8]

One of the prohibited activities is *predatory pricing* or selling at a loss as regulated in Article 20 of Law 5/1999. *Predatory pricing* is a pricing strategy by business actors to get rid of their competitors from the relevant market to maintain their position as monopolists or dominant [9]. *Black's Law Dictionary* also explains the definition of *predatory pricing*, namely *"Antitrust violation, consist of pricing below an appropriate measure of cost to eliminate competitors in short-run and reduce competition in the long run".*[10] From an economic point of view, *predatory pricing* is done by setting an unreasonable price for the product, which is a price that

[6] Muhaimin, (2020), *Legal Research Methods,* Mataram: Mataram University Press, p. 45

[7] Susanti Adi Nugroho, (2012), *Business Competition Law in Indonesia: In Theory and Practice and Application of the Law,* Jakarta: Kencana, p. 701

[8] Devi Melyiana, (2013), *Business Competition Law,* Malang: Setra Press, p. 17

[9] Susanti Adi Nugroho *, Op.Cit.* , p.260

[10] *Ibid.,* p. 152

is lower than the average variable cost [11]. Can analyze *predatory pricing* activities prohibited by article 20 of Law 5/1999 through a *rule of reason approach.* An assessment of the impact of activities suspected of *predatory pricing is required.*

Stages in Studying an Activity Allegedly Conducting *Predatory Pricing*

The Business Competition Supervisory Commission (KPPU) has guiding regulations in dealing with *predatory pricing activities* or commonly called selling and loss, namely KPPU Regulation Number 6 of 2011 concerning Guiding Regulations Article 20 (Selling Loss) of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Business Competition Unhealthy (Perkom 6/2011). Based on Perkom 6/2011, activities suspected of carrying out *predatory pricing* must meet the elements, namely Business Actor Elements, Supply Elements, Goods Elements, Service Elements, Selling Loss Elements, Very Low Price Elements, With Intentions, Eliminating or Deadly Elements, Elements Competitors' Businesses, Market Elements, Relevant Market Elements, Monopolistic Practice Elements, and Unfair Business Competition Elements.

Predatory pricing activities must first see as the intent of the business actor concerned. Perkom 6/2011 explains several intentions of business actors when conducting *predatory pricing.* If the purpose of the business actor in question is to kill the competing business actor in the same relevant market; limit competitors by imposing a selling price at a loss as *an entry barrier;* and obtain large profits in the future.[12] It is appropriate to suspect that the business actor is carrying out *predatory pricing,* which is prohibite in Law 5/1999. If the business actor concerned has the intention of carrying out *predatory pricing* to reduce and limit the adverse impact of past sales. As part of the promotion when introducing a new product, the *predatory pricing* carried out by the business actor concerned does not violate the provisions prohibited by Law 5/1999.

Based on Perkom 6/2011, KPPU will examine an activity that is suspect of conducting loss-selling by conducting tests in several stages, namely:

1. Test by assessing *unreasonable low price*

   At the initial stage, KPPU will examine the market share of the business actor concerned, which has at least a market share of 35%. Furthermore, KPPU will conduct an *unreasonable low price study* to assess the reasonableness of the standart price set. If the product price is above the *Average Total Cost* (ATC), then product's price reasonable. If the price of the product is below the *Average Variable Cost* (AVC), then the product's price is unreasonable and can be suspected of setting a limited price. If the product price is between ATC and AVC, must review other factors such as market demand or excess capacity. [13]

2. Doing *Recoupment Test*

   The recoupment test shows whether certain products sold by business actors are set at a very high price to cover losses from selling a product that previously sold at a price below the market price.

3. Doing *Price Cost Test*

   The price cost test is a test to determine and compare price data with costs objectively. The *price cost test* used is the calculation through the *Areeda-Turner Rule.* Based on *the Areeda-Turner Rule,* AVC is used to assess the price of a product. If the product price is above or equal to AVC, the business actor does not violate the rules of business competition.

