


Price Discrimination Practices: an Economic and Legal Perspective

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Article Info	ABSTRACT
<p>Keywords: Price Discrimination, Economy, Law</p>	<p>Unfair business competition practices have the potential to result in a situation where one company completely controls the market, known as monopoly. Monopolists often employ pricing strategies that competitors cannot pursue in a healthy market. The legal rules that regulate business competition practices in various countries generally focus on the public interest to improve the welfare of society. This research aims to present a holistic understanding of price discrimination practices, highlighting the complexity of the economic and legal regulations involved and their enforcement on markets and consumers. The practice of price discrimination is one of the business practices that is usually implemented by companies to gain more profits, but because its impact can be detrimental to the welfare of society/consumers and can hamper efforts to create a healthy business competition climate, several variants of price discrimination are classified as illegal practices. Based on the Per Se Illegal doctrine, Article 6 of Law Number 5 of 1999 confirms that price discrimination, namely determining that one buyer must pay a different price from the price that must be paid by another buyer, is a prohibited business practice. The Per Se Illegal Doctrine is used because of considerations to simplify the process of enforcing price discrimination laws by providing clarity and shortening the administrative process. Implementation of Article 6 of Law Number 5 of 1999 still faces many challenges, not least because the regulation does not clearly explain what types of price discrimination can be detrimental to society and anti-competitive.</p>
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INTRODUCTION

It is undeniable that every company faces different consumer demands, at least in terms of sensitivity to price (price elasticity of demand). Some consumers are sensitive to price, while others are not. For companies, these differences in consumer demand characteristics are opportunities to increase profit, one of which is by implementing different pricing strategies. In the field of economics, this concept is known as price discrimination. Price discrimination is applied because companies see differences in the demand characteristics they face (Frob et.al, 2014).

In general, price discrimination is a pricing strategy where the same product is sold at different prices (Allen et al., 2013; Samuelson & Mark, 2012) with the aim of increasing total revenue and profit. Price differences can be set based on consumer segments, markets, purchase quantity, or time differences. It is not considered discrimination if the price difference is based on differences in quality or service. Therefore, different pricing is not related to

differences in the cost of producing the goods/services (Hirschey & Bentzen, 2016; Griffiths & Wall, 2005; Blair & Rush, 2020), meaning cost-based pricing is not included in price discrimination.

Some examples of price discrimination that are commonly practiced include producers setting different prices for the same product but with different brands/labels. Professional services (doctors, consultants, or lawyers) charge different fees for their clients, and hospitals, for example, set different rates between insured and uninsured patients. Price discrimination in the healthcare services sector (medical care markets) is highly feasible because resale/no-arbitrage is impossible, differences in demand intensity can be clearly identified, it is very possible to identify patients based on their willingness to pay, and hospitals have market power. Similarly, in the airline business, price discrimination on tickets is commonly practiced in various forms. Even within a single flight and economy class, there can be up to 12 pricing variations (subclasses), which can be broadly divided into three categories: low, medium, and high prices (Aulia, 2019).

The phenomenon of price discrimination seems quite normal, as seen in common business practices. There are no prohibitions or regulations that limit companies from pursuing maximum profits. However, in several countries, including Indonesia, certain models of price discrimination practices tend to be restricted, must meet specific conditions, or are even prohibited (illegal). For example, in the United States, the Clayton Antitrust Act (1914), which was later amended by the Robinson–Patman Antitrust Act (1936), prohibits price discrimination if it reduces competition and leads to monopolies. One reason for the issuance of the Clayton Antitrust Act (1914) in the United States, which regulates selective price cuts, was to prevent strong regional or national companies from driving local businesses out of the market (Hirschey, 2008).

In European Union countries, it has been agreed (Article 82 of the EC Treaty) to limit the freedom of companies with market power (dominant firms) to set prices in order to avoid competition. In Indonesia, the Business Competition Supervisory Commission (KPPU) categorizes price discrimination practices as actions that can hinder or conflict with healthy business competition, beyond non-price discrimination practices (KPPU, 2011). Article 6 of Law No. 5/1999 states: Business actors are prohibited from making agreements that result in one buyer having to pay a different price than another buyer for the same goods and/or services. Furthermore, Article 19(d) of Law No. 5/1999 states: Business actors are prohibited from engaging in one or more activities, either individually or together with other business actors, that may result in monopoly practices and/or unhealthy business competition in the form of practicing discrimination against certain business actors.

