

Legal Review of Business Competition in Preventing Predatory Pricing Practices Using Buy One Get One Free and Discount Voucher Methods in the Modern Retail Market

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Abstract

This study aims to provide an overview of the role of law enforcement and government in business competition to prevent predatory pricing practices using the Buy One Get One Free (BOGO) method and cheap redemption under Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition in modern retail markets. This research employs empirical legal methods focusing on the modern retail market, specifically on minimarket operators such as Alfamart, Indomart, and Alfamidi. The findings indicate that the competition authority (government) plays a significant role in preventing predatory pricing practices through: 1) market supervision, including monitoring market and business activities to detect signs of predatory pricing; 2) conducting thorough investigations into allegations of predatory pricing; 3) enforcing laws with decisive actions against businesses found guilty of predatory pricing; and 4) raising public and business awareness about the risks associated with predatory pricing practices. The research concludes that predatory pricing practices using the BOGO method can distort business competition and harm consumers, highlighting the crucial role of competition law in prevention.

I. Introduction

Business competition is a fundamental and beneficial aspect of the corporate world. It serves as a driving force for companies to constantly innovate, enhance the quality of their products, and provide exceptional services to consumers. This competitive environment involves two or more parties striving to gain market share, attract customers, and maximize profits, all with the ultimate goal of becoming the best among their rivals. Business competition takes various forms, including perfect competition characterized by numerous sellers and buyers, homogeneous products, and transparent information. Additionally, there is monopolistic competition where multiple sellers offer slightly differentiated products, and oligopolistic competition where a small number of sellers dominate the market (Nabilasari Lesmana & Yustiawan, 2023). The positive impact of business competition is evident through the promotion of innovation, improved product quality, and the availability of affordable prices for consumers (Disyon et al., 2023).

Companies are constantly encouraged to foster innovation and develop novel products and services. Simultaneously, they strive to enhance the quality of their offerings to attract customers. Moreover, competition in the market compels companies to offer more competitive and affordable prices to consumers. However, it is important to acknowledge the negative consequences that can arise from such competition. These include the potential for monopolistic behavior, a decline in product quality, and the occurrence of fraudulent practices. Monopolies can emerge when companies attempt to eliminate competitors in order to establish a dominant position. Additionally, some companies may compromise on quality to achieve lower prices, while others may engage in unethical actions to undermine their rivals, particularly in the context of modern retail competition.

The modern retail industry is characterized by intense competition, driven by various factors such as limited cooperation with suppliers, customer retention challenges, a growing number of retailers, and the prevalence of product and service differentiation. The expansion of large-scale retail businesses further intensifies competition within the industry. Consequently, businesses are compelled to adapt their strategies to secure a larger market share and effectively compete for customers. This entails implementing customer-centric approaches and constantly striving to meet the evolving needs and preferences of end consumers.

Hence, in the modern retail market, businesses employ various strategies, such as predatory pricing, to stimulate consumer purchases. Predatory pricing involves selling goods at prices lower than the market rate (Nazhari & Irkham,

2023). This tactic not only aims to attract a larger customer base but also weakens competitors, allowing the business to dominate the market. However, predatory pricing falls under the category of monopolistic trade practices, resulting in losses and negative consequences for multiple parties, and is considered an illegal strategy. One characteristic of these illicit trade practices is the emergence of goods being sold at unreasonably low prices. Examples of such practices include the BOGO method and the "cheap redemption" system. These promotional techniques are frequently utilized by various brands. The BOGO strategy allows customers to purchase one product and receive another product for free or at a reduced price through the "cheap redemption" system. Both the BOGO and cheap redemption strategies are effective in quickly depleting stock and offering bundled savings, making them appealing for businesses. The BOGO strategy, in particular, proves more successful in capturing the attention of potential customers compared to simple discount offers (Li et al., 2023).