[11] Dayu Padmara Rengganis, (2013) *Business Competition Law: Telecommunication Equipment and Enforcement of AFTA Agreement,* Bandung: Alumni, p. 36

[12] Attachment to KPPU's Regulation Number 6 of 2011 concerning Guidelines for Article 20 (Selling Loss) of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, p. 11

[13] Attachment to KPPU's Regulation Number 6 of 2011, *Op.Cit.* , p. 28

In contrast, a product sold under the AVC is a strong suspicion of breaking the business competition.[14]

***"Burning money" as a Business Activity by E-commerce Platform* Businesses in Indonesia**

"Burning money" carried out by business actors providing *e-commerce platforms* referred to in this paper is *"burning money"* in giving discounts or discounts on a large scale for a product. *"Burning money"* itself is the initial stage common carry out by *E-commerce platform business actors* in running and introducing a digital "product".

The concept of *"burning money"* at least appeared from 1974 to 1989 and has a goal as an advertising strategy that has the intention of influencing people's perceptions of a product [15]. *"Burning money"* with actual prices is carried out by business actors providing *e-commerce platforms* to benefit consumers or *customers.* The purpose of giving a significant discount is to change consumer habits and give difficulties or barriers to entering the relevant market (*entry barrier*) so that the business actor can get many of consumers.[16] *"Burning money"* by giving massive discounts is done at the expense of *profit*, but the goal is to increase market share and enlarge the scale of expansion. [17]

"Burning money" in price cuts and massive discounts is common in Indonesia. Harbolnas is the time used by business actors providing *e-commerce platforms* to provide huge discounts on products sold on their *platforms*. Blibli, for example, offers the Hysteria program entitled "Surprised 12.12" Harbolnas on December 12, 2021, Tokopedia. Which has the Indonesia Shopping Time program during Harbolnas, which will be held throughout December 2021 and is not limited to December 12, 2021.

Based on an interview with one of the largest *e-commerce* in Indonesia, *"burning money"* either in a significant discount program or other document is part of *marketing* that has been adjust from the existing *marketing budget*. The initial purpose of this *"burning money"* is to introduce new habits, the market to transition from conventional markets to *e-commerce* and educate people about something new. According to him, *"burning money"* is not an easy and cheap because introducing an activity that did not exist before will require more *costs* than raising an existing industry.

One of the *e-commerce platform providers* said that *"burning money"* is a long-term strategy, either in an extansive product discount program or other forms of programs. According to him, the price discount program mostly carry out by business actors providing *e-commerce platforms* and is a normal business activity in the retail industry. The mechanism offered is generally a *supplier* or *merchant* who cooperates with *an e-commerce platform that* will provide their products and provide a *retail price suggestion* or a recommended price for selling a product. Furthermore, on the part of *the e-commerce platform* as the "market", it has the right to regulate the circulating prices. Can sell the product by looking for a significant price difference, a slight profit price difference, or selling at a loss if certain circumstances require a loss sale. The business actor providing *the e-commerce platform* explained that the giving of massive discounts does not only come from *the e-commerce platform* but can come from *suppliers, merchants,* or even from the manufacturer of the product in question.

E-commerce platform business actors is to achieve sales results or *turnover and achieve a company's valuation from the gross merchandise value* (GMV) benchmark. This goal to achieve, of course, requires a very substansial cost and attracts as many *customers* as possible

[14] P. Areeda, and D. Turner, (1975), "Predatory Pricing and Related Practices under Section 2 of the Sherman Act", *Harvard Law Review,* 88(4), p. 733

[15] John W. Pracejus, Thomas C. O'Guinn. G. Douglas Olsen, (2010) "When white space is more than "burning money": Economic signaling meet visual commercial rhetoric", *International Journal of Research in Marketing,* 30, p. 211 -212

[16] Can Liu, Op. Cit ., p . 13

[17] *Ibid.*

with existing programs. The next goal is to increase *traffic* from *the e-commerce platform* itself. *Traffic* itself understands the number of internet users who visit an *e-commerce platform* through applications or websites. Can use this large amount the traffic to attract *suppliers* interested in selling products in an *e-commerce. Significant traffic* can be used for other commercial purposes by *e-commerce platform business actors.* This is intended for advertising by other business actors. This *traffic* can also aim to be a benchmark for *e-commerce* to provide other services beyond the needs of the *e-commerce industry* by expanding the business of business actors on the *platform* relevant *e-commerce* .

