Prohibition of Price Discrimination Practice Under Law No. 5 Of 1999 on Prohibition of Monopoly Practices and Unhealthy Business Competition

Hangga Prajatama
Faculty of Law, University of Jenderal Soedirman

Abstract
In the business world, business competition or competence among business people in seizing the market is very reasonable. However, this becomes unnatural when the competition is carried out in an unfair manner, with the aim of preventing other business actors from competing (barrier to entry) or shutting down competitors’ businesses. One form of anti unfair competition carried out by business actors in creating market power has been anticipated in Law Number 5 of 1999, namely the existence of price discrimination. The research method used is normative juridical, namely legal research that emphasizes the review of legal documents and library materials related to the subject matter. Based on the research that has been done, there is an Article that Regulates Regarding Price Discrimination in Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, which is located in Article 6 which states that business actors are prohibited from making agreements that cause one buyer to pay a price that is different from the price that must be paid by other buyers for the same goods and / or services. and the Guidelines for the Business Competition Supervisory Commission on Implementation Provisions in Article 6 of Act Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

Keywords: Prohibition, Price Discrimination, Law No. 5 of 1999.

Introduction
In the business world, business competition or competence between businesses in seizing the market is very reasonable. However, it becomes unnatural when the competition is conducted fraudulently, to deter other businesses from competing or shutting down the efforts of its competitors.
Nevertheless, competition can be implemented reasonably, if there is healthy business growth and guarantees the opportunity to try the same. For that, it takes a climate of conducive business competition. Therefore, to create healthy business competition with the development of a conducive climate, the Government of Indonesia has passed Law No. 5 of 1999 on The Prohibition of Monopoly Practices and Unhealthy Business Competition (Law No. 5 of 1999) based on Pedoman Komisi Pengawas Persaingan Usaha tentang Pelaksanaan Ketentuan Pasal 6 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat.

One form of unhealthy anti-competitive action taken by businesses in creating market forces has been anticipated in Law No. 5 of 1999 namely price discrimination. According to Article 6 of Law No. 5 of 1999 on Prohibition of Monopoly Practices and Unhealthy Business, Competition states:

Businesses are prohibited from making agreements that result in one buyer having to pay a price different from the price that other buyers must pay for the same goods and/or services.

Price discrimination is stipulated in Article 6 of Law No. 5 of 1999 which is one form of agreement prohibited by Law No. 5 of 1999 which may occur through different pricing made by businesses for the same goods and or services of a manufacturer based on certain criteria, or may also occur in charging different prices to different customers based on disproportionate additions above marginal costs. Price discrimination can also be interpreted as a strategy for pricing that tries to get more consumer surpluses.

According to Shrimp Law No. 5 of 1999 on Prohibition of Monopoly Practice and Unhealthy Business Competition, there are four kinds of prohibited price-setting practices, namely:

1. Price fixing
   Pricing is an agreement among sellers competing in the same market to raise or set prices with the aim of limiting competition between them and gaining more profit.

2. Price discrimination
   Price discrimination is pricing to one consumer that differs from price to another in different market segments for the same goods and/or services for reasons unrelated to production costs.

3. Predatory pricing
   Damaging pricing is a strategy usually carried out by dominant companies to get rid of their competitors in a market by setting a very low price or sales price, below variable costs.
4. Resale price maintenance setting

Resale pricing arrangements are agreements between suppliers and distributors about the supply of certain goods and/or services based on the conditions of the agreement that the distributor will sell (resell) at a price set (unilaterally) or dictated by the supplier. The main purpose of price discrimination by businesses is to gain higher profits obtained by seizing the consumer surplus. The consumer surplus is the highest price difference that consumers are willing to pay at a price that is paid by the consumer. Implementation, many consumers are willing to pay higher, therefore the company will try to seize the surplus of those consumers by doing price discrimination.

Research Method

In this study, the research approach used is normative juridical, namely legal research that emphasizes the study of legal documents and library materials related to the subject matter. The approach is intended to study, criticize, and hopefully provide solutions. Thus to find answers to all the problems that exist, the writing of this article will be examined related matters as well as the supporting aspects of the problem.

Discussion


   Article 6 of Law No. 5 of 1999 on Prohibition of Monopoly Practices and Unhealthy Business Competition states:

   Businesses are prohibited from making agreements that result in one buyer having to pay a price different from the price that other buyers must pay for the same goods and/or services.

   Article 6 Details (Sirait, 2010):

   a. Business Estimating

      The definition of businesspeople is spelled out in Article 1 paragraph 5 of Law No. 5 of 1999 as follows:

      Businesses are individuals or business entities, whether in the form of legal entities or legal entities established and domiciled or
conducting activities within the jurisdiction of the Republic of Indonesia, either alone or together through agreements, organizing various business activities in the field of economics.

b. Agreement

The meaning of 'Agreement' in Law No. 5 of 1999 is stipulated in Article 1 paragraph (7) of Law No. 5 of 1999 as follows:

An Agreement is an act of one or more businesses to bind themselves to one or more other businesses under any name, whether written or unwritten.

c. "which may result in one buyer having to pay a price different from the price paid by the other buyer"

d. "for the same goods and/or services"

Article 1 number 16 defines the Goods as follows:

Goods are any object, whether tangible or intangible, whether moving or motionless, that can be traded, used, used, or utilized by consumers or businesses.