Many modern retail markets, including Alfamart and Indomart, compete vigorously in Indonesia, greatly benefiting consumers. Modern retail entered Indonesia in the 1960s with the establishment of Sarinah, initially as a department store. Subsequently, other retailers such as Golden Truly, Hero, Pasarraya Blok M, and Ramayana emerged (KPPU, 2020). Retailers' creativity in seizing market opportunities led to the development of various new formats such as minimarkets, convenience stores, and supermarkets. In 1988, Djoko Susanto established Indomart to meet employees' daily needs, while Alfamart followed in 1989, initially as Alfa Minimart, later majority-owned by PT HM Sampoerna Tbk in December 1989 (Alfamart, 2022). This competition has spurred innovation in product offerings to consumers. The BOGO strategy employed by both Alfamart and Indomart has significantly impacted consumer behavior.

Based on the results of observations made, the BOGO method carried out by Alfamart and Indomart where when consumers shop and will make payments at the cashier (Saputri & Rahardjo, 2020), modern retail employees will offer products at BOGO prices which in essence have sold products with a form of offer which in terms of price has a large price difference even almost half of the actual price. The method used certainly influences the determination of consumers in shopping and causes or influences consumers in determining the goods to be purchased. This is certainly part of predatory pricing that is connected to the BOGO method. Therefore, from a legal perspective, business actors are prohibited from supplying goods or services by selling at a loss or setting very low prices with the intention of eliminating or killing their competitors' businesses in the relevant market so as to result in monopolistic practices or unfair business competition.

Healthy business competition is the key to sustainable economic development

(Cannon & Tanner, 2006). However, the practice of predatory pricing through the Buy One Get One Free (BOGO) method can cause market distortions and adversely affect consumers (Gordon-Hecker et al., 2020). Therefore, a legal review of business competition is needed as a form of prevention of predatory pricing practices. Predatory pricing is the practice of underpricing with the aim of excluding competitors from the market. BOGO is a sales promotion where buyers get one product for free when buying one product. The BOGO concept can be utilized as a predatory pricing strategy to distort market competition.

Unfair business competition must be prevented, including in predatory pricing systems including the use of buy one get one free (BOGO) and cheap redemption strategies. This is the basis for conducting a study on the review of business competition law in preventing predatory pricing practices using the buy one get one free method in modern retail markets. The formulation of the problem in this study is how the review of business competition law in preventing predatory pricing practices using the buy one get one free and cheap redemption methods in modern retail markets. This research aims to analyze the review of business competition law in preventing predatory pricing practices using the buy one get one free method in modern retail markets.

2. Research Method

This research uses normative and empirical legal research, where data is obtained from primary data or data obtained directly from the community with a statutory approach in normative research and a qualitative approach in empirical legal research (Bachtiar, 2019). The statutory approach is an approach that is carried out by examining all laws and regulations related to legal issues in this case business competition in preventing predatory pricing practices using the BOGO method and the cheap redemption system. While the qualitative approach is the process of analyzing the results of research that produces descriptive data analysis which is in the form of data stated by informants in writing or orally and real behavior that is studied and studied as a whole.

The data sources in this research consist of primary data and secondary data where primary data is data obtained from empirical research conducted directly in the community using interview techniques with related and interested parties who can provide the information needed relating to the review of business competition law in preventing predatory pricing practices using the buy one get one free method in modern retail markets. Secondary data in this research consists of official documents, books, research articles and/or reports related to the review of business competition law in preventing predatory pricing practices using the BOGO and cheap redemption methods in modern retail markets. Primary legal materials in this research consist of the 1945 Law of the Republic

of Indonesia, Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Government Regulation Number 44 of 2021 on the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition, and KPPU Regulation Number 1 of 2022 on the Competition Compliance Program. Secondary legal materials in this research are in the form of legal and scientific books related to business competition (the subject matter under study), legal and social journals related to the issues under study as well as papers, articles, written works and research results/reports related to the issues under study.

The research was conducted at modern retail outlets consisting of Indomart outlets and Alfamart outlets located in the Manado City area. Data collection in normative legal research is obtained from literature study of legal materials, both primary legal materials and primary legal materials. Empirical legal research data is obtained from interviews with the public, implementers of Alfamart and Indomart outlets and document studies. The data management process is carried out by checking data, editing data and systematizing data where the data obtained is collected and arranged systematically in accordance with the order. Data analysis in this study is descriptive in nature which is carried out by analytical steps consisting of data reduction, namely summarizing, selecting key things, and focusing on important things. Presentation of data where the data is presented in the form of a brief description with narrative text. The next step of analysis is the rare conclusion drawing or verification where if the conclusions put forward at the initial stage are not found strong evidence that supports the next collection stage, it is still temporary. But if the conclusions put forward at an early stage are supported by valid and consistent evidence when researchers are in the field, then the conclusions put forward are credible conclusions.

