

Projection of Predatory Pricing Dispute Resolution in The Context of Business Competition Between Umkm in The Digital Economy Era Based on Win-Win Solution

Melki T. Tunggati

Business Law, Faculty of Law, Bina Taruna University Gorontalo, Gorontalo, Indonesia
melki.tunggati@gmail.com

Abstract

Predatory pricing disputes between UMKM have been in the public spotlight since the alleged practice of predatory pricing by UMKM businesses selling through the Tik-Tok Shop application. UMKM players in the Jakarta Tanah Abang Market suffered losses due to lack of visitors because the products sold through the Tik-Tok Shop application were twice as cheap. Government policy by modifying the Regulation of the Minister of Trade as a responsive effort in anticipating Predatory Pricing disputes, instead causing losses to Tik-Tok Shop UMKM actors. This research aims to analyze the regulation of Predatory Pricing dispute settlement on business competition practices among UMKM and offer ideas on the projection of Predatory Pricing dispute settlement on business competition practices among UMKM based on win-win solution. This is normative research, with statutory, conceptual and comparative law approaches, and analyzed perscriptively. The results of this research show that, First, the Law on Business Competition and Anti-Monopoly, the Law on UMKM, the Law on Trade and the Regulation of the Minister of Trade on PMSE have not regulated the dispute settlement of Predatory Pricing practices in the context of Business Competition between UMKM. Second, the projection of Predatory Pricing dispute settlement in business competition among UMKM must be done by optimizing out-of-court settlements, involving the role of UMKM organizations in Indonesia, assessing with the Rule of Reason approach, and containing business competition dispute settlement norms in the UMKM Law.

Keywords: Predatory Pricing, UMKM, Win-Win Solution

INTRODUCTION

Indonesia is one of the countries that continues to pursue technological developments in all sectors of life, including the modern-based business sector that utilizes digitalization in economic aspects. Indonesia's efforts in the modern-based business sector can be seen from the government's steps in increasing digitalization in the aspect of Micro, Small and Medium Enterprises or UMKM. Micro, small and medium enterprises are productive businesses owned by individuals or companies that meet the criteria according to the type of business. Referring to Law No. 20/2008 on Micro, Small, and Medium Enterprises (UMKM Law), the term Micro, Small, and Medium Enterprises has many meanings: first, businesses established for economic activities, not non-profit activities; second, businesses that are productive or generate profits from the business; third, an independent or separate company that is not a part, branch, or subsidiary of another company; and fourth, businesses owned by individuals or corporations (Komarudin, 2014).

UMKM are a business sector that is the focus of government attention considering that UMKM are the main pillar of the Indonesian economy. Not only do UMKM contribute to the development of the Indonesian economy today, but historically, UMKM used to be the savior and support of the Indonesian economy during the currency crisis. Twice in the history of the global financial crisis, UMKM became the backbone of the Indonesian economy during recession. UMKM slowly but surely became the savior economic sector of the Indonesian nation in 1997-1999 and 2008-2009.

The government launched the digitization of UMKM to welcome the Digital Economy era which will provide changes and developments in the UMKM sector today and in the future. By 2022, the results of UMKM have been digitized up to 20,997,131, recording progress of 17% compared to last year (Yusuf, 2023). This is certainly a positive signal for the development of UMKM in transforming into the digital world so that they can be aligned with progress in the Society 5.0 era. The transformation of UMKM into the digital world certainly brings many advantages, the first advantage is the ease and efficiency of the transaction process. The second advantage is a wider marketing network. The third advantage is cost and time minimization. The fourth advantage is an increase in business income.

Although the digitalization of UMKM has many benefits, changes in the digitalization era cannot avoid a variety of legal problems that occur in the midst of the development of UMKM. One of the various legal issues that have emerged and become a discussion/debate in the midst of Indonesian society is related to a business competition dispute between the Jakarta Tanah Abang Market UMKM and the Tik-Tok Shop platform as an e-commerce platform that doubles as a social commerce platform. The dispute between Jakarta's Tanah Abang Market UMKM and the Tik-Tok Shop platform stems from a report by Tanah Abang traders to the Minister of Trade Zulkifli Hasan who complained that they suffered losses of more than 50 percent. The problem is that they cannot compete with products sold at much cheaper prices through the Tik-Tok Shop platform. All complaints from Tanah Abang Market Traders boil down to indications of Predatory Pricing or Selling at a Loss practices carried out by traders on the Tik-Tok Shop Platform.