Article 1 number 17 defines the Service as follows:

Services are any services that take the form of jobs or achievements traded in the community for use by consumers or businesses.

While according to the Guidelines of the Business Competition Supervisory Commission on the Implementation of The Provisions of Article 6 of Law No. 5 of 1999 on Prohibition of Monopoly Practices and Unhealthy Business Competition, Article 6 as mentioned above can be described into the following elements (Pedoman Komisi Pengawas Persaingan Usaha tentang Pelaksanaan Ketentuan Pasal 6 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat) :

a. Business Estimating

The Definition of Business Person is based on the meaning as referred to in Article 1 number 5 i.e. every individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the territory of the Republic of Indonesia, either alone or together through an appointment, organizes various business activities in the field of economics.

b. Agreement

The understanding of the agreement is based on Article 1 Number 7 which defines the agreement as an act of one or more businesses that bind themselves to one or more other businesses under any name, whether
written or unwritten. Furthermore, because Article 6 is the Second Part of Law No. 5/1999 governing Pricing then the Price Discrimination referred to in Article 6 is the agreed price discrimination. Price discrimination committed unilaterally (without agreement) is stipulated in Article 19 Letter d.

The other thing is that the Agreement referred to in section 6 is an agreement between different parties in the vertical relationship such as the manufacturer and the buyer, the distributor, and the retailer. This means the agreement in question is not between the manufacturer and its competitors or its potential competitors set forth in Article 5 paragraph 1.

Given written agreements that can harm healthy competition and consumers can be evidence in court, then businesses have a strong incentive not to make them. Instead, businesses will make unwritten agreements in the form of coordination and other mechanisms that are tacit collusion.

In terms of economics, unwritten agreements are more difficult to prove and will only be effective when accompanied by credible systems and punitive mechanisms that make businesses less encouraged to violate what has been going on all along.

The requirements for coordination and mechanisms to run optimally are as follows:

1) Factors that depend on the structure of the market. For example: whether the market leader will forgive other businesses who violate unwritten agreements or punish as severely with the aim that no business person repeats the mistake.

2) The absence of regular cycles in making price adjustments.

3) The company is a price leader.

4) There is an open announcement about the price change plan.

5) There may be contractual clauses that allow manufacturers to give preferential treatment to certain businesses.

6) There is a uniform delivery price practice for all businesses.

c. Buyer
The party who will resell or consume the goods or services transacted.

d. Price
The price is the monetary value of the goods or services transacted. The price is the unit price and is not affected by the volume of transactions.

e. Different prices
Prices that occur when for the same goods different buyers are required to pay different values.

f. Same Goods/Services
The same or identical goods and/or services are based on criteria: function and nature, quantity, production cost of the delivery period associated with geographic region, time of use, payment method and marketing strategy. The goods in question are goods with the same technical functions and specifications. The services that many people consume at the same time consume them such as air, land and sea transportation is easy to identify in the event of price discrimination. But for the services provided it depends heavily on the individual conditions that consume it causing the manufacturer’s costs to vary for each consumer. So it’s hard to be perceived as price discrimination when the perpetrator is trying to discriminate against a price.

In short, neither the product nor the differentiation service belongs to the group.

The act of performing an agreement aimed at pricing different goods and/or services is prohibited by Article 6 of the Anti-Monopoly Act. The notion of a prohibited agreement, i.e. agreeing is suspected of discriminating against the position of one consumer with another consumer, by establishing different prices on the same goods/services (Margono, 2009).

In this case not all such different price formations are prohibited by Law No. 5 of 1999. Because, because the cost that has been incurred by the seller for one consumer with another is different, then the price is logically different. Therefore, technically new price discrimination can be said to be prohibited by Law No. 5 of 1999, if there is a price difference for one consumer and another consumer which is not essentially a reflection of the difference in margin costs incurred by the seller (Margono, 2009).

Price Discrimination is the ability of businesses to determine prices on the same goods and services at the same quality in different consumers. Price Discrimination should be distinguished by Price differentiation. In a technical-economic view, Price Differentiation also
defined the sale of the same commodity to different buyers at different prices. In a technical implementation, a company can perform technical pricing strategies that are indented with the techniques performed in Price Discrimination. A pricing strategy implemented by the company is categorized as prohibited Price Discrimination behavior if the following conditions occur (Pedoman Komisi Pengawas Persaingan Usaha tentang Pelaksanaan Ketentuan Pasal 6 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat):

A. Sellers/manufacturers have a certain monopolistic power in at least one market.
B. There is an inter-market split that does not allow buyers to resale (no-arbitrage).
C. Buyers in different markets have different levels of demand and demand elasticity.
D. Monopolistic sellers/manufacturers can take advantage of the difference in willingness to pay from each consumer.