Malaysia's competition policy can be seen with the implementation of the Competition Act 2010 (CA2010), also known as the Anti-Competition Act 2010 (AP 2010), as a significant step in Malaysia's efforts to have a comprehensive competition law. With the enactment of this law, Malaysia has an important tool to regulate competition. The main purpose of this law is to promote economic development by protecting the process of healthy competition. The AP 2010, along with the Consumer Protection Act 1999 (CPA 1999), are the two main pillars of consumer protection in Malaysia. These two laws complement each

other, with the AP 2010 focusing on the supply side while the CPA 1999 focuses on the demand side (Dwi Nugrahaeni, 2019).

The issue then is, in what aspects does the practice of price discrimination have a negative or harmful impact? Who is harmed by it, what are the indicators, and how can the law prove it? This article aims to analyze the practice of price discrimination from an economic and legal perspective, particularly based on several cases in Indonesia. The results of this study are expected to contribute to the body of knowledge in Business Law research and provide alternative input for efforts to create a healthy and fair business competition environment.

RESEARCH METHODS

This study uses a normative research method, which is a type of research that involves the analysis of various laws and regulations, literature, theoretical concepts, and their relation to the drafting of legislation (Marzuki, 2021). Normative research was chosen because of its focus on legal principles and doctrines, legal rules, and theories from legal experts. The approach used is the conceptual approach, which includes an analysis of views and legal doctrines to provide definitions, concepts, and legal principles relevant to the issue being discussed. In addition, a legislative approach is also employed by examining related laws and regulations to ensure alignment with the issue being researched (Efendi & Susanti, 2020).

RESULTS AND DISCUSSION

The Negative Impact of Price Discrimination: An Economic Perspective

Economic activities should ideally promote overall welfare (economic welfare), which includes both producer welfare (producer surplus) and consumer/society welfare (consumer surplus). The sum of the two is known as the concept of total surplus (Griffiths & Wall, 2005). Producer surplus is derived from the profit of the business, meaning the higher the profit, the greater the producer surplus. One of the goals of a company is to enhance shareholder welfare (shareholder's welfare), making profit a crucial and valuable factor for its shareholders. Meanwhile, consumer surplus is the benefit obtained by consumers from each unit of purchase minus the selling price. In other words, consumer surplus is the difference between the willingness to pay (the highest price a consumer is willing to pay) and the actual price paid by the consumer, or the difference between the value of the goods received and the actual value paid to the producer.

Since price discrimination essentially involves differentiating selling prices, the consumer segment that is charged a higher price will lose part or all of their consumer surplus, which is transferred (captured) into producer surplus in the form of increased company profits (Nicholson & Snyder, 2017). Thus, the main idea behind price discrimination is to maximize company profits by exploiting the heterogeneity in consumers' willingness to pay. For the consumer segment charged a lower price, their consumer surplus may increase. This is why, theoretically, price discrimination does not automatically disrupt overall economic welfare, as the total surplus may remain unchanged. Several studies support the view that price discrimination practices do not always have a negative impact on welfare (Amin et al., 2014). However, the issue does not stop at increasing consumer surplus; when a company sets a

lower price for a particular segment, there is a possibility that competition within that segment may decrease, which could eventually lead to the formation of a monopoly.

The extent of the reduction in consumer surplus, of course, depends on the model of price discrimination practiced by the producer. Several models of price discrimination are commonly practiced, but generally, they can be classified into three types: first-degree (perfect), second-degree (non-linear), and third-degree (group) price discrimination (Thomas & Maurice, 2016). In first-degree price discrimination (FPD), the price is set differently for each unit of the product or for each consumer, and the price charged is exactly the maximum price the consumer is willing to pay (willingness to pay = WTP). This means the company will earn the maximum profit from each unit of the product it sells while capturing all of the consumer surplus (Nicholson & Snyder, 2017; Wilkinson, 2005). For example, a doctor may charge different consultation fees for each of their patients. A car dealer could set different prices for the same car model for 10 different consumers. This criterion is what makes FPD difficult or even impossible to implement (McGuigan et al., 2014). How could a company isolate one buyer from another to ensure they don't share information about the prices set by the company?

"FPD is more likely to be practiced by online stores because consumer identities can be recognized through cookies, IP addresses, or log information, allowing for more accurate identification of consumer characteristics and behaviors. Differentiating online prices for identical products or services based on the information companies have about potential customers is known as the concept of personalized pricing (Poort & Borgesius, 2019). Additionally, online stores can quickly adjust prices according to changes in supply and demand (dynamic or time-based pricing), similar to how airlines typically set ticket prices."