3. Results and Discussion

Modern retail markets such as Alfamart and Indomart are retail businesses that focus on modern management practices with the goal of generating profits. However, in their pursuit of profits, these businesses engage in risky actions that do not always align with trading rules or ethics, all in an effort to attract consumers and increase revenue. One common strategy employed by these businesses is setting low prices on products, even if it means operating at a loss, a practice known as predatory pricing. This practice, which involves selling products below cost, is in violation of Law Number 5 of 1999, which prohibits monopolistic practices and unfair competition in the business sector.

The modern retail market outlets that are the subject of this research show that they practice predatory pricing using the BOGO (buy one get one free) method which is masked by the "*Tebus Murah*" method, where consumers can obtain

products at lower prices. The results of the analysis conducted, predatory pricing using BOGO in modern markets has an impact on consumers where consumers get cheaper prices in the short term, but are exposed to the risk of reduced choice and price increases in the future. In addition, it has an impact on business actors. Competing businesses may be excluded from the market and hinder fair competition and innovation. For the market itself, the market is distorted, with reduced product choice and the potential for long-term price increases. Article 20 of Law No. 5/1999, which prohibits selling at a loss, in this case BOGO under the guise of "Cheap Redemption", stipulates that the Law prohibits selling at a loss that causes the selling price to be very low, if such action has the aim of eliminating business competition from competing business actors so that it can lead to monopolistic practices and unfair business competition.

This is because in determining whether predatory pricing practices are proven by using the rule of reason juridical approach where it needs to be proven and there must also be elements that prove the existence of predatory pricing. The results of the interview with informant ST, said that:

"I have shopped many times at both Indomart and Alfamart because in addition to the outlets being in locations close to residential areas, there are so many offers when I come shopping. Starting from discounts, especially those who have cards of these two outlets, then the offer of buy one get two or the most widely done is in the form of cheap redemption offered by officers or employees and it is done to consumers who shop with a predetermined minimum limit."

The same thing was also conveyed by informant RS, who confirmed the answer of informant ST who said that:

"If you shop with a certain minimum amount, of course there is an offer at the cashier to carry out cheap redemption which, if you look at it, the price is much more economical. Honestly, I sometimes come just to buy products that will be offered cheap redemption and even buy one get one free. Of course this is very helpful, especially for people who have a small income, of course, with this, it will be very helpful."

Confirmed with the shopkeeper, informant GA and also the manager in charge of the shop, said that:

"This is done to reduce the risk of expired goods or products. So the leadership said to carry out buy one get one, redeem cheap, provide discounts for those who have our outlet card. This is also done to attract consumers so that when shopping, of course, they will come to our place. This is done in all our outlets even throughout Indonesia "

Based on the results of the interviews, it is concluded that in the end, consumers will indeed choose cheaper products, and the possibility of shopping at the same place is very large, especially for products that are basic needs at home.

This is based on Law Number 5 of 1999, particularly Article 20, which prohibits business entities from engaging in predatory pricing or setting excessively low prices with the intent to eliminate or suppress competitors in the relevant market, thereby leading to monopolistic practices and unfair competition. Furthermore, in accordance with Article 47 of Law Number 5 of 1999, administrative sanctions include: requiring the offending business entity to cease activities proven to cause monopolistic practices, unfair competition, or harm to the public (Article 47 paragraph (2) point f); and imposing fines ranging from Rp. 1,000,000,000.00 (one billion rupiah) to Rp. 25,000,000,000.00 (twenty-five billion rupiah), or imprisonment for up to 5 months in lieu of a fine (Article 48 paragraph (2)).

In addition, additional criminal sanctions are also imposed in the form of: Revocation of business licenses, prohibition of business actors who have been proven to have violated Law No. 5 of 1999 to hold positions of directors or commissioners between 2 (two) years and 5 (five) years or termination of certain activities or actions that cause losses to other parties. This is not much different from Government Regulation Number 44 of 2021 concerning the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition.