When these 4 conditions occur than when a company performs different pricing for the same goods and services with the same quality and quantity on different buyers, it is confirmed to have committed Price Discrimination prohibited by Article 6 (Margono, 2009).

In its implementation, there are several techniques of price discrimination, namely as follows (Margono, 2009):

a. Price Discrimination in the form of rebates (deductions).

The first form of Price Discrimination consists of rebates (payment deductions) imposed on the seller by certain buyers that are not given to other buyers. Rebates are said to be price discrimination because buyers who get rebates pay a cheaper price compared to other buyers who buy the same item.

There are three rebate categories:

1) Quantity rebates are based on the volume of purchase quantity). The note that needs to be underlined is that the quantity rebate given to large-scale buyers is not categorized as price discrimination but rather cost efficiency.

2) Fidelity rebate; discounts offered to buyers who have tied themselves to the seller so that rebates are given in both large and small volumes. Fidelity rebates are generally assessed as strategies aimed at preventing competitors from developing.
3) Target rebate; Rebates are given to business partners whose sales targets are more than in previous periods.

b. Selective Price Cuts
Where the seller selectively cuts the price on a particular buyer on a particular market secretary that is not given to the buyer in the other market secretary. These selective Rebates are usually given to buyers in high-chance markets switching to other competitors. but for other buyers in different markets still charged higher prices.

c. Tied and Bundled Pricing.
A company sells at a low price if buying two items in one package compared to if the buyer only buys two items individually.

The relevance of this Article 6 with other articles in Law No. 5 of 1999 on Prohibition of Monopoly Practices and Unhealthy Business Competition (Margono, 2009):

a. Article 5 paragraph (1)
The agreement referred to in article 6 is an agreement between the parties who are in a vertical relationship such as the manufacturer and the buyer, the distributor, and the retailer. This means that Article 6 does not include agreements made between the manufacturer and its competitors or its potential competitors (horizontal agreements). The horizontal agreement is covered by Article 5 paragraph (1). Thus if two business competitors agree that they will treat a particular buyer differently concerning the price then the provisions of Article 5 (1) can be applied.

b. Article 19 Letter d
Furthermore, because article 6 is the Second Part of Law No. 5/1999 governing Pricing, the price discrimination referred to in article 6 is agreed price discrimination. While price discrimination committed unilaterally (without agreement) is stipulated in Article 19 Letter d. Price discrimination can be unilaterally implemented if the business that sets the different prices has a dominant position. In practice, it is not closed the possibility of business actors being exposed to double articles i.e. violation of Article 6 and Article 19 letter (d). In this case, multiple supervision, namely the behavior in question can be supervised either through the application of Article 6 or Article 19 letter (d).

3. Examples of Price Discrimination Cases
For example, Company A and Company B sell the same products and are major competitors in San Francisco. Company A also sells its goods in Oakland, while Company B does not. If Company A charges different prices for its customers in San Francisco and Oakland, it may be an unhealthy practice. The most likely to occur in the illustration above is that Company A will provide lower prices for consumers in San Francisco, as it hopes to usurp its competitors. As for closing the expected loss of profits earned from San Francisco consumers, it could impose on consumers in Oakland, a place where it has no meaningful rivals (Siswanto, 2002).

While the other thing is if price discrimination can occur if the business person without special reason demands suppliers or buyers pay different prices for the same goods or services. In the world of trading is known bonus system that does not interfere with business competition. It is necessary to look on a case-by-case basis, whether there is an element in the bonus system that has the opportunity to create barriers to entry into the market. This is for example the case if there is a competitor's selling line will be stuck because the discount is applied for the long term and done by strong businesses in the market. The bonus system rewards buyers who buy certain needs only to certain businesses. If a competitor's supply line is closed by the discounter, such a rebate may be a drag, instead a discount of the amount may be permitted if the discount is a battery of cost savings by the seller.

Some examples of price discrimination, among others (Pedoman Komisi Pengawas Persaingan Usaha tentang Pelaksanaan Ketentuan Pasal 6 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat) :

a. Price Discrimination in the form of rebates (rebates)

Rebates are a form of Price Discrimination because buyers who get rebates pay a cheaper price than other buyers who buy the same item in the same market.

There are three forms of rebates:

1) Quantity rebate i.e. deductions imposed due to the volume of purchase of goods.

Example 1. Company A has 10 Distributors (B, C, D, E, F, G, H, I, J, K) that distribute Z products produced by Company A in District X. Company A offers distributors who can absorb at least 15% of their products to be distributed from the total

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products allocated in District Z will get a discount. Due to economic scale constraints, only three companies (C, G, and H) were able to fulfill the deal so that only three companies received rebates/ rebates. The percentage of Z products from the Company distributed by each distributor is B=5%, C=15%, D=5%, E=5% , F= 10%, G=20% ,H=30% , I=5%, J= 2.5% and K=2.5%. The U.S. Act of Appen there is a prohibited practice of Price Discrimination.

2) Fidelity rebate; discounts offered to buyers who have tied themselves to the seller so that rebates are given in both large and small volumes. Fidelity rebates are generally assessed as strategies aimed at preventing competitors from developing.

Fidelity Rebate Case Example 1:
An X drug company with a major supplier of the drug X in City Y guarantees that all distributors who are willing to take the drug from their company will get a rebate for every drug taken produced by the drug company. The price Strategy by company X is classified as Prohibited Price Discrimination Behavior.

Fidelity Rebate Case Example 2:
Company X which is the dominant producer of Y goods which at the same time faces increased competition from Y products originating from China and Thailand. Company X will withdraw rebates from distributors it assesses will import Y products from China and Thailand. Instead, Company X will provide rebates for distributors who are willing to only buy those Y products from them only and not take imported Y products from China and Thailand. The price Strategy by company X is classified as Prohibited Price Discrimination Behavior.

3) Target rebate; Rebates are given to business partners whose sales targets are more than in previous periods.

Example Case 1 of target rebate:
Two buyers/customers (Travel Agent) purchase Airline G tickets at the same level (number, destination, class) but in reality get different rebates where A gets a greater rebate from travel agent B because the sale of tickets from travel A in the previous year is greater than the Travel Agent B. The Pricing Strategy by the Airline G is classified as prohibited Price Discrimination Behavior.
Example Case 2 target rebate:
Y company with a position of dominating in the motor vehicle industry. To increase the sales of tires produced by company Y gives bonuses to all dealers where the bonus is given depending on the number of sales they managed to achieve in the previous period. However, the purchase price of tires imposed on all dealers is the same. Price Strategy by Y company is classified as Prohibited Price Discrimination Behavior.

b. Price Discrimination in the form of Selective Price Cut
Where the seller selectively cuts the price on a particular buyer who is expected to turn to his competitor but for other buyers still charged a higher price.
Case in point: Selective Price Cutting Company A has two main marketing areas of Z products namely District B and City C in Province X. In City, C company A has several competitors while in District B company A is a relatively dominant position. To increase sales in City C, company A provides deductions to all distributors who distribute their products but are not given to their distributors in District B. The pricing strategy carried out by company A is classified as prohibited Price Discrimination Behavior.

c. Tied and Bundled Pricing
A company sells at a low price if it buys one particular item if it is packaged with another item compared to if the buyer buys the goods separately.
Examples of Tied and Bundled Pricing Cases:
Company A is the sole distributor of Mainboard Personal Computer from PT X in City A which is commonly used by computer users in City A. At some point the U.S. company gets a business opportunity to channel new hard drives from the unknown PT Y in City A. To increase sales of The New Drive Company A sells PT Y New Hard Drive and Main Board PC PT X in one package where the main board selling price in one package is cheaper than if buyers purchase the Main Board individually.

4. Comparative Studies with Other Countries Governing Price Discrimination.
Price discrimination by Graham & Richardson is defined as "the power of a firm to charge different prices to different groups of customers". Cheaper pricing for regular customers is a simple example
of price discrimination. Generally, this price discrimination is applied by companies that are trying to expand or open new markets for their products (Siswanto, 2002).


Commonly referred to as the Anti-Monopoly Act in the United States, namely (Margono, 2009):

1) The Sherman Antitrust of 1890, 15 USCA sec. 1-7 is known as the Sherman Act.

2) The Clayton Act of 1914, 15 USCA Sec. 12-27 is known as the Clayton Act, including Section 2 of the Robinson-Patman Act, which is an amendment to the 1936 amendment.


In various considerations of the establishment of the law, the purpose is not to prevent conglomeration, but rather to apply the rule of the game of the fair competition. In turn, it is expected that due to intense competition, the growth of monopoly or oligopoly can be limited. The Law does not state that the monopoly is unlawful, but every monopoly there is, there is a possibility of an investigation into whether the position was achieved by fairness or not (Margono, 2009).

In the United States, this price discrimination is expressly stipulated in the Robinson-Patman Act of 1936 which among other things states:

"[I]t should be unlawful for any person engaged in commerce... to discriminate in price between different purchasers of commodities of like grade and quality... where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce."

The growing discontent prompted the birth of new federal legislation in 1914. The Clayton Act was presented in response to criticism and dissatisfaction with and the effectiveness of the Sherman Act. The Clayton Act lists 4 activities or practices that are considered illegal or unlawful, namely:

1) Price discrimination, i.e. selling products at different prices to buyers who are in the same position (Article 2);

2) Tying contracts and exclusive dealing contracts, such as sales contracts in which the seller is willing to sell on the condition or
condition that the buyer must cease to transact with the seller’s rivals (Article 3);
3) Corporate merger, i.e. acquisition action against competing companies (Article 7);
4) Interlocking directorate: directors or board members in the same position in companies that should be in competing positions.

b. Regulations on Price Discrimination in Europe

It is also similar to the application of Price Discrimination embraced in other countries. The Prohibition of Price Discrimination in Europe demonstrates conditional price discrimination i.e. price discrimination per committed by the dominant market participants (article 82 (c)) European Competition Law; one or several firms holding dominant position applying a dissimilar condition to equivalent transaction with other trading parties, thereby placing them at a competitive disadvantage” which is an abuse of dominant position in the market, where this dissimilar condition in the explanation includes the dissimilar price (Geradin and Petit, dalam, Pedoman Komisi Pengawas Persaingan Usaha tentang Pelaksanaan Ketentuan Pasal 6 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat).

c. Regulations on Price Discrimination in Canada.