Alleged *Predatory Pricing on "Burning Money"* Activities by Business Actors Providing *E-commerce Platforms*

"Burning money" with price discounts and huge discounts on a product carried out by business actors providing *e-commerce platforms* can potentially carry out a loss-making activity or *predatory pricing* that can lead to unfair business competition. The existence of an allegation of *predatory pricing* in an act can be analyzed using the *rule of reason approach.* If you look at the regulation of Perkom 6/2011, it is not enough to judge an activity indicated by *predatory pricing* only based on the fulfillment of the elements of Article 20 of Law 5/1999, therefore it is necessary to look at several other aspects, namely:

1. Great market power by related business actors

   Law 5/1999 states that a business actor has controlled a particular market if it controls 50% of the relevant market and a group of business actors has controlled about 75% of the relevant market. Perkom 6/2011 explains that the KPPU's assessment is to see market power by business actors so that at least the business actors control 35% of the market.[18]

   Research by Kantar shows that the strength of the *e-commerce market* in Indonesia in 2021 indicates that there are 4 (four) prominent business actors providing *e-commerce platforms* that control most of the *e-commerce* industry, namely Shopee, Tokopedia, Lazada, and Bukalapak. In the four categories taken into account in the study, Shopee led all four categories, the brand category that consumers remember, the most number of users, the brand used most often, and the average monthly transaction value. In the calculation of the most frequently used brand category and the highest number of users category, Shopee dominates with 62% and 86%, followed by Tokopedia in second place with 24% and 57% , respectively.[19] These data show that Shopee dominates the *e-commerce industry* in Indonesia in 2021, which by Tokopedia, Lazada, and Bukalapak.

   The e-commerce industry's mastery can also be seen in the number of visits to *the e-commerce platform*. According to a survey conducted by Katadata, the number of monthly visitors *to e-commerce platforms* in Indonesia in the third quarter of 2021 was dominate by Tokopedia with an average number of visitors per month of 158 million, Shopee was in second place with a total of 134 million, and Bukalapak was in position third with a total of 30 million visitors.[20]

   The previously described figures from a survey by Kantar and Katadata show the strength of the *e-commerce market* in Indonesia. KPPU has determined that at least business actors control 35% of the market so that it can be asses whether they carry out selling at a loss or not. The previously described *e-commerce such as Tokopedia, Shopee, and even Bukalapak have controlled the market more than the limit set by KPPU based on Perkom 6/2011.*

[18] Attachment to KPPU's Regulation Number 6 of 2011, *Op.Cit.* , p. 28

[19] Iman Fakhrudin, beritadiy, (2021), *"This is Indonesia's E-Commerce Champion in 2021"* Available from, https://beritadiy.minded-rakyat.com/nasional/pr-703126550/ini-dia-jawara-e-commerce -indonesia-tahun-2021 , [Accessed January 9, 2022]

[20] Dwi Hadya Jayani, katadata, (2021), *"Map of E-commerce Competition in Indonesia"* Available from https://katadata.co.id/ariayudhistira/infografik/61b945392d739/peta-persaingan-e-commerce-di-indonesia , [Accessed January 12, 2022]

2. Very low pricing done within a specific time frame

   "Burning money" is carried out by giving huge price discounts to almost all *e-commerce platform business actors*. Indonesia Shopping Time, a program by Tokopedia, has a subprogram that offers values of up to 90& for household products, deals of up to more than 50% for electronic products, and discounts of up to 100% for specific products for new *customers*. The Indonesian Shopping Time will be hold from December 20, 2021, to December 31, 2021. Furthermore, the Hysteria program from Blibli, has the theme Dikagetin 12.12 program, which will be hold in mid-December 2021. One of the offers made is the selling price of a product is only certain rupiah period.

   Such low prices offered by *e-commerce platform* business actors can come from the *e-commerce platform business actor* or can come from sellers or *suppliers,* and can also come from producers. Perkom 6/2011 uses *a recoupment* and a *price cost test* to determine the reasonableness of a low price or an *unreasonably low price. The recoupment test* use to determine the price margin given by business actors at the time after carrying out selling and loss activities. Business actors generally raise very high prices to cover losses when selling at a loss. Through *recoupment test*, can assess the fairness of the cost. *Recoupment tests* are carried out when business actors have achieved their goals by conducting loss-selling activities, so that the *"burning money" carried out by e-commerce platform* business actors is difficult to assess using *the recoupment test* because the *"burning money"* carried out is currently still in the stage of providing a high price. Very low for a product.