The government saw the problem of Predatory Pricing by moving quickly to find alternative solutions, which in the end revised the Regulation of the Minister of Trade (Permendag) No. 50 of 2020 concerning Provisions on Business Licensing, Advertising, Guidance and Supervision of Business Entities Trading Through Electronic Systems (currently Regulation of the Minister of Trade (Permendag) No. 31). Law No. 2023 on Provisions for Licensing, Advertising, Guidance and Supervision of Business Operators through Electronic Systems. The consequence of the issuance of MOT 31/2023 is a breath of fresh air for local UMKM traders who sell at the Tanah Abang Market in Central Jakarta, as well as a progressive

step by the government in structuring and supervising trade conducted through electronic systems, especially the supervision and prosecution of Predatory Pricing practices.

The existence of Permendag 31/2023 as a special regulation governing Trading Through Electronic Systems (PMSE) on the other hand not only has positive consequences for the structuring and supervision of Predatory Pricing practices, but on the one hand has become a lethal antidote for UMKM that market their products through the Tik-Tok Shop application. The reason is, based on the statement of Shou Zi Chew as CEO of Tik-Tok during his visit to Indonesia in June 2023, he said, 5 million business people in Indonesia use the Tik-Tok platform. Of these, most of them are UMKM, of which 2 million sell through the Tik-Tok e-commerce store. (Kementerian Perdagangan RI, Tik-Tok CEO Meets Trade Minister, Shou Zi Chew: Tik-Tok Shop Used by 2 Million UMKMs, 2023). The reason why these UMKMs prefer to sell through Tik-Tok Shop is none other than the features and conveniences offered by the application, such as access to millions of active users, interactive and creative platforms, virality, support for live shopping features, and collaboration with influencers and potential collaborators.

Since the revision of Permendag 31/2023 was passed, all e-commerce and social commerce must comply with the provisions in the Permendag and even had an impact on the temporary closure of the Tik-Tok Shop feature on the Tik-Tok application. Various complaints from UMKMs who sell through Tik-Tok Shop have sprung up through the Tik-Tok application homepage, they feel that the government's policy is tearing apart the sense of justice of the UMKMs who sell on the application. Seeing this problem, the settlement of Predatory Pricing disputes between UMKMs should be able to provide benefits in a win-win solution, so as not to hurt the sense of justice of one of the parties.

Based on the background of the problems that have been described, the problem formulation in this research is related to how is the regulation of Predatory Pricing dispute resolution in business competition practices between UMKM? and how is the projection of Predatory Pricing dispute resolution on business competition practices between UMKM based on win-win solution in the future?

RESEARCH METHODS

This research refers to the type of normative juridical research or Dogmatic Legal Research. Normative juridical research is understood as legal literature research that is pursued by analyzing legal materials, or research related to mere secondary data (Sunggono, 2015). Normative legal studies tend to present law as a descriptive discipline, viewing law only in terms of its norms, which by definition are descriptive (Sonata, 2014).

This research uses a legal approach, which is an approach that seeks to consider all laws and regulations related to the problem (legal problem) at hand. This research also uses a conceptual approach, which is an approach that departs from the views and principles that have been developed in legal science. In addition to legal and conceptual approaches, this research applies a comparative legal approach. This approach is carried out by comparing regulations or court decisions in one country with other regulations in one country or even more (Irwansyah, 2021).

Legal materials in this research consist of primary legal materials, namely laws and regulations relating to the legal issues studied, and secondary legal materials, namely books, academic writings, journals, articles on legal issues. also presented from tertiary legal materials containing legally relevant information obtained from official and authentic websites. Analysis of legal materials in this research is studied through prescriptive analysis, where all primary, secondary and tertiary legal materials are collected, identification and analysis will be carried out to find steps regarding problem solving.

DISCUSSION**Dispute Resolution Arrangements for Predatory Pricing in Business Competition Practices between UMKMs**

Het Recht Hink Achter De Feiten Aan, this adage illustrates that the law always lags behind the events it regulates. The practice of Predatory Pricing/Loss Selling is part of the framework of legal events that have not been fully reached by various regulations governing business and business. The concept of Predatory Pricing, according to Andi Fahmi Lubis in Vicky Darmawan and Ditha Wiradiputra, is an action taken by a business or economic organization to eliminate competitors by setting prices below production costs (Darmawan & Wiradiputra, 2022). On the other hand, Munir Fuady in Akhmad Farhan Nazhari also explained that Predatory Pricing is caused by an economic actor who controls a market by maintaining a very low and commercially unviable price for a certain period of time, thus preventing other economic actors from entering the relevant market (Nazhari, 2023).

The context of Predatory Pricing practices in Indonesia differs from that of Predatory Pricing in the United States. Indonesia's Predatory Pricing law regulates the setting of artificially high prices for goods and services, although it only focuses on detrimental sales under certain conditions and does not include explicit regulations to combat price abuse. While in the United States through the Sherman Act and Clayton Act regulations, when discussing sales at a disadvantage, this is closely related to "abusive pricing", and the disadvantages of discriminatory pricing decisions are also revealed (Himawan & Tri Anggraini, 2023).

In various regulations in Indonesia, the practice of Predatory Pricing is a prohibited business competition practice, given that its purpose is to monopolize the market in an unfair manner. Predatory Pricing is widely practiced by large companies to kill their competitors so that the company can dominate the market and bring the expected financial benefits. Entering the digital economy era, there are indications that Predatory Pricing is not only carried out by large companies, but also occurs among small and medium enterprises (UMKM) as in the case described in the previous chapter, namely indications of Predatory Pricing practices by Tik-Tok Shop traders who have damaged market prices so that it has an impact on Indonesian UMKM, especially for UMKM in the Tanah Abang Market, Central Jakarta.

Dispute Resolution of Predatory Pricing between UMKMs Based on Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition

Law No. 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition regulates only two things, the first related to the prohibition of monopolistic practices, and the second related to unfair business competition (Rokan, Business Competition Law: Theory and Practice in Indonesia, Mold 2, 2012). According to Article 1 number 1 of Law No. 5/1999, monopoly is defined as the control over the production and/or marketing of certain goods and/or the use of certain services by an entity or group of economic entities. Monopoly according to Article 1 point 2 of Law Number 5 Year 1999 is the concentration of economic power by one or more economic entities, resulting in control over the production and/or marketing of certain goods and/or services. This can lead to unfair business competition and harm the public interest. Centralization of economic power as referred to in Article 1 paragraph (3) of Law Number 5 Year 1999 is the centralization of economic power that can be effectively controlled.

At the same time, unfair commercial competition can be understood as a condition for unfair competition between companies. Law No. 5 Year 1999 shows three indicators to emphasize the occurrence of unfair business competition, namely (Rokan, Business Competition Law: Theory and Practice in Indonesia, 2012):

1. Business competition is carried out dishonestly, which can be seen from the competition of economic actors with other economic actors.

2. Business competition that is carried out unlawfully, as evidenced by the competition of economic actors with other economic actors that violate the provisions of applicable laws and regulations or agreed regulations.
3. Business competition is carried out by preventing competition between economic actors in the face of unfair market conditions.

Predatory Pricing Practices when drawn into the substance of Law No. 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, it can be found in Article 20 which stipulates that :

“Business actors are prohibited from providing goods and/or services by selling at a disadvantageous price or setting a very low price with the aim of eliminating or stopping the activities of their competitors in the relevant market in a way that can lead to monopolistic activities and/or unfair business practices competition”.

From the formulation of Article 20 of Law No. 5/1999, the elements can be described as follows:

- 1) Elements of Business Actors.
- 2) Supply Element.
- 3) Item Elements.
- 4) Service Element.
- 5) Elements of Sale and Loss.
- 6) Very low-price element.
- 7) With the intention of.
- 8) Elements of removal or death.
- 9) Competitor Business Element.
- 10) Market Elements.
- 11) Relevant Market Elements.
- 12) Elements of Monopolistic Practices.
- 13) Elements of Unfair Competition.