This Government Regulation (PP) regulates the authority of the Business Competition Supervisory Commission (KPPU); sanction criteria, types of sanctions, and the amount of fines; and examination of objections and cassation of commission decisions. KPPU is authorized to impose sanctions in the form of administrative actions on business actors who violate the provisions of laws and regulations. Administrative actions that can be taken include, among others:

- a) Stipulation of cancellation of the agreement;
- b) Order to a business actor to cease vertical integration;
- c) Order to a business actor to cease abuse of dominant position;
- d) Stipulation of payment of compensation, and others. In supporting the implementation of its duties, KPPU stipulates KPPU regulations established in accordance with the law on the establishment of laws and regulations.

Therefore, KPPU Regulation No. 1 of 2022 on Business Competition Compliance Program was issued, which according to the regulation of the Business Competition Supervisory Commission (KPPU), has regulated further provisions related to predatory pricing practices. From a law enforcement point of view, the competition authority is authorized to take action against business actors who are proven to have committed predatory pricing practices. The competition authority plays a role in preventing predatory pricing practices. The authority

conducts supervision, namely:

- a) Monitor the market and business practices to identify indications of predatory pricing;
- b) Conduct in-depth investigations into alleged predatory pricing practices;
- c) Law enforcement authorities, take firm action against business actors proven to practice predatory pricing; and
- d) Competition authorities must provide education by raising public and business actors' awareness about the dangers of predatory pricing practices.

Compliance with business competition is a preventive measure against unfair business competition (Hermansyah, 2008). KPPU Regulation No. 1 of 2022 is expected to prevent companies or business actors from violating the law. Effectively, this regulation is not yet known to be able to overcome the problem of unfair business competition if it is not fully implemented properly. The implementation is inseparable from the challenges of implementing business competition law in the case of BOGO through the "cheap redemption" process. The implementation challenge faced is predatory pricing, namely determining when a price is considered "below cost" and meets the criteria of predatory pricing. Another implementation challenge is proving monopolistic intent, which proves that the ultimate goal of the BOGO practice is to eliminate competitors. There are also challenges in the form of changes in business strategies, where business actors can change promotional strategies to avoid the snares of competition law and other challenges in the form of comprehensive supervision, where competition authorities need to have adequate resources for effective supervision and law enforcement.

KPPU Regulation number 1 of 2022 issued is not necessarily followed by business actors or companies. Therefore, the implementation of this regulation if business actors/companies are required to register the unity program and also the active nature of KPPU is needed so that the implementation of the program by KPPU runs effectively. In addition, the imposition of fine waivers for business competition violations will result in a deterrent effect for business actors which causes the KPPU's objectives not to be achieved to prevent the practice of business competition violations (Sianipar, 2020).

Business competition between modern retailers run by Alfamart and Indomart outlets from a marketing perspective which is an eternal enemy in winning the available market which causes them to compete by issuing franchises only to expand their reach to the public who are consumers. If you pay attention, if an Indomart outlet is opened, an interval of one or two months later with a distance that is not too far away, an Alfamart outlet will also be opened and it is not uncommon to have a location just across the street and even across the street. This is also the case in Manado City. The analysis conducted shows that the retail business competition between Indomart and Alfamart, shows:

- a) **Products:** the products sold by both outlets are very diverse and have many choices and variations, then both outlets sell the daily needs of housewives in the form of groceries and baby needs such as milk and diapers. Both outlets also have their own company-labeled products such as Indomart/Alfamart brand drinking water, towels, tissues, and others.
- b) **Price:** Product pricing at Indomart and Alfamart is set by the head office, where every day the price is always updated and every day the price posted on the sales rack must be changed if there is a price change.
- c) **Promotion:** Promotions are carried out by distributing catalogs and pamphlets that are distributed on the street, or through short messages specifically for customers or members;
- d) **Location:** Both outlets develop outlets in various remote areas such as residential neighborhoods where there used to be many traditional stalls and even traditional markets which aim to be more accessible to consumers.

Based on the system implemented, both outlets have the same goal, namely to reach the largest consumer market by conducting competition and even using strategies where there is a strategy to sell products using a predatory pricing system with the BOGO method and cheap redemption. This certainly creates business competition where both outlets try to attract as many consumers as possible by offering in various ways including the predatory pricing system through the BOGO method and the cheap redemption system.