   The price-cost test determines the fairness of the price sold by business actors for a product. Based on Perkom 6/2011, the proposed *price-cost test* is the *Areeda-Turner Test.* According to *the Areeda-Turner Test,* product's pricing is predatory price if it set less than the short-term marginal cost that can calculate using AVC because it has proximity.[21] If you look at the giving of very large discount prices such as the Indonesia Shopping Time program by providing discounts of up to 90% and there are even prices that are cut up to 100%, it can be said that the sales of these products are below AVC.

   One of the biggest *e-commerce* companies said that in giving a big discount, a specific fund called the *marketing budget had be considered* to market an internet product. The significant value that carry out depends on the *marketing budget*, whether the funds are for one program or more than one program, so the amount of a deal depends on the allocation of the marketing funds. The existing rules on *e-commerce* show that the price of a product in *e-commerce* determine by *the e-commerce* concerned. The *supplier* provides a *retail price suggestion* or only a price recommendation to *e-commerce platform business actors.* Giving significant discounts does not always come from *e-commerce platforms* but can come from *suppliers* or manufacturers.

   According to Areeda and Turner, the sale of AVC products will not make a profit, so there are other goals by business actors other than the pursuit of profit or *profit* alone [22]. One of the largest *e-commerce* companies in Indonesia said that holding significant discounts was not only to achieve turnover but also to introduce *e-commerce* and achieve high *traffic*.

3. The aims and objectives of business actors

   "Burning money" in practice has the initial goal of introducing the concept of *e-commerce* to the public. Teaching a new habit that did not exist initially requires a lot of money and a good business strategy. The provision of price cuts or discounts on a large scale expects to educate the public to use digital products, namely *e-commerce. "Burning money"* by giving

[21] Attachment to KPPU's Regulation Number 6 of 2011, *Op.Cit.* , p. 29
[22] P. Areeda, and D. Turner, Op. Cit ., p. 733

massive discounts is also expected to educate the market to transition from the conventional to the digital era, namely *e-commerce.*

Significant price discounts can also increase turnover or increase the valuation of *e-commerce companies* through GMV. Achieving an increase in GMV is one of the expected goals, but the costs incurred to acquire the GMV are very high. Business actors providing *e-commerce platforms* have another goal: to get high *traffic* on their respective *platforms* .

Traffic is use to determine how many *customer visits are* on an *e-commerce platform. Traffic* use to maintain *the supply chain e-commerce* itself. The use of many discount programs attracts the attention and interest of *customers. The number of customer* visits will increase *traffic. High traffic* will interest *suppliers* or *merchants* to put their products on *e-commerce platforms.* The increasing number of product choices sold from many *suppliers* will result in more *customers* visiting *the e-commerce platform* and transacting on *the platform*. Therefore, *e-commerce platform business actors compete* to provide programs such as significant price discounts to increase *traffic.* This substantial *traffic* also allows *the e-commerce platform to* become larger and offers an opportunity for *the platform* to expand its business toward other digital services.

Perkom 6/2011 explains that the intent and purpose of business actors conducting loss-selling activities can exclude if the meaning and purpose is to overcome the adverse impact of past sales, or is part of a promotional strategy to introduce new products [23]. The initial goal described by one of the largest *e-commerce* companies in Indonesia is that " *burning money* " by giving significant discounts is part of introducing a new internet "product", namely the concept of *e-commerce* itself to the public.

Another goal, namely achieving a large amount of *traffic,* is also part of plan and goal of *e-commerce platform business actors,* but cannot deny that the granting a significant discount program requires a significant investment boost to increase capital for *e-commerce platforms* the end. Finally, competition can occur between *large* capital *platforms so that other e-commerce platforms* that do not have too much money will eliminate. The significant cash required also creates *an entry barrier* for new business actors who wish to enter the same market. At this time, the potential to kill competing business actors in the relevant market and limiting competitors by imposing a loss-selling price as *an entry barrier* are the aims and objectives prohibited in Perkom 6/2011. In Indonesia, it can see that there are quite a several bankrupt *e-commerce platforms and also the market dominance by several large e-commerce platforms* over the last few years.