To be able to classify whether the actions of an economic actor involve predatory pricing, it must be determined that the actions cumulatively fulfill the elements of Article 20 of Law No. 5/1999, as previously stated. As for the Predatory Pricing dispute resolution mechanism stipulated in Article 20 of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, it is left to the duties and authorities of the Business Competition Supervisory Commission (KPPU) as stipulated in Article 35 and Article 36 of Law No. 5 of 1999 in conjunction with Presidential Decree (Keppres) of the Republic of Indonesia (RI) No. 75 of 1999 on the Business Competition Supervisory Agency/Business Competition Supervisory Commission (KPPU).

The agency that oversees business competition, in this case the KPPU, has broad duties, authority and work procedures in resolving business competition disputes. This can be found in its work procedures, including monitoring, receiving reports, assessing actions, investigating, concluding up to the stage of imposing decisions accompanied by administrative sanctions for violations of unfair business competition practices, including the practice of Predatory Pricing. KPPU's work procedures are strengthened in the Regulation of the Business Competition Supervisory Commission (PerKPPU) Number 1 of 2006 concerning Procedures for Handling Cases at the Business Competition Supervisory Commission.

Although the duties, authorities and work procedures of the KPPU are regulated in great detail and extensively in the various competition regulations above, there is a weakness in the regulation of the Predatory Pricing dispute resolution mechanism in business

competition/business practices carried out by fellow UMKM actors. The weakness lies in the exclusion element stipulated in Article 50 letter h of Law No. 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, which emphasizes that:

“Business actors classified as small and medium enterprises are exempted from the provisions of this law”.

The Explanation of Article 50 letter h of Law No. 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, states that:

“Entrepreneurs classified as small and medium enterprises are regulated in the Small and Medium Enterprises Law Number 9 of 1995”.

Based on the elements of exclusion above, it explicitly confirms that Law No. 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition does not accommodate the settlement of Predatory Pricing (selling at a loss) disputes in business competition that occurs with respect to UMKM, thus, it also has implications for the limitation of the duties and authority of the Business Competition Supervisory Commission (KPPU). KPPU is only tasked and authorized to deal with monopolistic practices and business competition conducted by large businesses and not micro and small businesses.

Settlement of Predatory Pricing Disputes between UMKM Based on Law Number 20/2008 on Micro, Small and Medium Enterprises

In order to protect and develop the MSME sector, the government has enacted Law No. 20/2008 on Micro, Small and Medium Enterprises ("UMKM"). This regulation provides a legal framework for all activities in this area. The main themes or policies contained in this law are the development of the business environment and competitiveness of UMKM, the principles and objectives of strengthening UMKM, as well as the role of government in promoting UMKM and increasing the competitiveness of UMKM (Sitorus, Legal Politics of Micro, Small and Medium Enterprises (UMKM) Protection in the Asean Economic Community, 2018). There are several important aspects that need to be considered in developing UMKM. These important aspects are the culmination of previous debates on the economy. One important aspect of this is that the government must support the development of UMKMs in the form of legal services (Sitorus, Legal Politics of Micro, Small, Medium Enterprises (UMKM) Protection in the Asean Economic Community, 2018).

Predatory pricing practice is one of the deviations in the UMKM business world that has not been regulated in the UMKM Law, both in terms of the criteria for prohibited acts and in terms of dispute resolution arrangements. The matters included in the criteria for prohibited acts and regulated in the UMKM Law are only related to the abuse of the partnership system as in Article 35 paragraph (1) and paragraph (2) of Law No. 20/2008 on UMKM, as well as the abuse of UMKM labeling by everyone for the sake of profit and convenience as in Article 40 of Law No. 20/2008 on UMKM.

Dispute Resolution of Predatory Pricing between UMKMs Based on Law Number 7 Year 2014 on Trade

Digital technology presents valuable opportunities for UMKMs to enhance their competitive advantage in today's competitive industry. This is important for the UMKMs as this sector is considered an important industry for the stability and competitiveness of the country's economy (Pimoljinda & Siriprasertchok, 2018). Digitalization of UMKMs is an important solution in the current digital economy era. Many factors encourage UMKM to go digital, including customer demand, competition with competitors, product and service

innovation, value that can be achieved, and effective use of data (Evangeulista, Agustin, Edy Putra, Pramesti, & Madiistriyatno, 2023).

In line with the importance of digitalization in the UMKM sector, Jacky Mussry as Executive Vice President of the International Council for Small Business (ICSB) in Wulan Ayodya said that "UMKM must be professional, productive, creative and entrepreneurial". These four elements must be interrelated. UMKM players in the 4.0 era will also become more digitally focused and operate less conservatively, but they must be able to identify digital opportunities to attract a wider market (Ayodya, 2022). The UMKM sector, which has followed the development of digitalization, will certainly not escape various legal problems, such as the practice of Predatory Pricing between UMKM actors. For this reason, regulations present in the trade sector must basically be able to stand as a solution to the problem of Predatory Pricing practices between UMKM players.

In Law No. 7 Year 2014 on Trade, the settlement of Predatory Pricing disputes between UMKM actors when based on Article 65 paragraph 5 which stipulates that :

"If a dispute arises in connection with a business transaction conducted through an electronic system, the affected individual or business entity may resolve the dispute through a court or other dispute resolution mechanism".

The main thing that is regulated in Article 65 paragraph 5 of Law No. 7/2014 on Trade, is related to trade transactions through electronic systems, so that disputes that will occur in the future can be resolved through the judiciary or other dispute resolution mechanisms and methods, such as out-of-court settlements. Conceptually, there is a difference between the concept of trade transactions and the concept of Predatory Pricing (selling at a loss). Trade transactions are included in the buying and selling process in trade, while Predatory Pricing is only limited to setting the selling price for trade. Therefore, dispute resolution on Predatory Pricing using Article 65 paragraph 5 of Law No. 7 Year 2014 on Trade is irrelevant.

Settlement of Predatory Pricing Disputes between UMKM Based on Government Regulation No. 80/2019 on Trading Through Electronic Systems and Minister of Trade Regulation (Permendag) No. 31/2020 on Provisions for Business Licensing, Advertising, Guidance, and Supervision of Business Actors in Trading Through Electronic Systems

In 2019, state institutions, in this case the government, issued Government Regulation (PP) No. 80 concerning Trade / Commerce through Electronic Systems / Patterns. This Government institution regulation (PP) on Trade / Commerce through Electronic Systems / Patterns (PP PMSE) was launched to advance sustainable development in the aspect of electronic commerce (e-commerce or electronic commerce) in Indonesia. In addition, it is for the growth of trade in domestic commodities and to promote export activities online. This E-Commerce Regulation does not discriminate between e-commerce operators operating in Indonesia, whether they are domiciled in Indonesia or not. It also regulates the level playing field between foreign and domestic economic actors. (Kementerian Perdagangan RI, Press Release: Government Regulation No. 80/2019: Government Enacts Government Regulation on Electronic Commerce, 2023).

Indonesia must adapt to the changing technological era. The PMSE Regulation is an articulation of government institution schemes that prioritize the nation's interests in business opportunities through electronic system/pattern mechanisms that are now growing rapidly. The drafting of the PMSE Regulation is mandated in Article 65 of Law No. 7/2014 on Trade. The PMSE Regulation aims to increase consumer confidence and ensure consumer protection and fair business competition. It also aims to ensure the establishment of a safe e-commerce ecosystem that can facilitate increased activity and growth of the trade and e-commerce industry (Kementerian Perdagangan RI, 2023).

As already mentioned, the existence of the E-Commerce Regulation is a legal umbrella that can ensure fair business competition and realize legal certainty for actors/parties who play a role in business transactions/electronic commerce, without exception, it also becomes a legal umbrella and provides legal certainty against Predatory Pricing practices in business competition through e-commerce or electronic commerce. The E-Commerce Regulation substantially does not mention the practice of Predatory Pricing in each article-by-article provision in the E-Commerce Regulation, but the E-Commerce Regulation outlines how to resolve business and business disputes in the electronic commerce sector.

Article 72 paragraphs (1) and (2) of Government Regulation No. 80/2019 on Trading Through Electronic Systems (PMSE Regulation) outlines that :

- 1) *If a dispute arises regarding the PMSE, then the parties may resolve the dispute through the court or other dispute resolution mechanisms.*
- 2) *The settlement of PMSE disputes as referred to in paragraph (1) may also be conducted electronically (online) in accordance with the provisions of laws and regulations.*

The presence of Article 72 paragraph (1) and paragraph (2) of Government Regulation No. 80/2019 on Trading Through Electronic Systems has basically paved the way for the settlement of Predatory Pricing practice disputes between UMKM, which can be resolved through judicial institutions (litigation) or through non-litigation dispute resolution. In addition, the disputing parties can settle the case through online dispute resolution or internet-based alternative dispute resolution. However, the weakness of Article 72 paragraph (1) and paragraph (2) of Government Regulation No. 80/2019 on Electronic Commerce lies in the absence of a detailed description of the methods and systematics of dispute resolution both through judicial/litigation and non-judicial/litigation, considering that the conception of business and business dispute procedural law is different from dispute procedural law in general cases. The same applies to the law of dispute resolution using online dispute resolution, which is also not regulated in the PMSE Regulation. Whereas internet-based dispute resolution has its own level of characteristics that require various online tools and media, so it needs to be described systematically and in detail.

Predatory pricing is only mentioned in a derivative regulation of the E-Commerce Regulation, namely Regulation of the Minister of Trade (Permendag) No. 50/2020 on Provisions for Business Licensing, Advertising, Guidance and Supervision of Business Entities Trading Through Electronic Systems (currently Regulation of the Minister of Trade (Permendag) No. 31/2020 on Provisions for Licensing, Advertising, Guidance and Supervision of Organizers). Article 13 of Permendag No. 31 of 2023 states:

- 1) *In carrying out PMSE activities, PPMSE must have an active role in:*
 - a. *Provide equal business opportunities to franchisees. And*
 - b. *Protect the price of goods and/or services from direct or indirect price fixing activities.*
- 2) *PPMSE endeavors to conduct direct and indirect supervision, prevention, and countermeasures against all forms of unfair business competition practices and/or price fixing practices as stipulated in the Standard Operating Procedures.*
- 3) *In maintaining fair business competition as referred to in paragraph (2), PPMSE must ensure:*
 - a. *There is no linkage or connection between electronic systems used as PMSE facilities and electronic systems used outside PMSE facilities. And*
 - b. *Not misuse the control of user data used by PPMSE and/or its affiliates in its electronic system.*
- 4) *In the event that there are allegations of unfair business competition and/or direct or indirect price fixing among traders, PPMSE shall coordinate with the competent*

authority in the field of business competition within three working days after discovery. Contents of claims and/or reports received by PPMSE.

Article 13 of Permendag 31/2023 only explicitly mentions the role of the Electronic Trading System Operator (PPMSE) in monitoring, preventing and overcoming the occurrence of *Predatory Pricing* practices in the e-commerce sector. In addition, PPMSE is also authorized to coordinate with the institution in charge of business competition when *Predatory Pricing* practices occur in the e-commerce sector. Thus, Permendag 31/2023 also does not regulate the dispute settlement mechanism of *Predatory Pricing* practices among UMKMs because the working area of this regulation is only limited to the aspects of licensing, advertising, guidance and supervision of business actors in PMSE.

Projection of *Predatory Pricing* Dispute Resolution against Competition Practices between UMKM Based on *Win-Win Solution* in the Future

Talking about projection, the paradigm that will emerge first is how to design something so that it can be useful in the future. In relation to the projection of *Predatory Pricing* dispute settlement, this sub-chapter will review how the design of *Predatory Pricing* dispute settlement among UMKM based on *win-win solution* will be in the future. As explained in the previous sub-chapter, the regulation of *predatory pricing* dispute settlement between UMKM has many weaknesses that have implications for the occurrence of a legal vacuum. The legal vacuum in the settlement of *Predatory Pricing* disputes between UMKM must receive *problem solving* so as to realize justice for the parties to the dispute.

According to Budiman Sinaga in Irma Istihara and Haerani, trade disputes arising in small, medium and micro businesses are a form of civil dispute that can be resolved in two ways, namely dispute resolution through the court (*judgment*) and dispute resolution outside the court (not in court). Although these legal disputes can be resolved through the courts, the judicial settlement is only a last resort after all other means have failed (Zain & Haerani, 2024). Therefore, it is necessary that the dispute resolution that will be pursued by UMKM actors can provide *output* that does not have the potential to harm one of the parties or UMKM actors, in this case it is necessary to rely on a *win-win solution*.

Win-Win Solution is a mental and emotional mindset that is equally focused on achieving mutual benefits in all human endeavors. *Win-win solution* is a solution that benefits and satisfies all parties. With the creation of a *win-win solution*, all parties will be happy with the decision taken. *Win-win solutions* believe that life is not a place for competition, but a place to work together (Sobarna, 2002). In line with the previous argument, Devi Wahyuni argues that *Win-win solution* is a problem-solving strategy by making decisions that are beneficial to both parties. The dispute resolution process is based on the principle of *win-win solution* and guarantees the agreement of the parties so that the decision taken is in accordance with the interests of both parties (Wahyuni, 2015).

The *win-win solution* principle is a principle that should be applied in the settlement of *Predatory Pricing* disputes between UMKM, considering that basically none of the UMKM actors are harmed by the disputes that occur, because UMKM actors have the same position to obtain their rights and are entitled to protection, support, equal opportunities, as well as development and empowerment guaranteed by the state. For this reason, it is necessary to project the ideal settlement of *Predatory Pricing* disputes between UMKM based on the principle of *win-win solution* in the future, with the legal steps described below.

1. Optimizing Out-of-Court Dispute Resolution

Dispute resolution through litigation (court) is determined in accordance with the rules of the legal system and legal principles in the legislation and procedural law of a country. The litigation system uses the first level of examination, the level of

appeal, the level of cassation, and special legal remedies through judicial review. There is another way to resolve disputes outside of court, called alternative dispute resolution (ADR) (Helmi, 2018).

According to Article 1 point 10 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, ADR is "a body that resolves disputes or disagreements through means agreed by the parties, namely out-of-court negotiation, negotiation, agreement, conciliation, or expert judgment methods".

Out-of-court dispute resolution has many advantages over court settlement. The explanation is as follows (Tektona, 2011):

- 1) The third party who will mediate in ADR is chosen by the disputing parties who are experts in their respective fields so that they understand the issues in dispute.
- 2) The principle of privacy. As stated above, Dispute Resolution is an independent, closed and non-public dispute resolution meeting. Erman Rajagukguk from Rahmadi Indra Tektona said that parties do not want the public, especially competitors, to know the secrets of their corporate "kitchen", thus damaging the company's reputation.
- 3) The process of resolving disputes through the courts is faster and easier.
- 4) Another outcome of dispute resolution can be a *win-win solution*. With such characteristics, it is hoped that even if a dispute arises between the parties, it will not put them at a "disadvantage". Thus, alternative dispute resolution will indeed facilitate efforts to maintain business relationships in the future.

Of course, there are some advantages of ADR methods that are "contradictory" compared to mediation methods through judicial institutions. In fact, dispute resolution through the judiciary is very nuanced in practice which is slow or sluggish (takes a long time), complicated and high cost. In addition, sometimes the world of courts, in some of its problems, has proven to be full of nepotism and corruption (Albar, 2019).

The advantages of out-of-court dispute resolution and the weaknesses of dispute resolution through the courts as described, are important assessments for the settlement of *predatory pricing* disputes between UMKM. In order to realize a win-win solution-based dispute resolution, the settlement of *predatory pricing* disputes between UMKM must be resolved through mediation as part of several alternative or out-of-court dispute resolution options.

Mediation efforts in resolving *predatory pricing* disputes that can be taken by UMKM as well as the government and stakeholders concerned, are an initiation in wanting and providing justice for all UMKM actors without exception, considering the benefits of mediation are that a *win-winsolution* decision can be made that does not burden either party but still creates mutual satisfaction between the parties to the dispute.

2. Engaging the Role of UMKM Organizations in Indonesia

The mediation process will certainly present the parties involved in the *predatory pricing* dispute, these parties include UMKM actors, mediators and economic/business law experts, the government and related stakeholders. In the context of *predatory pricing* disputes between UMKM in the Jakarta Tanah Abang Market and *Tik-Tok Shop* UMKM actors, the mediation process must also present UMKM representatives as parties representing aggrieved UMKM actors. Parties that represent legal interests and are ready to fight for the rights and justice of UMKM actors can also come from UMKM organizations in Indonesia, such as the Community of Friends of UMKMs, the Upgrading UMKM Community, the Hand on Top UMKM Community,

the UMKM Focus Community, The Entrepreneurs Society Community, and the AKUMINDO Association.