Then, in the second-degree price discrimination (SPD) model, prices are generally set differently for each specified range of unit purchases (range of output). The application of this type of price discrimination is often encountered in daily life and is commonly practiced by merchants. For example, purchasing more than 10 units will be cheaper compared to buying 1-10 units. Another example is the price difference per unit for wholesale purchases versus retail purchases, as well as the determination of electricity or water tariffs that vary based on customer categories. Unlike FPD, SPD practices still leave a small consumer surplus that can be enjoyed by consumers (Allen et al., 2013).

One variant of SDP is versioning, which is frequently practiced by airlines. Generally, versioning involves setting a higher ticket price for flexible tickets, which allow prospective passengers to reschedule or even cancel their departure without incurring a penalty fee (high-quality version). Conversely, restricted tickets are indeed cheaper but come with several restrictions, including the requirement to be booked well in advance of departure and the condition that the ticket becomes void if the trip is canceled (low-quality/damaged version). Ticket prices can also be differentiated based on service quality, in this case, flexibility of the ticket (versioning), whether there is a contract with the airline (discount to large consumers), and how often passengers use the airline's services (frequent flyer programs).

On the other hand, the third-degree price discrimination (TPD) model is the most commonly practiced form of price discrimination, where companies group markets or consumers into two or more segments (submarkets). For example, international publishers

set the price of softcover textbooks lower than hardcover ones. Producers can pursue a dumping strategy by setting higher prices for the domestic market compared to the international market (exports). Airlines often engage in TPD by offering lower prices for passengers who book their tickets at least one day in advance compared to those who purchase tickets at the last minute. They may also set a full price for business travelers and a discount price for tourists, or establish higher prices for morning departures, lower prices for afternoon departures, and even lower prices for evening departures. If a company has a large number of employees who frequently use airline services, it is very likely to obtain discounts on tickets by entering into contractual agreements with the airline (discount to large consumers). The impact of TPD on consumer surplus is ambiguous; it can increase, decrease, or remain unchanged (Nicholson & Snyder, 2017). Even Hirschey & Eric Bentzen (2016) assert that under certain conditions, price discrimination is necessary because it can increase the quantity of goods and services in the market."

Not all companies can apply price discrimination strategies; at least three requirements must be met by the company: (1) the company must have market power (which is typically associated with monopoly and oligopoly market structures in economic theory); (2) the company must be able to clearly differentiate or separate each target segment. This means that each market/segment must have different price sensitivities (price elasticity); and (3) the markets must remain separated, either based on location or nature, so that consumers cannot buy from the market with the lower price and then resell in the market with the higher price (no-arbitrage or resale). The nature of the market can vary based on time, age, or location. For example, consumers of PT KAI who are elderly receive a 20% discount, but to obtain this benefit, they must show an ID card. The requirement to separate market segments is what makes price discrimination practices more likely to be applied in the service industry.

Meanwhile, the KPPU categorizes price discrimination into four forms (KPPU, Regulation of the Commission for the Supervision of Business Competition No. 3 of 2011 concerning Article 19 Letter d (Discrimination Practices) of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, 2011). The first form is in the form of rebates (payment discounts) that are applied to certain buyers and not offered to others. Included in this rebate category is the quantity rebate, which is a price reduction based on the volume of purchases. Quantity rebates given to large-scale buyers are not considered price discrimination but rather a cost efficiency measure. Next is the fidelity rebate (loyalty discount), which is a discount offered to buyers who have committed to the seller, so the rebate is given whether the volume is large or small. There are several forms of fidelity rebates, including discounts that are not based on the total purchase amount but are adjusted according to the purchase relative to the buyer's needs. The larger the purchase portion relative to the needs, the larger the discount received. Target rebates can also be offered to business counterparts whose sales targets exceed previous periods. In conclusion, discounts in fidelity rebates are only given to buyers who are considered to have met certain conditions (conditional). Fidelity rebates are generally regarded as a strategy aimed at preventing competitors from growing, which is why they are considered unfair business practices. Under the Clayton Act, fidelity rebates are included in the business practices that are prohibited unless offered to all consumers (Baye & Prince, 2022).

The second form is selective price cuts, where sellers selectively lower prices for certain buyers in specific market segments, which are not offered to buyers in other market segments. Typically, these selective discounts are given to buyers in markets that are at risk of switching to other competitors. However, other buyers in different markets still face higher prices. For illustration, AKZO Nobel N.V., a global paint company based in the Netherlands, was once penalized under the EC Treaty for engaging in selective price cuts by setting prices below its production costs (average cost = AC) specifically for its competitors' consumers. However, the EC Treaty considers not only companies that set prices below AC but also those that set prices above AC to be in violation. For example, this was imposed on Hilti, the world's largest supplier of construction and electronic tools (with branches in Indonesia), based in Liechtenstein (Bouckaert, Hans Degryse, & Dijk, 2006).