4. The impact of selling and losing activities

Activities that suspect selling at a loss have an impact that at least there are competing business actors who are out of the competition due to the sale at a loss. Perkom 6/2011 implicitly stipulates the need for clear evidence of the existence of business actors leaving the relevant market due to this sale and failure. *"Burning money"* in the form of significant price discounts by *e-commerce platform business actors is* difficult to prove its impact on closing competitors' businesses. In the last few years, dozens of *e-commerce platform* businesses have closed and left *the e-commerce platform industry.*

Rakuten, one of the largest *e-commerce companies* in Japan, was present in Indonesia from 2011 to 2016. Rakuten closed in Indonesia and Southeast Asia because it could not compete with competitors such as Lazada, which had dominated the Southeast Asian market. Blanja.com is an *e-commerce platform* initiated by an Indonesian BUMN, Telkom, and a large US *e-commerce company, namely* e-Bay. In 2020 this *e-commerce company stopped its services due to not being able to compete with e-commerce* competencies in Indonesia.

[23] Attachment to KPPU's Regulation Number 6 of 2011, *Op.Cit.* , p. 11

Qlapa is also regional *e-commerce* that once existed and had high popularity in 2018. Qlapa had to close due to not making Qlapa a profitable and sustainable business, especially in local *e-commerce.* Those with more capital, such as Tokopedia and Bukalapak, are in tight competition.

The result of *"burning money"* by business actors *on e-commerce platforms* does impact on business competition where substantial capital can survive in the *e-commerce industry.* Dozens *of e-commerce* businesses have closed due to the difficulty of maintaining existing businesses with not so significant a wealth. Large *e-commerce* companies that do have substantial money can still dominate the market. The iPrice report noted that in 2018, Tokopedia and Bukalapak were the largest *e-commerce* sites in Indonesia [24]. In 2019, Katadata noted that Tokopedia, Shopee, and Bukalapak were the *e-commerce* sites with the most prominent visitors in Indonesia [25]. In 2020, Katadata also noted that Shopee, Tokopedia, and Bukalapak were the largest *e-commerce* sites in Indonesia. Likewise, in 2021 were based on Katadata, Shopee, Tokopedia, and Bukalapak are still the most prominent *e-commerce* in Indonesia. This shows that the domination of the *e-commerce market* in Indonesia in the last four years dominate by only a few *e-commerce business actors*.

Another impact that is no less important is the existence of *"burning money"* which attracts *customers* and increases *traffic* for *e-commerce platforms,* creating a collaboration between business actors to improve their services. Blibli and Halodoc have a partnership by providing health products for *customers. Major e-commerce* sites such as Tokopedia, Bukalapak, Shopee, Blibli are pioneers in introducing MSMEs to transition to a more profitable and digital era. The COVID-19 pandemic that has hit the world is also ready to be handled in the form of product needs for the community due to the readiness of *e-commerce platform business actors*. The demand for goods for the community is guaranteed when physical contact restrictions are being carried out to prevent the spread of the COVID-19 virus. Therefore, the impact of *"burning money"* by business actors *on e-commerce platforms is* difficult to prove directly, resulting in unfair business competition. However, this activity can potentially lead to unfair business competition.

CONCLUSION

Predatory pricing or selling at a loss is the act of selling a product at a meager price to get rid of competitors who have competed in the same market. Selling and losing is prohibited in Article 20 of Law 5/1999 because it can result in unfair business competition and has anti-competitive nature. KPPU has Perkom 6/2011 as a guiding rule in enforcing Article 20 of Law 5/1999. In determining an activity indicated by selling at a loss which is prohibited by Law 5/1999, at least it can see by using the following aspects:

1. great market power by related business actors
2. very low price fixing done within a certain period time
3. the aims and objectives of the business actor
4. the impact of selling and losing activities

The *"burning money" activity in meager price discounts by e-commerce platform* businesses is part of a business strategy to attract more *customers* and increase *traffic* on

[24] Khoirunnisa, SELULAR, (2019) *" Top 10 Ecommerce in Indonesia 2018",* Available from https://selular.id/2019/03/top-10-e-commerce-di-indonesia-2018/ , [Accessed January 12, 2022]

[25] Dimas Jarot, Katadata, (2021) *"10 E-commerce with the Largest Visitors in the Fourth Quarter of 2020",* Available from https://databoks.katadata.co.id/datapublish/2021/02/11/10-e-commerce- with-biggest-visitor-in-quarter-iv-2020 , [Accessed January 13, 2022]

related *e-commerce platforms*. Based on the analysis using the four described aspects, it is undeniable that *e-commerce platform business actors* through, *"burning money"* tend to carry out selling and loss activities that can potentially lead to unfair business competition. *E-commerce platform* business actors who have huge capital will be able to survive and can provide extensive discount programs to attract consumer interest and increase *traffic while e-commerce platform* business actors who do not have large enough capital will be eliminated. The existence of *"burning money"* becomes an obstacle to market entry for new business actors because *"burning money"* is an "barrier" that has been created by existing business actors so that every business actor who wants to enter the *e-commerce industry* will be affected by *"burning money"*.