Canada was one of the first countries to have a rule of law to prevent trade-hindering actions made through agreements or approvals of companies. According to records, the provision was already owned by Canada in 1899. Nevertheless, Canada’s comprehensive business competition provisions were only in place at the time of the enacting of the Competition Act of 1986 (Siswanto, 2002).

The Competition Act 1986 recognizes two types of actions that are considered to violate the terms of business competition. The first is actions that the Competition Act 1986 considers criminal offenses. Included in these criminal offenses are conspiracy, bid-rigging, price discrimination, predatory pricing, price maintenance, and misleading advertising. Meanwhile, the second type of action is referred to as "reviewable practices", which is a violation of the Competition Act 1986 but is not a criminal offense. According to Canadian law, "reviewable practices" include mergers, abuse of dominance, refusals to deal, exclusive dealing, and tied selling. Unlike "criminal offenses" examined
in ordinary criminal courts, "reviewable practices" are examined by the Competition Tribunal, a quasi-judicial administrative institution. Because it is not a criminal court, the Competition Tribunal does not have the authority to apply criminals. However, the authority of the Tribunal is considerable, including the authority to order the termination of actions classified as "reviewable practices" and ordering the breakdown of the company’s assets and shares. Although "reviewable practices" are not criminal charges, the failure of the perpetrator to comply with the Competition Tribunal order is considered a criminal offense that is threatened with criminal fines or imprisonment and can be considered an insult to the court (contempt of court) (Siswanto, 2002).

d. Regulations on Price Discrimination in Japan.

Anti-Monopoly Law in Japan prohibits private party monopolies that have been carried out by domestic companies, which incurs unreasonable trade barriers, restrictive treatment in monopoly conditions, and so on. Among these arrangements, some are often problematic for foreign companies. The problems, among others, are as follows (Margono, 2009):

1) Prohibition of Holding Company

As applies to domestic companies. Foreign companies are also prohibited from holding companies that in principle control the business activities of domestic companies. In Japan. Merging in the sense of incorporating or owning a holding company is not justified. For this purpose, the Fair Trade Commission issued its guidance entitled Interpretations of the Application of the Provisions of Section 9 of the Anti-Monopoly Act concerning Venture Capital Firms.

2) Restrictions on Holding Shares, Related To Mergers, and Business Acquisitions.

If competition in a particular field is limited due to the acquisition of shares by a foreign or domestic company over other domestic companies, such acquisition or holding of shares is prohibited. In connection with this provision, if a foreign company holds a shareholding of a domestic company, it must report the ownership of the shares in question within 3 months after the end of each financial year (as is the obligation also applies to domestic companies).
Anti-Monopoly Law prohibits any restrictions on business competition in certain fields arising from the inclusion (dispatch) or interlocking of employees or officials of companies, or due to the inclusion of employees or officials of a company against other companies that are actually in a competing position, conducted through unsanctioned transactions. Furthermore, if an official at the company also concurrently as an official at another domestic company, and if the gross assets of both companies exceed 2 billion yen, then the Free Trade Commission (FTC) must be notified of the assignment of the relevant officer no later than 30 days after his appointment.

Before a merger or business assignment (assignment of business) is held, a notice must be sent in advance to the free trade commission address.

3) Prohibition of Fraudulent Trading Practices

Fraudulent (unfair) trading practices, such as unfair rejections of transactions, discriminatory treatment of trading terms, and unreasonable bargaining or purchase transactions through high reasonable pricing (markups), are generally prohibited under Japan’s Anti-Monopoly Act.

Cartels are prohibited, but the Free Trade Commission also monitors coordinated price increases. Violations, in this case, are still possible to be addressed only by the provisions of abatement or surcharges.

e. France: le Conseil de la Concurrence

When Canada passed the Competition Act in 1986, by chance France also issued new legislation in the field of business competition. Under the 1986 Ordinance, the main role of enforcing the terms of business competition in France is held by an independent administrative authority called le Conseil de la Concurrence. le Conseil de la Concurrence has 16 members consisting mostly of administrative and civil judges. Some of the other members are people who have special expertise in the field of consumer affairs /competition policy as well as from businesses (Siswanto, 2002).

f. Germany: Bundeskartellamt
In Germany, its business competition law is run by an independent body called the Bundeskartellamt (Federal Cartel Office). Institutionally this body is under the Ministry of Economy, but in dealing with business competition cases, the body is independent. Bundeskartellamt has an organization similar to the usual judicial body and its verdict can be compared to the judicial procedure in general. In addition to the Bundeskartellamt, Germany also has another organ in the implementation of its business competition law, the Monopoly Commission. However, unlike the Bundeskartellamt, the Monopolies Commission, which consists of legal and economic experts, has only reporting, reviewing, and recommendation functions (Siswanto, 2002).

Furthermore, there are some important differences between the European Union (EU) business competition law and United States (US) antitrust law, namely as follows:

a. Important Differences First.

The first important difference between European Union (EU) business competition law and United States (US) antitrust law is a very different procedure to the handling of restraint of the trade area. EU legislation emphasizes more on setting up practices, while the U.S. Antitrust Act further reviews them from vertical restrictions by basing themselves on the concept of the rule of reason. As a result, under EU law, the process is very different. First, it must be proven whether an allegation of a violation of restriction is a potential violation of Article 85 paragraph (1). There is much debate in the EU’s determination to determine this threshold determination, but if one thinks there has been a potential violation, no one can analyze it based on a rule of reason, but instead must find a way under Article 85 paragraph (3) if they wish to be exempt from such demands. To do so there are two roads, namely:

1) First, look for provisions governing block exemption regulation that cover the type of agreement and present it if the situation is considered sufficiently qualified;

2) Secondly, to reduce the burden and provide certainty to companies, the EU Commission publishes regulations
containing the conditions under which certain agreements may be excluded in advance without having to give the relevant agreement to the commission. These rules generally contain descriptions of the types of agreements, white list restrictions or restrictions, blacklist restrictions or restrictions, and other requirements (e.g., sometimes in the form of maximum turnover or market share) (Margono, 2009).

The EU Commission publishes the provisions of the block exemption stipulated for various agreements, including exclusive distribution agreements (but not for selective distribution), exclusive purchasing, patent, know-how, patent/know-how licenses (but not for licenses for brands or copyrights), R&D (research and development) agreements, franchising, specialization agreements, i.e. distribution agreements for certain commodities (e.g., motor vehicles and beer). If it is unable to meet the block exclusion requirements, then another effort that can be taken is to try to be subject to individual exemption from the commission. Therefore a notice of agreement must be sent to the commission address (along with a form of the field known as Form A/B). The commission has the authority to grant such exemptions, grant exceptions with modifications to the agreement, or cancel them. This is all based on the fact that the granting of an exception cannot be granted by the court because it is the commission that has exclusive jurisdiction to do so. The applicant may also seek an opinion from the commission that the agreement does not violate Article 85 paragraph (1) of the Anti-Monopoly Act (Margono, 2009).

b. Important Differences Between The Two

The second important difference is the substantive differences that have a very large impact in the field of restriction or vertical non-price restrictions (vertical nonprice restraintso. While the forerunner of antitrust arrangements in various ways has always been associated with competitive economic philosophy, the fact suggests that the right is not the primary purpose of the Treaty of Rome. The issue considered most important in the process of establishing the
European Common Market (to prevent the segmentation of these markets into separate national markets), has brought the EU commission and the EU Court of Justice to a very different analysis in response to an issue of non priced vertical restrictions. EU law is highly suspicious of the processes that allow market segmentation, and therefore companies must be very careful in shaping their distribution in Europe. A selective distribution strategy that would easily escape the analysis of the rule of reason in the US, in Europe may not only be considered in violation of Article 85 paragraph (i) but also deemed ineligible to obtain "individual exemptions" (Margono, 2009).

c. Other Differences

Another difference between European Union (EU) competition law and U.S. antitrust law, which concerns the legal environment, for example, relates to the role of law enforcement by the private sector that is substantially in an EU country different from in the Americas. Although private rights to act exist in the courts of EU member states, the situation is much different from in the US. The system in the US provides relatively easy access to judicial buildings, while the European system is generally in the practice of limiting the provisions of contingent fees and payments by the loser. The system in the US prioritizes extensive and expansive pretrial discovery (which adds to the increasing cost and difficulty of the judicial process), while in Europe it is generally not. The American system also prioritizes decision-making by juries, tending toward large verdicts, doubling losses, and other protrusions, all of which are generally unknown in European countries (Margono, 2009).


In the conception of anti-monopoly laws several price discriminations are prohibited, namely as follows (Margono, 2009):

a. Primary price discrimination

What is meant by the definition of primary line price discrimination is discrimination committed by a business person that can result in a loss for the competitor's business.
b. Secondary price discrimination

While the meaning of secondary line price discrimination is price discrimination committed by a business person that can have negative consequences on the consumers of its competitors.

c. Direct price discrimination

Direct price discrimination is price discrimination given by a seller to buyers where it appears that the price is nominally different from one buyer to another, for example, the buyer with the other buyer still buys for Rp 50,000.00 per kilogram, but there are certain conveniences or certain additional services provided only to certain buyers that are done discriminatorily. If calculated the final price each buyer has to pay, each will be different.

The provisions in Article 6 of Law No. 5 of 1999 prohibit any price discrimination agreed by the supplier to the detriment of each buyer. Price discrimination will certainly cause great harm to the affected party, where the supplier through such a strategy can force the buyer affected by such discrimination to be knocked out of the market because it has to pay a price that makes it unable to compete with other businesses competitors. The provision would also protect buyers who receive the heaviest blow from discrimination. It can then be analyzed that Article 6 of Law No. 5 of 1999 needs to be interpreted systematically through comparison with other prohibited elements contained in Articles 5 and 7 of Law No. 5 of 1999.

The provisions of Article 6 of Law No. 5/1999 include agreements, both between actual competitors and between potential competitors, as well as classic cartels, as agreements in a vertical relationship between suppliers and their buyers. But if two business competitors agree that they will treat certain buyers differently concerning the price, then what can be applied is Article 5 paragraph (i), not Article 6 of Law No. 5/1999, because this condition is in a horizontal relationship. While Article 6 of Law No. 5/1999 is based on the discrimination price agreed in a vertical relationship, namely agreements between manufacturers and agents. From http://khaerulhtanjung.blogspot.co.id/2009/10/diskrimasi-harga-menurut-uu.html, in connection with the implementation of Article 6 of Law No. 5/1999 should be distinguished as follows:

a. Goods and/or services concerned
It is difficult to determine the standard that the goods and/or services are the same as referred to Article 6 of Law No. 5/1999. The term "goods and/or services of the same" is also found in Article 1 Number 10 of Law No. 5/1999 in the definition of the relevant market in terms of factual. However, from the formulation of Article 6 of Law No. 5/1999, it is concluded that the term "same item" does not refer to the division of the market according to Article 1 Number 10, but only to a certain aspect. Contrary to Article 1 Number 10 of Law No. 5/1999, Article 6 does not offend substitutions. The fact is that the interpretation of Article 6 is narrow so that goods and/or services must be the same. The problem arising in connection with the implementation of Article 6 of Law No. 5/1999 is the calculation of transport costs if goods and/or services are the same where different prices are set, sold in different markets in terms of geography.

b. Quantity of goods and scope of service
The formulation of Article 6 of Law No. 5/1999 only reaches out to price discrimination agreements for certain goods and/or services. Price discrimination can only occur for the same goods as the same quantity. Therefore price discrimination agreements can only be done against the price per unit quantity. Against the goods, the unit of quantity can be determined based on the number of goods sold. But against the service can not be determined the right benchmark, so it is recommended that the rewards for certain services be calculated qualitatively.

c. Different prices
As a result of the agreement, businesses must request different prices for the same goods and/or services from the buyer. The agreement itself is sufficient, it does not need to be proven that they have demanded different prices. According to Article 6 of Law No. 5/1999, the price discrimination agreement is already prohibited, let alone the act of discrimination itself.

In prohibiting price discrimination, at least anti-monopoly laws should wisely consider the following factors (Margono, 2009):

a. Similar production costs.

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b. The similarity of quality and quantity of goods sold.
c. Similar costs for producing, selling, and delivery.
d. There is no price change due to changes or time differences.
e. The marketing activity of the goods must be the same.
f. Different pricing components, including if there are perks, bonuses, or conveniences/services from the seller are given differently to one buyer with another buyer.

In certain markets, manufacturers can set prices that may generate a much higher profit than what is generated if the manufacturer only sets one price for all consumers. These different pricing rates can also undermine business competition. One of them sets price discrimination. In this case, there are three types and three strategic levels of price discrimination, where each level demands different information about consumers, namely (Usman, 2004):

a. Price discrimination is perfect, where manufacturers will set different prices for each consumer. Each consumer will be charged the highest price he or she can afford. By setting this strategy, manufacturers will absorb the entire consumer surplus, so that it can achieve the highest profit. This strategy can only be implemented in certain cases, as it requires manufacturers to know exactly what the maximum amount consumers want to pay for the number of goods offered.

b. In situations where manufacturers cannot identify the maximum price that can be charged for each consumer or a situation where the manufacturer cannot continue the same pricing structure for additional unit sales, then the manufacturer can establish a cyclical strategy of the second price level, in which the manufacturer will implement a portion of the consumer surplus. In this strategy, manufacturers apply different prices to each buyer based on the number of goods purchased. Buyers who are willing to buy more goods are given a cheaper price per unit. The fewer items purchased, the more expensive the price per unit. This strategy is done a lot in wholesale sales or supermarkets.

c. The latter form of price discrimination is generally applied by manufacturers who know that demand for their products
varies systemically based on consumer characteristics and demographic groups. In these conditions, manufacturers can benefit by charging different tariffs for each different group of consumers.

Therefore, it can be noted that discrimination criteria are always required cooperation treatment of two buyers or sellers by business people. Businesses that discriminate must be in a favorable position in the competition because otherwise will not allow any loss in the competition. There are no regulations that determine absolutely that businesses should treat suppliers or buyers in the same way. New discrimination is considered an unhealthy business competition if business estimating unaccountable businesses are doing the same conditions in different ways.

Discrimination can have at least two consequences that interfere with competition, namely:

a. The seller who controls the market can push his competitors out of the market through a discrimination strategy, in which he is more concerned with certain buy-to-like and thus blocked supply lines;

b. Discrimination can also result in a business being discriminated against from the market for a long time.

Furthermore, the Business Competition Supervision Commission (KPPU) has the authority to impose sanctions in the form of administrative measures as referred to in Article 47 of Law No. 5 of 1999 against businesses that violate the provisions of the law, to enforce competition law based on Law No. 5 of 1999. These administrative actions can include:

a. Order to businesses to cease activities proven to discriminate against prices as referred to in Article 6 (Article 47 paragraph (2) item c and/or

b. Determination of Indemnity payment (article 47 paragraph (2) of point f and/or

c. The imposition of fines as low as Rp 1,000,000,000.00 (one billion rupiah) and as high as Rp 25,000,000,000,00 (twenty-five billion rupiah) (article 47 paragraph (2) item g)
Violation of article 6 may also be subject to the basic criminal penalty as stipulated in article 48 paragraph(2) of Law No. 5 of 1999 which is a criminal fine as low as Rp5000,000,000,000.00 (five billion rupiah) and as high as Rp 25,000,000,000.00 (twenty-five rupiah) or a prison sentence instead of a fine of 5 (five) months.

Against the basic criminal can also be convicted of additional crimes against violations of Article 6 as stipulated in Article 49 of Law No. 5 of 1999 in the form of:

a. Revocation of business license, or

b. Prohibition to businesses that have been proven to violate this law to hold the position of board of directors or commissioners for at least 2 (two) years and 5 (five) years or

c. Termination of certain activities or actions that cause harm to others.

Conclusion

Based on the above discussion, it is obtained as follows:

1. According to Article 6 of Law No. 5 of 1999 on Prohibition of Monopoly Practice and Unhealthy Business Competition states that Businesses are prohibited from making agreements that result in one buyer having to pay a price different from the price that other buyers must pay for the same goods and/or services. The details of Article 6 of Law No. 5 of 1999 consist of a) business people, described in Article 1; b) the agreement, which is stipulated in Article 1 paragraph (7); c) "which may result in one buyer having to pay a price different from the price paid by the other buyer"; d) "for the same goods and/or services", where Article 1 number 16 defines "Goods", and Article 1 number 17 defines "Services".

2. According to the Guidelines of the Business Competition Supervisory Commission on the Implementation of Provisions of Article 6 of Law No. 5 of 1999 on Prohibition of Monopoly Practice and Competition of Unhealthy Businesses, price discrimination is the ability of businesses to determine prices on the same goods and services at the same quality in different consumers. In its implementation, there are several price discrimination techniques, namely price discrimination in the form of rebates.
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(deductions), Selective Price Cuts, and Tied and Bundled Pricing. Furthermore, article 6 has relevance to other articles in Law No. 5 of 1999, namely Article 5 paragraph (i), and Article 19 Letter d of Law No. 5 of 1999.

3. There are several examples of price discrimination, such as cases in the case of price discrimination in the form of rebates, price discrimination in the form of a selective price cut, and price discrimination in the form of tied and bundled pricing, as the above cases are contained in the Guidelines of the Business Competition Supervisory Commission on the Implementation of Provisions of Article 5 of Law No. 5 of 1999 on Prohibition of Monopoly Practices and Unhealthy Business Competition.

4. There are several comparatively put forward business competition law enforcement organs in some countries, namely a) in the United States, this price discrimination is expressly regulated in the Robinson-Patman Act 1936; b) Prohibition of Price discrimination in Europe indicates conditional price discrimination i.e. price discrimination per committed by the dominant market participants (article 82 (c)) European Competition Law; c) Canada's new comprehensive business competition provisions at the time of the enacting of the Competition Act of 1986; d) The Anti-Monopoly Act in Japan prohibits fraudulent (unfair) trade practices, such as unfair rejections of transactions, discriminatory treatment of trading terms, and unreasonable bargaining or purchase transactions through unreasonable pricing (mark up); e) France issued new legislation in the field of business competition, namely le Conseil de la Concurrence; and f) In Germany, competition law is run by an independent body called the Bundeskartellamt (Federal Cartel Office).

5. In the conception of anti-monopoly laws, there are several prohibited price discriminations, namely primary price discrimination, secondary price discrimination, and direct price discrimination. In prohibiting price discrimination, at least anti-monopoly laws must wisely consider the following factors, the similarity of production costs, the similarity of the quality and quantity of goods sold, the similarity of costs for producing, selling, and delivery, no price changes due to changes or time differences, marketing activities of the goods tribute must be the same, and different price components, including if there are perks, bonuses, or conveniences/services of the seller given varying to one buyer with another buyer.
References


