

Price agreement and market provision between principal and distributor in the constitution no. 5, 1999

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Abstract

Market structure is one of the things that determines potential occurrence of price fixing. Market characteristics with large entry barriers for newcomers causing difficulties for competitors to enter so that there are no substitutes. Distributor is one of the business actors namely a national trading company that acts for and in its own name based on an agreement with the principal to make purchases, storage, sales and marketing of goods and/or services. There are pricing activities in business activities carried out by distributors with their networks in controlled markets, so the main issue in this study is whether the pricing is included in the price fixing agreement which is prohibited by the Law Prohibition of Monopolistic Practices and Unfair Business Competition. The approach used to analyze the problem is statute and conceptual approach to examine and find legal concepts that are relevant to the issues raised, thus finding a way out and produce solution for business actors to become more competitive and avoid anti-competitive behavior.

Keywords: *business competition, price fixing, market share, distributors, principals*

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1. Introduction

Developments arising from the globalization process pose new challenges that require separate solutions including in the field of law. The development of Indonesian economic law in essence must refer to the formulation of Article 33 of the 1945 Constitution that the economy is prepared based on family principles, and production branches which are important for the state and society are controlled by the state, and all natural resources are used entirely for the welfare of the people.

In order to realize this prosperity, the interests of the people as consumers must be considered one of which is through conducive economic activities, and run optimally. Economic activity is an activity carried out by humans to obtain goods and services. Sellers and buyers meet to obtain goods and services in the market that are currently developing very rapidly because of innovation, research and developments by businesses to perfect their products and meet the needs and desires of consumers for a product. Due to the demands of this development, the conditions of competition among business people have become increasingly stringent. The state requires equal opportunity for citizens to be involved in the process of production and marketing of goods or services in a healthy business climate so that the behavior of business actors is regulated in business competition law through Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Business Competition No Healthy (Law No. 5 of 1999).

The enactment of Law No. 5 of 1999 is to maintain the continuity of competition among business actors in order to stay alive and to be acknowledged. In other words, the purpose of business competition is also to protect competition itself by abolishing or

preventing the restraint or limitation of private and public businesses that can cause or harm the competition process (L. Budi Kagramanto, 2012: 13) The next objective is to protect the competition system what is on the market like what has long happened in the United States, by applying competitive preserve systems. Based on the need to reduce the negative excesses that may arise from business people, the objective to be achieved by making various regulations concerning the prohibition of monopoly and unfair business competition, as practiced by developed countries is to maintain competition. Business competition is maintained for the sake of achieving efficiency, both for the community as consumers and for the company. Competition will encourage each company to carry out its activities as efficiently as possible in order to be able to sell goods and / or services at prices that compete with other companies that are competitors in the market.

In the definition of business competition, besides covering business competition law, it also includes deregulation, foreign direct investment, and other policies aimed at supporting business competition such as reducing restrictions on the quantification of imports and aspects of ownership (intellectual property) UU no. 5 of 1999 is present with the need that the state guarantees the integrity of the business competition process against interference from business actors by drafting a law that prohibits businesses from changing trade barriers by a state that has just been abolished by the private sector.

The principle of Law No. 5 of 1999 as stipulated in Article 2 is economic democracy. Democracy means having its own peculiarities, namely realizing the interests of society by all people by serving the welfare of the community itself. In connection with this principle, it is necessary to understand that the legislation in the field of anti-monopoly does not only aim to protect business competition in the interest of competition itself. Article 3 of Law No. 5 of 1999 states that the purpose of establishing this law is to:

- a. safeguarding public interests and increasing national economic efficiency as one of the efforts to improve people's welfare;
- b. realizing a conducive business climate through sound business competition arrangements so as to ensure the certainty of the same business opportunities for large business actors, medium business actors, and small business actors;
- c. prevent monopolistic practices and or unfair competition caused by business actors; and
- d. creating effectiveness and efficiency in business activities.

The process of business competition can achieve these objectives by means of limited resource efficiency, adjusting product capacity with production methods and demand structures and adjusting the supply of goods and services to consumer interests (business competition regulatory functions), by ensuring optimal economic growth, technological progress and stable price level (function of driving business competition) and by channeling income according to market performance based on marginal productivity (distribution function) (. Abdul Hakim G. Nusantara, 1999: 105). Basically the steps taken to achieve the objectives of the establishment of the law must remain within the corridor permitted by the applicable legislation. In this era of globalization and transparency, the results of fair business competition cannot only benefit certain groups, but with the rules regarding the prohibition of monopolistic practices and unfair business competition, the interests and welfare of consumers will automatically be guaranteed and increased. Theoretically, business competition law will benefit consumers on the one hand and develop a better business climate for business people on the other. In the consumer perspective, with the prohibition of monopolistic practices, the consumer gains, namely.

1. Ease to choose alternative goods or services offered;
2. Prices of goods or services will tend to be cheaper with competition among business actors; and
3. Services that compete between business actors

At first, prices are seen as the things that most influence consumer behavior in the selection of a product both goods or services. Therefore the strategy used to dominate the market by business actors in general is to play a price on the market. Prices are payments for goods or services that do not only cover basic costs or services, but also must include additional costs such as discounts or delays in payments (Asri Ernawati, 2004: 23). This is based on the fact that payments in return for goods or services must be fully determined by free business competition.

The price mechanism is a process that runs on the basis of the style or force of attraction between consumers and producers that meet on the market. At one time, the price of an item or service might rise because the consumer's attraction becomes stronger, that is, consumers ask for more of the goods or services. Conversely the price of an item or service falls when consumer demand weakens. Price mechanism is very closely related to pricing. Pricing does not only occur due to production factors, but also comes from the location of sales, the size of the market, the uniqueness of a product, the brand of an item, the holder of a patent, and the way of selling (Marshall C. Howard, 1964: 23).

Pricing agreements can easily be done in certain markets compared to other practices, however it is very possible that the pricing cannot work at all in other markets. This is important to know because pricing agreements are usually clandestine agreements and are often very difficult to detect. It takes a good economic instinct to create law enforcement in the related market which is most conducive to price fixing. Price fixing that occurs vertically or horizontally is considered as a restraint of trade, which has a negative effect on price competition. In other words, if price fixing is done, freedom to determine prices independently becomes reduced.

Known 2 (two) kinds of pricing, horizontal pricing (horizontal price fixing) (RS Khemani, 1999: 27), occurs when more than one company is at the same stage of production, thus one company with another is a competitor that determines the price sell their products at the same level. The second pricing is the vertical price fixing, which occurs when a company is in a certain stage of production, determines the price of the product that must be sold by other companies that are in the lower production stage.

Pricing is carried out by business actors in the market. Markets with ideal conditions are considered to guarantee the realization of optimal production of goods or services known as perfect competition markets. Market structure is a market condition that provides guidance on aspects that have an important influence on the behavior of business actors and market performance, including the number of sellers and buyers, market entry and exit barriers, product diversity, distribution systems, and market share control. Market structure is one of the things that determines the potential for pricing. The characteristics of the market with large barriers to entry for migrant business actors (barriers to entry) make it difficult for competitors to enter so that substitute goods are not available in the market. Market conditions with obstacles cause the old players in the relevant market (incumbent) most likely to make a price fix. For example, conditions in the motorized bicycle market are one of the increasingly popular and widespread use of technology products. Supported by the improved land development sector, motorized bicycles are one of the types of needs that are in high demand today. Honda is one of the

motorcycle brands with a majority market share compared to its competitors (Complete AISI Data 2009-2018). For the East Java and NTT areas the distribution is held by PT MPM Distributor. Sales of Honda brand motorcycles are targeted to increase every year in accordance with the obligations given by PT Astra Honda Motor (AHM) as the principal.

As a distributor, PT MPM has a registered network to receive motorcycle unit distribution from the principal. In the distribution process the network has an obligation to sell motorcycle units at predetermined prices. Principals provide prices to distributors, distributor companies deliver and ensure prices to their networks. The price is the On The Road Price (OTR) which is the purchase price of a motor vehicle after all vehicle taxes and various documents (STNK and BPKB) are added.

2. Pricing Agreement as a Distribution Strategy

A business will not be great if the distributor does not function properly, so it is very important to create conducive conditions between the principal and the distributor. So far, the distributor is considered to be in an inferior position from the principal. Principal and distributor relations do not always go easily because of the very minimal provision of net margins to distributors while the demand for increased service as a method to increase product engagement with consumers is increasingly high. Often if there are obstacles in the distribution or marketing process of a product, mistakes are imposed on the performance of distributors, who are considered unable to control the market so that the market share is limited. Though many things affect whether or not a product is accepted in the market, the most dominant is the presence of competitors. The activities of competitors in carrying out branding on their products are sometimes difficult to predict by principals, not infrequently such errors are bestowed on distributors

The responsibility of distributors to principals is basically to the limits of spreading (spread), coverage, and penetration to the market. But principals often intervene in determining distributor strategies to fulfill their responsibilities, and some distributors do not object to this. For example, the principal specifically monitors the distribution process by placing supervisor areas in each distributor's marketing location. In fact, this kind of relationship between principals and distributors is one of the anticipatory or preventive actions of the principal to minimize friction with the distributor. Mistakes of distributors that are often carried out such as submission of forecast demand that are unfounded and difficult to be realized by the distributors themselves, payments to retained principal products even though there are guarantees given by distributors to principals, price games made by distributors themselves with their networks, poor service from distributors to their networks or to consumers if through a direct distribution process that affects the brand image of the principal's products. Therefore, in the agreement between the principal and the distributor, it is also usually stipulated about the marketing strategy proclaimed.

Through this program, principals will not easily break their business relationships with distributors, on the contrary if the distributor manages to establish good relations with the principal through fulfilling the marketing targets provided by the principal, the bank guarantee benefits that are deposited to the principal become minimal.