These UMKM Communities and Associations in Indonesia will be an extension of the complaints, suggestions and needs of UMKM players in Indonesia, including UMKM players in the Jakarta Tanah Abang Market and UMKM players who sell through Tik-Tok Shop. Therefore, the involvement of UMKM organizations in the settlement of *predatory pricing* disputes between UMKMs is the right step, because the data and facts that will be presented in the mediation process will be proportional and fair.

3. Examining the Substance of Disputes Through the *Rule of Reason* Approach

The Rule of reason approach was first used in the 1711 Mitchel vs Reynolds case (Meseroll, Apatov, & Rutledge, 2015). The United States Supreme Court determined that not all agreements that impede trade are *unlawful*, but only *unreasonable* agreements are not allowed. The United States Supreme Court's decision in Standard Oil Co of New Jersey v United States in 1911 marked the beginning of the use of the *Rule of Reason* approach (Bork, 1965).

The United States Supreme Court determined that only agreements that have been proven to kill competition are not allowed. In addition, agreements that provide support for competition are still valid. The *rule of reason* approach is often used and used as a reference to distinguish whether an activity is included in *unfair* business competition and causes losses/deficits to the public and other businesses/entrepreneurs or not (Supianto, 2013).

The examination of the substance of *predatory pricing* disputes between UMKMs in the mediation process must adhere to the *Rule of Reason approach*. Although the *Rule of Reason* approach is one of the approaches used by law enforcement in assessing a behavior or action that violates the law of competition or business competition in the trial process, this approach can also be used in assessing the actions of UMKM actors who violate the law of business competition and monopoly in the context of out-of-court dispute resolution through mediation.

The use of *Rule of Reason* in resolving predatory pricing disputes between UMKMs is not for the purpose of proving the guilt of one of the parties so that it can be used as an excuse to sanction one of the UMKM parties, but the use of *Rule of Reason* is as a corrective material for UMKM actors who violate the norms and principles of business competition law, so that in the future these UMKM actors can improve / improve and comply with the legal signs of fair business competition in the UMKM sector. Making the *Rule of Reason* approach as a corrective material will also create a determination that is a win-win solution, not a *win-lose solution*.

4. Improvements to UMKM Regulations in Indonesia

The current regulations governing UMKMs still have many weaknesses that need to be reviewed by legislators, government, and related stakeholders. One of the weaknesses in UMKM regulations is when they do not cover the settlement of business competition disputes between UMKMs. This legal vacuum has an impact on the essence of justice for UMKM actors. When the systematic settlement of business competition disputes between UMKMs is contained in detailed UMKM regulations in the future, the state's attention to the development of UMKMs in the future can be implemented optimally and fairly.

The law on business competition among UMKMs and the mechanism for resolving business competition disputes among UMKMs need to be contained in

Chapter X on the Characteristics of Business Competition among UMKMs and Chapter XI on the Settlement of Business Competition Disputes among UMKMs in the UMKM Law. Chapter X regulates in detail the criteria for fair business competition in the UMKM sector, the criteria for actions that fall into the category of unfair business competition (including *predatory pricing*) between UMKMs, and the categories of UMKM actions that fall into the act of Market Monopoly. Chapter XI regulates in detail the principles of business competition dispute resolution among UMKMs (including the principle of *win-win solution*), dispute resolution methods (both litigation and non-litigation methods based on the type of violation).

CONCLUSION

The settlement of *predatory pricing* disputes in the context of business competition between UMKMs is currently not regulated in existing laws and regulations. Revising the Regulation of the Minister of Trade is not an ideal solution to the polemic that occurred between Tik-Tok Shop UMKM players and Jakarta Tanah Abang Market UMKM players. The settlement of *predatory pricing* disputes between UMKMs must be based on the principle of balance of rights, which will result in a determination that is a *win-win solution*, not a *win-lose solution*. On the other hand, the *win-win solution* principle will only be born in the out-of-court dispute resolution mechanism. In order to realize the principle of *win-win solution* with legal certainty, it needs to be *covered* in the form of legislation.

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