Third, tying occurs when consumers are 'forced' to buy another product from the same company or brand in order to use one product. When a printer brand 'forces' consumers to use its own ink, it means the printer manufacturer has 'tied consumers' to continue their relationship with that brand or manufacturer. If consumers do not use that ink, the printer cannot operate or, at least, the printing results will not be optimal. Technically, printers are classified as base goods, while the ink is considered variable goods. In this case, the target consumers are those who enjoy printing color photos. For this reason, what the company is concerned about is the willingness to pay (WTP) for the ink (variable goods), not the WTP for the printer (base goods). In practice, the price of the base goods (printer) is set as low as possible (or theoretically below the average cost of production or AC), while the price of the variable goods (ink) is set as high as possible (above AC). Because it is bundled with the printer, consumers are unaware that they are actually buying the ink at a high price (overcharged). One goal of tying for manufacturers is to distribute their fixed costs (such as R&D costs) to more consumers (printer + ink consumers) and simultaneously eliminate competitors from the ink business. Therefore, tying contracts can lead to anti-competitive business practices and create monopolies. For this reason, in most U.S. states and many countries, tying is categorized as per se illegal (Allen et al., 2013; Keat et al., 2013).

IBM practiced tying for many years by requiring consumers who rented its machines to also use IBM parts and repair services. Ultimately, IBM's business practice was halted by the U.S. Supreme Court for violating the Clayton Act. However, not all tying contracts are prohibited; for example, if consumers feel adequately justified that by using parts from the same brand, the machine they purchased can operate optimally. If a franchise company requires its business partners to always use all supplies/raw materials/systems provided by the franchise company, this is also not classified as prohibited tying. The justification is that the franchise company must maintain its reputation by serving consumers with the same quality, regardless of who the operator partner is (Allen et al., 2013).

Fourth, bundling is when a company sells at a lower price if, for example, two items are purchased together in a package compared to if the buyer only buys them individually. A classic example is Microsoft, which sells Word, Excel, Outlook, Access, and PowerPoint in a package known as Microsoft Office. However, for some people, only Word and Excel may be frequently used. Bundling practices are also performed by cable TV producers who force their customers to purchase 12 TV channels at once, even if only 2 or 4 channels are needed or

frequently watched. Producers can choose pure bundling, where they only sell in packaged form (not sold separately), or mixed bundling, where they sell both. Broadband service (and cable TV) is a clear example of mixed bundling. Because bundling practices fall under first-degree price discrimination (FPD), they have the potential to completely deplete consumer surplus, especially if the company implements pure bundling (Allen et al., 2013; Blair & Rush, 2020; Froeb et al., 2014).

Some Cases of Price Discrimination in Indonesia

Eldo Malba (2016) explains in his essay that price discrimination practices have been carried out by Indosat, which divided the prepaid GSM segment into two services, Mentari and IM3, based on research findings that showed the two segments have different characteristics. The aim was to maximize revenue and profit by dominating both segments. This began in 2000 when Indosat acquired PT. Satelindo, which had been offering the Mentari prepaid GSM service since 1996. This acquisition resulted in Indosat having two services for the prepaid GSM market segment: Mentari and IM3. Although the segments are now the same, Indosat did not merge them into one; instead, it implemented price discrimination by setting the Mentari rates higher than the IM3 rates. The higher rates for Mentari allowed Indosat to provide better services in terms of voice quality, internet speed, coverage, etc., and to avoid customer churn to other providers. Meanwhile, the purpose of imposing lower rates on the IM3 service was to capture the market in segment B. For consumers in segment B who are sensitive to rates, lower prices were set in hopes of preventing customer migration to other providers.

In another case, in 2019, Garuda Indonesia was suspected of violating the provisions of Law No. 5 of 1999 regarding monopolistic practices and unfair business competition, particularly concerning price discrimination in the selection of partners for selling Umrah tickets to Jeddah and Medina. This case was triggered by public reports stating that Garuda Indonesia sought to close off access to Umrah ticket sales through a wholesaler program, creating obstacles for other Umrah travel organizers. The price discrimination practiced by Garuda Indonesia included the designation of six PPIUs as wholesalers without an open and transparent selection process and without clear and structured considerations. The inconsistency in the designation of wholesalers indicates discriminatory practices by Garuda Indonesia (Sunur, 2022). Based on the ruling of case No. 06/KPPU-L/2020, the Commission for the Supervision of Business Competition determined that Garuda Indonesia was found to have violated Article 19 letter d of Law No. 5 of 1999 (KPPU, 2020).