As explained in the previous chapter that in carrying out its business activities, the principal gives the price agreed upon by the distributor. The price component here consists of a list of prices, rebates or discounts, special discounted prices, payment periods, and price credit terms (Philip Kotler and Kevin Lane Keller, 2007: 23). In setting prices agreed upon by principals and distributors there are steps taken by both, including.

a. Choose a pricing goal

The company decides where to position its market offer. The clearer the goal of a company, the easier it is to set prices.

b. Determining requests

Each price will produce a different level of demand and therefore have a different influence on the marketing objectives of a company.

c. Estimating costs

The request determines the highest price limit that the company can charge for its product.

d. Analyze competitors' costs, prices and offers

In the range of price possibilities determined by market demand and company costs, the company must take into account the costs, prices and possible reaction of competitor prices.

e. Choose a pricing method

With the schedule of customer requests, cost functions, and competitor prices, the company is now ready to choose prices.

f. Choose the final price

Pricing methods narrow the space that companies must use to choose the final price. In choosing this final price the company must consider additional factors which include the impact of other marketing activities, company pricing policies, pricing that share profits and risks, and the impact of prices on other parties

3. Distributor Obligations in Improving Performance Through Market Share / Market Mastery Strategies

In the marketing strategy set by principals, distributors are also burdened with the obligation to continue to improve their permits by increasing market share so that the principals can be guaranteed that their products will be easily channeled to the market so that demand from distributors will automatically increase against the principal's products. In an economic perspective, companies that have market power have the ability to raise prices above marginal costs, marginal costs themselves are a condition of rising total costs caused by the production of one unit of output. The greater the market power possessed by the company, the greater the price difference will be towards marginal costs. So that the higher the market power possessed by a company, the more inefficient the market will be (Ayu Sitoresmi, 2012: 20).

Mastery of market share and excellence in financial terms, access range, efficiency, technology and so on can make a business actor have a dominant position in a relevant market. Based on this, having a dominant position is an achievement for business actors. Business competition law is a law that regulates the interaction of a company or business actor in the market. In business competition law to be superior (market leader) is not prohibited, businesses will certainly be encouraged to innovate and efficiency in terms of producing quality products at competitive prices in order to obtain a superior position (market leader) from other business actors in a relevant market. Competition is what drives business actors to become dominant business actors. However, by having a dominant position, the business actor has the potential to carry out anti-competitive actions in the form of abuse of dominant position (abuse of dominant position), this is due to his dominant position that the business actor can easily take actions that affect

market dynamics (supply and demand) widely without being affected by other business actors. This action ultimately has the potential to threaten the sustainability of fair and effective business competition in a relevant market.

Talking about the distributor's obligation to improve performance through market share / market share, the behavior of distributors in carrying out their business activities must be considered. The misuse of the market share can be seen from the strategic behavior of the business actors. Strategic behavior is a concept of how a company can reduce the level of competition that comes from existing competitors and potential competitors that will enter the relevant market. This strategic behavior is basically aimed at increasing the profits of business actors, which include pricing and quality, pursuing market share, and widening capacity to narrow the competition for competitors. The application of strategic behavior aimed at inhibiting competition by business actors can have a negative impact on both competition and consumers

4. Impact of Dominant Position of Distributors as Market Leaders

Ownership of a dominant position by a distributor company is not prohibited as long as the business actor in achieving his dominant position in the relevant market is carried out in his own capacity in a justified manner. Business competition law on this matter focuses on maintaining fair business competition in the relevant market and encourages business actors to become business actors who have a dominant position through fair and effective business competition.

Having a dominant position of a business actor has the ability to influence market conditions independently by pricing, controlling production or marketing of important parts of the products requested. The ownership of a dominant position in this case by a new distributor is prohibited if with the dominant position it has, the business actor carries out anti-competitive actions that can lead to unfair competition in the relevant market.

In business competition law there are 2 (two) forms of abuse of dominant position, namely exploitative abuse (exclusionary abuse) and exclusionary abuse.

In the event that a distributor company becomes a market leader, the opportunity to abuse a dominant position can be done through the selection of consumers and business partners based on the principle of discrimination on the basis of economic (business) and non-economic considerations. Distributors choose their networks as business partners without objective reasons that clearly accept or reject them at will. For example because of differences in ethnicity, race, social status and others. Misuse of dominant positions always occurs in the same industry, among companies that have a dominant position, with distributors, suppliers and retailers (Hanif Nur Widhiyanti, 2015: 406) Therefore, to ensure that abuse of dominant positions by distributors as market leaders must be proven fulfillment of the dominant position limit conditions which is equal to 50% for one or a group of business actors, or 75% for two or three business actors or groups of business actors

5. Conclusion

The prohibition on pricing agreements and market control is regulated in Law No. 5 of 1999. The behavior of principals and distributors who make price-fixing agreements that can affect consumer behavior towards a product, if proven to result in loss of competition so as to have an adverse effect on consumers and the economy as a whole, is considered contrary to Law No. 5 of 1999. Likewise with market control that makes a

distributor have a dominant position, it must be ensured that his achievement in that position is due to his own ability and is not misused.

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