Overall, business competition is a competition between companies or businessmen and businesswomen based on business ethics. Competition law is a legal instrument created to determine ethics in business regarding how competition should be carried out including business competition between Indomart outlets and Alfamart outlets.

4. Conclusion

Based on the results of the research conducted, the author concludes that Alfamart and Indomart outlets run a predatory pricing system (selling at a loss) by using the BOGO system and cheap redemption to attract customers which ultimately causes community stalls in the vicinity to close due to not being able to compete with the sales system carried out which is considered an unfair business competition. From a legal review, the implementation of predatory pricing is regulated in Law Number 5 Of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Government Regulation Number 44 Of 2021 on the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition, and KPPU Regulation Number 1 Of 2022 on the Competition Compliance Program. KPPU as a supervisory commission in conducting supervision of business competition, performs its duties by

monitoring the market and business practices to identify indications of predatory pricing; conducting in-depth investigations into allegations of predatory pricing practices; law enforcement authorities, taking firm action against business actors proven to practice predatory pricing; and competition authorities must provide education by increasing public awareness and business actors about the dangers of predatory pricing practices.

As such, KPPU needs to conduct socialization on predatory pricing practices for business actors so that predatory pricing practices can be controlled and do not harm other business actors who do not practice predatory pricing practices. It is necessary to confirm the practice of predatory pricing in Law Number 5 Of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Government Regulation Number 44 Of 2021 on the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition, and KPPU Regulation Number 1 Of 2022 on the Competition Compliance Program. Predatory pricing practices are very detrimental to the economy, therefore the sanctions given must be appropriate without any reduction in sanctions in order to provide a deterrent effect for the perpetrators.

References

- Bachtiar, B. (2019). *Metode Penelitian Hukum*.
- Cannon, M. F., & Tanner, M. (2006). Healthy competition: What's holding back health care and how to free it. *AHIP Coverage*, 47(3).
- Disyon, H., Amalia, G., & Elthania, I. N. (2023). Tinjauan Hukum Persaingan Usaha Terhadap Dugaan Praktik Monopoli Penjualan Avtur di Indonesia. *Jurnal Persaingan Usaha*, 3(2), 163–174.
- Gordon-Hecker, T., Pittarello, A., Shalvi, S., & Roskes, M. (2020). Buy-one-get-one-free deals attract more attention than percentage deals. *Journal of Business Research*, 111. <https://doi.org/10.1016/j.jbusres.2019.02.070>
- Hermansyah. (2008). *Points of Business Competition Law in Indonesia*. Kencana Prenada Media Group. <https://opac.perpusnas.go.id/DetailOpac.aspx?id=279884>
- Li, Y., Khouja, M. J., Pan, J., & Zhou, J. (2023). Buy-One-Get-One Promotions in a Two-Echelon Supply Chain. *Management Science*, 69(9). <https://doi.org/10.1287/mnsc.2022.4638>
- Nabilasari Lesmana, E., & Yustiawan, D. G. P. (2023). Civil Law Analysis of Unwritten Agreements in Business Activities. *POLICY, LAW, NOTARY AND REGULATORY ISSUES*, 2(2), 109–116. <https://doi.org/10.55047/polri.v2i2.568>
- Nazhari, A. F., & Irkham, N. (2023). Analisis Dugaan Praktik Predatory Pricing Dan Penyalahgunaan Posisi Dominan Dalam Industri E-Commerce. *Jurnal Persaingan Usaha*, 3(1), 19–31.
- Saputri, F. S., & Rahardjo, S. T. (2020). Analisis Pengaruh Lingkungan Toko, Variasi Produk, Promosi Penjualan, Dan Layanan Tenaga Penjualan Terhadap Kepuasan Konsumen (Studi Pada Alfamart H825 Semarang, Jawa Tengah). *Diponegoro Journal of Management*, 9(1).
- Sianipar, L. H. (2020). *Tinjauan Hukum Praktik Jual Rugi dalam Industri Retail Berdasarkan UUU No. 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat (Studi Pada Swalayan Maju Bersama Glugur)*.