Suggestions that can be given to *"burning money" activities carried out by e-commerce platform* business actors are that it is hoped that there will be a regulation that regulates the provision of price discount information, a certain time limit for giving price discounts, to certain indicators that show potential *predatory pricing* so that perpetrators *e-commerce platform* businesses can provide discounted prices that do not violate *predatory pricing rules* as stipulated in Article 20 of Law 5/1999. On the part of the business competition supervisory agency, namely KPPU, there is an expectation to provide supervision that can prevent and provide a deterrent effect to business actors who violate predatory pricing rules.

Bibliography

Books with an author:

Abdul Halim Barkatullah. (2019). *Electronic Transaction Law: As a Guide in Facing the Digital Era of e-Commerce Business in Indonesia.* Bandung: Nusa Media

Dayu Padmara Rengganis. (2013). *Business Competition Law: Telecommunications Equipment and Enforcement of the AFTA Agreement.* Bandung: Alumni

Devi Melliana. (2013). *Business Competition Law.* Malang: Setra Press

Mohammad Dastbaz. (2019) *Industry 4.0 and Engineering for a Sustainable Future.* Switzerland: Springer

Muhaimin. (2020). *Legal Research Methods.* Mataram: Mataram University Press

Susanti Adi Nugroho. (2012). *Business Competition Law in Indonesia: In Theory and Practice and Application of the Law.* Jakarta: Kencana.

Journal articles:

can liu. Jiawen Fu. and Miaomiao Xia. (2020). "A Literature Review of the "Burning Money" Behavior of Internet Products" *Journal of Economic Science Research,* 3(3): 13-16

John W. Pracejus. Thomas C. O'Guinn. and G. Douglas Olsen. (2010) "When white space is more than "burning money": Economic signaling meet visual commercial rhetoric" *International Journal of Research in Marketing,* 30: 211-218

P. Areeda. and D. Turner. (1975). "Predatory Pricing and Related Practices under Section 2 of the Sherman Act" *Harvard Law Review,* 88(4): 697-733

World Wide Web:

Andrea Lidwina. Datadata. (2021). *Highest Indonesian E-commerce Users in the World.* Available from https://databoks.katadata.co.id/datapublish/2021/06/04/gunakan-e-commerce-indonesia-tertinggi-di-dunia# , [Accessed September 4, 2021]

Dimas Jarot. Datadata. (2021). *10 E-commerce with the Largest Visitors in the Fourth Quarter 2020.* Available from https://databoks.katadata.co.id/datapublish/2021/02/11/10-e-commerce-dengan-pengunjung-terbesar-pada-kuartal-iv-2020 [Accessed January 13, 2022]

Dwi Hadya Jayani. Datadata. (2021). *E-commerce Competition Map in Indonesia.* Available from https://katadata.co.id/ariayudhistira/infografik/61b945392d739/peta-persaingan-e-commerce-di-indonesia . [Accessed January 12, 2022]

Faith Fakhrudin. Beritadiy. (2021) *This is Indonesia's E-Commerce Champion in 2021.* Available from https://beritadiy.minta-rakyat.com/nasional/pr-703126550/ini-dia-jawara-e-commerce-indonesia-tahun-2021 . [Accessed January 9, 2022]

Khoirunnisa. MOBILE. (2019). *Top 10 Ecommerce in Indonesia 2018.* Available from https://selular.id/2019/03/top-10-e-commerce-di-indonesia-2018/ . [Accessed January 12, 2022]

Monavia Ayu Rizaty. Datadata. (2021). *Free Postage is the Main Factor of E-Commerce Still Favored by Consumers.* Available from https://databoks.katadata.co.id/datapublish/2021/07/30/free-ongkir-jadi-factor-utama-e-commerce-tetap-digemari-konsumen [Accessed September 4, 2021]

Regulations:

KPPU Regulation Number 6 of 2011 concerning Guidelines for Article 20 (Selling Loss) of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition