JURNAL ILMIAH METADATA, ISSN :2723 -7737, Vol. 8 No. 2
Edition May 2026, Published: 04-05-2026, Page 442-445
DOI: 10.47652/metadata.v8i2.1096

UNFAIR BUSINESS COMPETITION AGAINST TRADITIONAL RETAILERS DUE TO THE DOMINANCE OF THE MODERN RETAIL MARKET

by
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ABSTRACT

The market dominance of modern retail has created unequal competition for traditional retailers. Modern retailers possess substantial capital, extensive distribution networks, and efficient management systems, enabling them to sell goods at lower prices. Conversely, traditional traders purchase goods in small quantities, resulting in higher cost prices. Modern retailers offer shopping comfort through air conditioning, good lighting, neat product displays, cashless payment options, and adequate parking. These are key preferences for modern consumers. Many modern retailers are permitted to operate near traditional markets or residential areas, seizing market share that was previously the catchment area of traditional traders.
Keywords: *Business Competition, Unhealthy, Retail*

PERSAINGAN USAHA TIDAK SEHAT TERHADAP PEDAGANG RITEL TRADISIONAL AKIBAT DOMINASI PASAR RITEL MODERN

ABSTRACT

Dominasi pasar oleh ritel modern memicu persaingan usaha yang tidak seimbang bagi pedagang ritel tradisional. Ritel modern memiliki modal besar, jaringan distribusi luas, dan sistem manajemen yang efisien, sehingga mampu menjual barang dengan harga lebih murah. Sebaliknya, pedagang tradisional membeli barang dalam skala kecil sehingga harga pokoknya lebih tinggi. Ritel modern menawarkan kenyamanan berbelanja melalui pendingin ruangan (AC), penerangan yang baik, tata letak produk yang rapi, fasilitas pembayaran nontunai, dan area parkir yang memadai. Hal ini menjadi preferensi utama konsumen modern. Banyak ritel modern yang diizinkan beroperasi di dekat pasar tradisional atau pemukiman warga. Hal ini merebut pangsa pasar yang sebelumnya menjadi wilayah tangkapan (catchment area) pedagang tradisional.
Kata Kunci : *Persaingan Usaha, Tidak Sehat, Ritel*

INTRODUCTION

One of the issues when discussing the business climate is the existence of unfair competition. Essentially, businesses prioritize or desire substantial profits in their respective sectors. This directly demands a dominant position in a market. Having a dominant position in a market is the dream of every entrepreneur. This is understandable, as being dominant in a market will

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undoubtedly provide maximum profits for entrepreneurs. Therefore, gaining a market advantage is not prohibited; in fact, it will certainly spur entrepreneurs to implement efficiencies and innovations to produce quality products at competitive prices amidst the competition with other businesses in the market. Achieving a dominant position in a market is not an easy matter for every business actor, for example, the business actor must increase his financial capabilities, ability to access supply or sales, and the ability to adjust the supply or demand for certain goods or services first, only then can the business actor achieve a dominant position in the market.

Achieving a dominant position in a market is no easy feat. Therefore, business owners tend to be driven to do whatever it takes to achieve and maintain their dominant position, preventing it from being overtaken by other business owners. Sometimes, these dominant positions even resort to anti-competitive actions to maintain their dominant position. It is undeniable that a nation cannot progress without a rapidly developing and efficient business world. The business world is a world that cannot stand alone. Many aspects of various other worlds are directly or indirectly involved with this business world. Although many people assume that the growth of a country's economy depends on the hard work of business owners and other workers, the regulations and laws issued by their creators also play a significant role.

The rapid development of the business world is sometimes not matched by the creation of regulatory guidelines. A business world that grows too rapidly to abide by existing guidelines will clearly be detrimental in the end. One of the crucial regulations governing business activities is how businesses compete with each other. Competition should be viewed positively by the business world. It's considered an essential element of the modern economy. Businesses recognize that it's natural to seek maximum profits in the business world, but it should be done through fair competition. Competition benefits both businesses and consumers. With competition, businesses strive to continually improve their products and services, innovate, and strive to provide the best possible service to consumers. Competition leads to increased efficiency in producing products and services. Furthermore, competition benefits consumers by providing options for purchasing specific products or services at affordable prices and with high quality.

Economists argue that a society with an economy open to competition will have lower prices, better products, and a wider choice for consumers. To implement and oversee this, antitrust laws are essential. These laws are expected to provide oversight of business practices, and

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furthermore, achieve economic efficiency and maintain reasonable prices for goods and services of high quality. The business world is a complex entity that cannot stand alone. Many aspects of various other sectors are directly and indirectly involved in it. These interconnectedness sometimes disregards the business world's priorities, ultimately forcing the business world to comply with existing guidelines and often even prioritize them, ignoring existing regulations. Indeed, no country can function and progress without a rapidly developing and efficient business world as a supporting factor. One of the most competitive business sectors is the retail sector, or retail companies. Retail is the final stage of a long marketing process. In other words, it's the process of selling a product directly to the end consumer. This end consumer is the purchaser of goods or services who uses the product for personal use or personal consumption. This final buyer purchases retail products from a retail company such as a supermarket or mini market without any intention of reselling.

Retail companies are companies that target consumers or end-users. As such, their distribution isn't concentrated in a single, crowded area, but rather spreads to almost every corner of an area. It's no surprise, then, that minimarkets are now flourishing and populating every corner of the country like mushrooms in the rainy season. The single, undeniable goal of any retail company is to maximize profits. This is the reason why retail owners like Alfamart, Indomart, and others strive to build and open as many branches as possible to capture all the money from these end-users. One tangible manifestation of capital power, a key strength of retailers, is the existence of retail forms influenced by large capital. Large retail companies such as Hypermart, Carrefour, Matahari Department Store, Ramayana, Suzuya, Macan Yohan, Naga Mas, Berastagi Department Store, and so on have emerged. These retail companies differ fundamentally from the aforementioned retailers due to their substantial capital.

RESEARCH METHODS

The object of this research isBusiness competition among retail traders. This research is descriptive in nature. Descriptive research is intended to provide the most accurate data possible. This descriptive research begins with collecting data related to the discussion above, then compiling, classifying, analyzing, and interpreting the data to obtain a clear picture of the phenomenon being studied. The approach used is a normative and empirical legal approach. The normative legal approach is used to study the laws and regulations related to franchise

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agreements to determine whether the existing legal basis is sufficient to regulate business competition among retail traders. Meanwhile, the empirical legal approach is carried out by collecting materials relevant to the problems of this thesis by conducting interviews with retail traders.

RESEARCH RESULTS AND DISCUSSION

Article 1 number 7 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that: "An agreement is an act of one or more business actors to bind themselves to one or more other business actors under any name, either in writing or verbally." Based on the formulation of this definition, it can be concluded that the elements of an agreement according to the concept of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition include:

1) An agreement occurs because of an act
2) These actions are carried out by business actors as parties to the agreement
3) Agreements can be made in writing or unwritten.
4) Does not mention the purpose of the agreement.

Compared with the definition given in Article 1313 of the Civil Code which formulates an agreement as an act by which one or more people bind themselves to one or more people, it can be seen that in principle there is no significant difference, only that in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition the definition that has been given expressly mentions business actors as legal subjects, namely every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the legal territory of the Republic of Indonesia, either alone or together through an agreement, carrying out various businesses in the economic sector. The types of agreements prohibited by Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition are regulated in Articles 4 to 16. The types of agreements described below are prohibited because they can result in monopolistic practices and unfair business competition. The types of agreements are as follows:

1. Oligopoly

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Oligopoly is a market condition where the number of producers and buyers of goods is small, so that they or one of them can influence market prices.

1. Pricing.

Price fixing agreements prohibited in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition include four types of agreements, namely:

2. Price fixing

The prohibition on price fixing agreements is contained in Article 5 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, which states that: "Business actors are prohibited from making agreements with competing business actors to determine the price for the quality of goods and/or services that must be paid by consumers or customers in the same relevant market."

3. Price discrimination

Article 6 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that "Business actors are prohibited from making agreements that result in one buyer having to pay a different price from the price that must be paid by another buyer for the same goods and/or services." So in this article there is an agreement between business actors that results in different treatment between one buyer and another. One buyer must pay more or less than another buyer for the same goods or services. This is not allowed because it will cause unfair business competition between business actors.

4. Pricing below market price or selling at a loss (predatory pricing)

Article 7 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that “Business actors are prohibited from making agreements with their competing business actors to set prices below market prices, which can result in unfair business competition.” On the one hand, setting prices below marginal costs will benefit consumers in the short term, but on the other hand, it will be very detrimental to competitors (other producers). This predatory pricing is actually the result of an unhealthy price war between business actors in order to capture the market.

5. Resale price maintenance

Article 8 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that: "Business actors are prohibited from

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making agreements with other business actors which contain conditions that the recipient of goods and/or services will not sell or resupply the goods and/or services received at a price lower than the agreed price which may result in unfair business competition."

6. Division of Regions

Article 9 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that: "Business actors are prohibited from making agreements with competing business actors which aim to divide marketing areas or allocate markets for goods and/or services which may result in monopolistic practices and/or unfair business competition." Based on Article 9 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, the area division agreements that are subject to the prohibition are those where the contents of the area division agreement in question are aimed at dividing the marketing area or allocating the market for a product and/or service, where the agreement can give rise to monopolistic practices and/or unfair business competition.

7. Boycott.

This boycott is a horizontal agreement between competing business actors to refuse to enter into trade relations with other business actors.

8. Cartel.

The prohibition on cartel agreements is regulated in Article 11 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, which states: "Business actors are prohibited from making agreements with competing business actors with the intention of influencing prices by regulating the production and/or marketing of goods that can result in monopolistic practices or unfair business competition."

Cartel practices are a strategy employed by businesses to influence prices by regulating their production volumes. They assume that if their production in the market is reduced while demand for their products remains constant, prices will rise. Conversely, if there is an overabundance of their products in the market, this will inevitably lead to lower prices.

9. *Trust*

Article 12 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that: "Business actors are prohibited from making agreements with other business actors to cooperate by forming a joint company or larger

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corporation, while maintaining and preserving the survival of each member company or corporation, which aims to control the production and/or marketing of goods and/or services, which can result in monopolistic practices and/or unfair business competition."

10. Oligopsony

Oligopsony is a market structure dominated by a small number of consumers who control purchasing power. This market structure shares similarities with an oligopoly, except that it is concentrated in the input market. Therefore, distortions caused by collusion between market participants will distort the input market. Oligopsony is a unique form of anti-competitive practice. This is because in oligopsony, the victims are producers or sellers, whereas in other forms of anti-competitive practices (such as price fixing, price discrimination, and cartels), the consumers are usually the victims.

Oligopsony, a consumer makes an agreement with another consumer with the aim of jointly controlling the purchase or receipt of supplies, which ultimately controls the price of goods or services in the relevant market. Thus, simply put, oligopsony is a situation where two or more business actors control the receipt of supplies or are the sole buyers of goods and/or services in a commodity market. With oligopsony practices, producers or sellers have no other alternative to selling their products other than to the businesses that have entered into an oligopsony agreement. Having no other option for businesses to sell their products other than to the businesses engaging in oligopsony practices, they can only accept the prices set by the businesses engaging in oligopsony practices.

11. Vertical Integration

Chapter14 Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that: "business actors are prohibited from making agreements with other business actors aimed at controlling the production of a number of products included in a series of production of certain goods and/or services where each series of production is the result of processing or further processing, either in a direct or indirect series, which can result in unfair business competition and/or harm the community." Vertical integration is an agreement that occurs between several business actors at different, but interrelated, stages of production, operations, and/or distribution. The agreement takes the form of combining some or all sequential operational activities into a single production or operations chain.

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12. Closed Agreement

A closed agreement is an agreement that occurs between parties at different levels in the production process or distribution network of a good or service. These closed agreements consist of exclusive distribution agreements and tying agreements.

13. Agreements with foreign parties

Agreements with foreign parties are prohibited if they can damage business competition and commit monopolistic acts. The prohibition on agreements with foreign parties is stipulated in Article 16 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, which states that: "Business actors are prohibited from making agreements with other parties abroad that contain provisions that can result in monopolistic practices and/or unfair business competition."

Based on this article, there are specific provisions for entering into agreements with other business actors. This article applies to cases where a foreign company does not operate in the Indonesian market but influences the Indonesian market through an agreement. In other words, Article 16 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition cannot be applied to agreements where both parties are domiciled abroad, and the impact is only felt in Indonesia. Based on Article 25 paragraph (2) letter a of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, franchise minimarkets have fulfilled the provisions of having a quantitatively dominant market. Because in the Article it is stated that a business actor is said to have a dominant position if he has controlled 50% or more of the market share of a particular type of goods and services. According to the author's observation, the Alfamart franchise minimarket is possible to fulfill the provisions of a dominant market, this is due to the large number of franchise minimarket outlets that have appeared in strategic locations and are easily accessible to the public, another reason is because for the types of daily household products such as ready-to-eat packaged food and beverage products, the need for nine basic ingredients and fresh products, and household products; according to the author, the franchise minimarket has succeeded in winning the competition with traditional retail traders in the surrounding area. Article 2 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition states that business actors in Indonesia in carrying out their business activities are based on economic principles by paying attention to the balance between

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the interests of business actors and the public interest. A little note regarding economic democracy is that there is no definite definition of economic democracy, even in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition itself there is no official explanation.

Article 2 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, when examined, reveals the distinctive characteristics of competition law in Indonesia. With the principle of economic democracy that pays attention to the balance between business actors and the public interest, Indonesian competition law not only questions the realization of a healthy competitive climate and achievable efficiency, but also questions the public interest. The implementation of business activities by business actors not only pays attention to the realization of a healthy competitive climate and efficiency, but must also pay attention to the public interest. In relation to the two objectives of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, there is a definition of public interest. There are two thoughts regarding public interest in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, namely the first thought is based on the background of the formation of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, namely to overcome economic inequality, thus public interest must be interpreted as an interest that is more specifically for small business actors. In order not to cause public unrest, the implementation of business activities by large business actors at a certain point must pay attention to the balance with the public interest to ensure the certainty of equal business opportunities for large, medium, and small business actors. Furthermore, at a certain point business actors must maintain the public interest in an effort to improve the welfare of society.

The first rationale by the KPPU was emphasized in the handling of the Alfamart case in the KPPU decision No: 3/KPPU-LI/2000, it was stated that in developing its business, PT. Sumber Alfaria Trijaya, Tbk (Alfamart) did not pay enough attention to the principle of balance according to the principles of economic democracy between the interests of business actors and the public interest. It was said that competition between large business actors and small business actors had caused a disturbance in the balance of public interest because the survival of small business actors was threatened so that it had the potential to increase greater unemployment,

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there had been social unrest. In Jakarta, Bogor, Tangerang, and Bekasi, most of the 129 small business owners stated that the establishment of Alfamart had a negative impact on their businesses. This also occurred in Medan City. The author's research on a small business owner on Jalan Letda Sujono, Medan City, also stated that Alfamart had an impact on the continuity of his business, namely a drastic decrease in income or sales turnover, loss of customers, and threatened household living expenses, because previously the business was a livelihood for daily living expenses.

Disturbances in the balance have the potential to cause losses in the form of a decline in the welfare of small business actors due to business decline and because they are unable to compete with large business actors who have better capital, management and access to sources of goods. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition has become the basis or foundation for the KPPU in carrying out its duties. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition gives the KPPU a mandate to supervise the continuity of business activities carried out by business actors, both large, medium and small business actors and the KPPU can impose legal sanctions on business actors who have truly violated the provisions contained in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

Based on the discussion above, the legal protection provided by Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition for the business continuity of small business actors in traditional markets in relation to the increasing number of business actors in modern markets is based on the principles and objectives of Articles 2 and 3 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

CONCLUSION

A form of business competition among retailers involves businesses setting prices below the market value, with franchise minimarkets competing with each other to set prices well below market value. This price competition among franchise minimarkets can negatively impact traditional businesses in the surrounding area, leading to a loss of customers. Legal protection against unfair business competition for retail traders provided by Law Number 5 of 1999

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concerning the Prohibition of Monopolistic Practices and Unfair Business Competition for the business continuity of business actors in traditional markets in connection with the increasing number of business actors in modern markets is based on the principles and objectives of Article 2 and Article 3 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. This protection is due to the proliferation of business actors in modern markets which has caused many negative impacts on business actors in traditional markets. If it causes many negative impacts, the KPPU based on reports from each community or without reports (KPPU initiative) can stop the implementation of business activities of business actors in modern markets and impose sanctions in accordance with the provisions in KPPU Decree Number: 5/KPPU/Kep/IX/2000.

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