Legal Analysis of Price Discrimination Practices

One of the legal objectives is legal certainty (*rechtssicherheit*), which is an effort to achieve justice. As a form of legal certainty, the implementation of legal actions or law enforcement is essential, regardless of who performs those actions. With legal certainty, each individual can anticipate the consequences they will face if they engage in certain legal actions. To realize the principle of equality before the law, discrimination must be avoided, and legal certainty must be ensured. Certainty is a characteristic that is inseparable from law, especially in the context of written legal norms. Laws that do not provide certainty will lose their value because they cannot serve as a guideline for individual behavior (Lathif, 2017).

Legal certainty is the belief that clear and consistent legal rules will be applied fairly by legal authorities, providing a stable framework for society to regulate their behavior. Justice, on the other hand, is a moral principle that demands fair and equal treatment of all individuals while protecting them from abuses of power or injustices. Legal certainty creates the necessary foundation for justice to be applied consistently, while justice ensures that legal certainty does not overlook individual rights or allow injustices to occur within the legal system. The relationship between legal certainty and justice plays a crucial role in ensuring that the legal system operates effectively and protects individual rights while ensuring that everyone is treated fairly under the law. Certainty is one of the characteristics that is inseparable from law, particularly in the context of written legal norms. Laws that do not provide certainty will lose their meaning because they cannot serve as a guide for individual behavior (Siregar, 2018).

Legal rules governing competition practices in various countries are generally focused on the public interest to enhance the welfare of society (Lubis et al., 2017). A key factor determining the course of competition processes is the need for policies or laws related to competition. Competition law generally emphasizes that the process of competition is a very important priority compared to protecting business actors (Sunur, 2022). Robert Bork in Lubis et al. (2017) states that why we must support the continuity of competition? The answer is simple: because competition provides society with the maximum possible outcome at any given time with the available resources. In a competitive system, productive resources are used efficiently to achieve maximum profit. Each productive resource is utilized in places that yield the highest product value. Maximum output is achieved because there is no reallocation of resources that could enhance the overall output value for consumers. Therefore, competition is deemed important because it helps create a prosperous society and gives consumers the freedom to determine which goods and services they desire most through their actions.

Law enforcement in the realm of competition serves as an economic tool generally utilized to ensure that competition among business actors is conducted fairly, healthily, and results in measurable impacts, such as the improvement of community welfare. To ensure effective and quality legal certainty, laws are the primary instrument used (Kagramanto, 2012). Therefore, Law Number 5 of 1999, which relates to the enforcement of laws against monopolistic practices and unfair competition, is the main instrument for law enforcement in the field of competition. To date, Law No. 5/1999 has undergone one constitutional review against the 1945 Constitution of the Republic of Indonesia by the Constitutional Court (MK) and two amendments through Law Number 11 of 2020 concerning Job Creation (Law No. 11/2020) and Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation.

Law Number 5 of 1999 has two objectives that can be categorized into two parts: specific objectives and general objectives. Generally, the primary goal of enacting Law Number 5 of 1999 is to maintain the continuity of competition among business actors, ensure their survival, and acknowledge their existence. This is achieved by providing protection for competition by eliminating or preventing restrictions that could harm the competition process itself. Meanwhile, its specific objective is to protect the competitive system (Samawati, 2018).

Unfair competition practices have the potential to create monopolistic conditions in which the market is entirely controlled by a single business entity. Other negative impacts include the tendency of monopolistic actors to sell products at high prices without providing adequate quality (Juwana, 1999). Monopolistic entrepreneurs often implement pricing strategies that cannot be matched by competitors in a healthy competitive market. One such strategy is price discrimination, where the same product price may vary depending on the time of purchase, customer characteristics, or the target market, without considering production costs (Sugiarto, 2015).

Price discrimination can be classified into three types: first-degree price discrimination, where monopolists attempt to exploit the entire consumer surplus by setting varying prices for each different level of output. Using this approach, each unit of the product is sold at the highest price that the buyer is willing to accept; second-degree price discrimination, where the price per unit of the commodity decreases as the volume of purchase increases, considering that the price reduction reflects cost efficiency; and third-degree price discrimination, where different prices are set in each market to maximize profit. Law Number 5 of 1999 regulates price discrimination in two groups of articles: price discrimination that occurs due to agreements (Article 6) and price discrimination that occurs without agreements between business actors (Article 19) (Government of Indonesia, 1999).

Guidelines in Article 6 of the KPPU explain that price discrimination is the ability of business actors to set prices on the same goods and services of the same quality for different consumers. It is necessary to distinguish between price discrimination and price differentiation. Technically, in economics, price differentiation also refers to selling the same commodity to different buyers at different prices. In practice, the pricing strategy techniques used in price differentiation can be similar to those in price discrimination. A company is considered to engage in prohibited price discrimination if it meets several conditions (KPPU): (1) the seller/producer has a certain monopolistic power in at least one market, (2) there is separation between markets that prevents buyers from reselling (no arbitrage), (3) buyers in different markets have different demand levels and price elasticities, (4) the monopolistic seller/producer can take advantage of differences in willingness to pay among consumers. If all four conditions are met, setting different prices for the same goods and services to different buyers is considered prohibited price discrimination under Article 6.

This aligns with the prohibition against price discrimination in Europe, which states that price discrimination by dominant market players constitutes an abuse of dominant position in the market. Similarly, according to the UNCTAD Agreement of 1994, price discrimination in vertical relationships is only prohibited if it constitutes an abuse of dominant position in the market. The elements in Article 6 include: (1) Business actors, (2) Agreements, (3) Buyers, (4) Prices, (5) Different prices, (6) Same goods/services. Article 6 is relevant to Article 5 paragraph (1) if the agreement is horizontal (an agreement made between producers and their competitors or potential competitors).

Article 19 letter d regulates the prohibition against discriminatory practices carried out by business actors, whether independently or in collaboration with other business actors. Discrimination carried out independently refers to activities that obstruct or do not comply with the principles of healthy business competition. Actions that obstruct or do not comply

with healthy business competition, as stipulated in Article 19 letter d, can include both price and non-price discrimination (KPPU, 2011). The elements in Article 19 letter d include: (1) the element of business actors, (2) the element of acting both independently and jointly, (3) the element of other business actors, (4) the element of conducting one or more activities, (5) the element that can lead to monopolistic practices, (6) the element of unhealthy business competition, and (7) the element of engaging in discriminatory practices. Article 19 letter d is relevant to Articles 17 and 18 (monopoly and monopsony), Article 19 (market dominance), Article 22 (collusion), and Article 25 (dominant position).

In Competition Law, there are two legal approaches used to assess whether there has been a violation of Law Number 5 of 1999 concerning monopolistic practices and unhealthy business competition by business actors, namely the Rule of Reason approach and the Per Se Illegal approach. The Rule of Reason approach is a method used by the authority responsible for overseeing business competition to evaluate the impact of a particular agreement or business activity, whether it hinders or supports competition. In the legal concept of the Rule of Reason, certain business practices can be categorized as illegal activities if they are suspected, presumed, or anticipated to restrict trade/transactions, or are exclusive or predatory (Blair & Rush, 2020). When using the Rule of Reason approach, legal formulations typically contain phrases like "reasonably suspected" or "which may result in," requiring further evidence to determine whether an action hinders competition. The application of the Per Se Illegal approach under Law Number 5 of 1999 includes cartel practices (Article 11) and provisions regarding the prohibition of pricing below market price (Article 7).

In the context of the Rule of Reason approach, a business competition action is considered illegal or unlawful if it can be proven that the action harms other business actors or the national economy as a whole (Jemarut, 2020). If the Rule of Reason approach is used, the KPPU must also prove the negative impact caused by the actions of the reported party. If proven, it will significantly disrupt or hinder competition, then legal action can be taken. One of the weaknesses of the Rule of Reason approach is that it complicates companies' ability to ascertain exactly which pricing strategies are considered illegal. This is why the Clayton Act (1914) was amended/clarified by the Robinson-Patman Act (1936) (Baye & Prince, 2022).

Meanwhile, the Per Se Illegal approach refers to situations where an action is considered a legal violation without the need for further analysis of specific facts related to the case (Fajar & Kharisma, 2019). Per Se Illegal is also characterized by the existence of an explicit agreement (contract) between the involved parties (Keat et al., 2013). Kissane and Benerofe in Kagramanto (2008) explain that an action can be immediately deemed illegal if the court has ruled it as a legal violation without needing to consider specific facts. The Per Se Illegal approach must focus on the behavior of business actors, not market conditions, and must be easily identifiable without requiring complex analysis. The application of this Per Se Illegal approach simplifies the law enforcement process in business competition by providing clarity and shortening administrative processes. Therefore, this approach offers significant benefits for the enforcement of competition law by shortening the overall enforcement process. The application of the Per Se Illegal approach under Law Number 5 of 1999 includes: price-fixing agreements (Article 5), price discrimination (Article 6), boycotts (Article 10),

closed agreements (Article 15), collusion to impede competitors' products/marketing (Article 24 in conjunction with Constitutional Court Decision No. 85/PUU-XIV/2016), abuse of dominant position (Article 25), and issues related to majority shareholding (Article 27).

CONCLUSION

One strategy that companies can practice to maximize profit is through price discrimination, which involves setting different prices for goods/services for each consumer segment. Some forms of price discrimination practices have the potential to harm the public/consumers because consumer surplus is forced to be converted into producer surplus, which ultimately increases company profits. Additionally, price discrimination practices are considered anti-competitive because they can eliminate other companies that operate in segments where prices are set lower. As applied in several countries, the Business Competition Supervisory Commission (KPPU) categorizes price discrimination practices as actions that can hinder or conflict with healthy business competition. Article 6 of Law No. 5/1999 explicitly states that business actors are prohibited from making agreements that result in one buyer paying a different price than another buyer for the same goods.

The application of the Per Se Illegal doctrine in Article 6 of Law No. 5 of 1999 to address price discrimination practices is not easy, as it requires proving the occurrence of a legal violation without needing to demonstrate the resulting impact. Moreover, the regulation does not clearly define what kind of price discrimination practices are harmful, leading to multiple interpretations, both among businesses and law enforcement. This factor is believed to be one reason why few cases of price discrimination practices have been successfully uncovered by the KPPU. Targeting dominant companies suspected of practicing price discrimination is also challenging due to the various forms it can take (including discounts, rebates, tying, bundling, selective price cuts, input price discrimination), ranging from obvious to subtle, with different purposes and impacts. Additionally, from an economic perspective, the impact of price discrimination on public welfare remains debatable (ambiguous).

To strengthen consumer protection and ensure healthy business competition, there is a need for improvements in regulations governing price discrimination practices by providing clearer and more detailed definitions as a form of legal certainty, as well as enhancing the authority of the Business Competition Supervisory Commission (KPPU) in handling cases of violations. From the consumer perspective, efforts are needed to raise awareness about price discrimination practices and the appropriate reporting methods to authorities. Cooperation between the government and industries is also essential to establish stricter standards regarding price discrimination practices. Finally, further research is needed to understand the impact of these practices on society and the economy as a whole, in order to support the refinement of regulations and more effective law enforcement in the future.

REFERENCES

Allen, W. B., Doherty, N. A., Weigelt, K., & Mansfield, E. (2013). *Managerial economics: theory, applications, and cases* (Eight ed.). USA: W. W. Norton & Company.

- Aulia, M. R. (2019, Februari 12). *metrotvnews.com*. Retrieved Februari 28, 2019, from <http://telusur.metrotvnews.com/news-telusur/nN9MY9AN-ngos-ngosan-bisnis-penerbangan>
- Baye, M. R., & Prince, J. T. (2022). *Managerial Economics and Business Strategy* (Tenth ed.). New York: McGraw-Hill/Irwin.
- Blair, R. D., & Rush, M. B. (2020). *THE ECONOMICS OF MANAGERIAL DECISIONS* (Global ed.). Harlow, England: Pearson Education Limited 2020.
- Bouckaert, J., HansDegryse, & Dijk, T. (2006, November 21). *unamur*. Retrieved March 4, 2019, from www.unamur.be: <https://www.unamur.be/en/eco/eeco/2006-2007/hdegryse>
- Dwi Nugrahaeni, A. W. (2019). Tantangan dan Pengaturan Price Discrimination: Studi Komparatif Indonesia dan Malaysia. *Jurnal Ilmiah Dunia Hukum*, 3(2), 68-86.
- Efendi, A., & Susanti, D. O. (2020). *Logika Dan Argumentasi Hukum*. Jakarta: Kencana.
- Eldo Malba. (2016, May 21). Strategi Diskriminasi Harga: Dua Layanan GSM Prabayar Indosat. *Artikel*. <http://kanopi-febui.org>.
- Fajar, A. H., & Kharisma, A. S. (2019). Penggunaan Pendekatan Perse Illegal Dan Rule Of Reason Dalam Penyelesaian Kasus Praktek Monopoli Dalam Pelayanan Regulated Agent Pada PT Angkasa Pura Logistik Di Bandar Udara Sultan Hasanuddin. *Jurnal Supremasi Hukum*, 15(2), 65-74.
- Froeb, L. M., Shor, M., & Ward, M. R. (2014). *Managerial Economics: A Problem solving approach* (3 ed.). South-Western: Cengage Learning.
- Griffiths, A., & Wall, S. (2005). *Economics for Business and Management: A Student Text* (1st ed.). Edinburgh Gate, Harlow: Pearson Education Limited.
- Hirschey, M. (2008). *Fundamentals of Managerial Economics* (12th ed.). Cengage Learning.
- Hirschey, M., & Bentzen, E. (2016). *Managerial Economics* (14 ed.). Cengage Learning EMEA.
- Jemarut, W. (2020). Pendekatan Rule of Reason Dan Per Se Illegal Dalam Perkara Persaingan Usaha. *Jurnal Hukum Widya Yuridika*, 3(2), 377-384.
- Juwana, H. (1999). Sekilas tentang Hukum Persaingan dan UU No. 5 Tahun 1999. *Jurnal Magister Hukum*.
- Kagramanto, L. B. (2012). *Mengenal Hukum Persaingan Usaha*. idoarjo: Laros.
- Keat, P. G., Young, P. K., & Erfle, S. E. (2013). *Managerial Economics: Economic Tools for Today's Decision Makers* (7th ed.). Pearson.
- KPPU. (2011). Peraturan Komisi Pengawas Persaingan Usaha No. 3 Tahun 2011 Tentang Pedoman Pasal 19 Huruf d (Praktek Diskriminasi) Undang-undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat. Jakarta: Sekretariat Komisi Pengawas Persaingan Usaha.
- KPPU. (2020). *Putusan Perkara Nomor 06/KPPU-L/2020*. Jakarta: Sekretariat Komisi Pengawas Persaingan Usaha.
- KPPU. (n.d.). *Pedoman Pasal 6 Undang-undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat*. Jakarta: Sekretariat Komisi Pengawas Persaingan Usaha.

- Lathif, N. (2017). Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat. *Palar / Pakuan Law Review*, 3(1), 125-140, <https://doi.org/10.33751/palar.v3i1.402>.
- Lubis, A. F., Anggraini, A. M., Toha, K., Kagramanto, L. B., Hawin, M., Sirait, N. N., . . . Silalahi, U. (2017). *Hukum Persaingan Usaha : Buku Teks (Edisi Kedua) (Ed.) Sirait, Ningrum Natasya ; Lubis, Andi Fahmi ; Wulandari, Helena Wirastri*. Jakarta: Komisi Pengawas Persaingan Usaha (KPPU).
- Marzuki, P. M. (2021). *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenadamedia Grup.
- McGuigan, J. R., Moyer, R. C., & Harris, F. H. (2014). *Managerial Economics: Applications, Strategy, and Tactics* (13th ed.). Stamford, USA: Cengage Learning.
- Nicholson, W., & Snyder, C. (2017). *Microeconomic Theory: Basic Principles and Extensions* (Twelfth ed.). Hampshire, United Kingdom: Cengage Learning EMEA.
- Pemerintah Indonesia. (1999). *Undang-undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 33*. Jakarta: Sekretariat Negara.
- Poort, J., & Borgesius, F. J. (2019, January 30). Does everyone have a price? Understanding people's attitude towards online and offline price discrimination. *Internet Policy Review*.
- Samawati, P. (2018). *Monopoli BUMN Dalam Perspektif Hukum Persaingan Usaha 1st edn*. Malang: Tunggal Mandiri.
- Samuelson, W. F., & Marks, S. G. (2012). *Managerial Economics* (7th ed.). John Wiley & Sons, Inc.
- Siregar, M. (2018). Bukti Tidak Langsung (Indirect Evidence) Dalam Penegakan Hukum Persaingan Usaha Di Indonesia. *Jurnal Hukum Samudra Keadilan*, 13(2), 187–200, <https://doi.org/10.33059/jhsk.v13i2.910>.
- Sugiarto, I. (2015). Perspektif Ilmu Ekonomi dan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat Terhadap Diskriminasi Harga. *Jurnal Wawasan Hukum*, 33(2), 153-174.
- Sunur, C. P. (2022). Diskriminasi Harga Oleh PT Garuda Indonesia.Tbk Terkait Pemilihan Mitra Penjualan Tiket Umroh Dari Madinah – Jeddah (Studi Putusan Nomor 06/KPPU-L/2020). *JUSTITIA : Jurnal Ilmu Hukum dan Humaniora*, 9(4), 1940-1956.
- Thomas, C. R., & Maurice, S. C. (2016). *MANAGERIAL ECONOMICS: FOUNDATIONS OF BUSINESS ANALYSIS AND STRATEGY* (Twelfth ed.). New York: McGraw-Hill Education.
- Wilkinson, N. (2005). *Managerial Economics: A Problem-Solving Approach*. New York: Cambridge University Press.