Predatory Pricing in The Telecommunication Business Advertisement in Indonesia

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Abstract: Predator pricing also known as destroyer pricing is a practice of selling products with a very low price with the intention of shutting down business competitors from the market, creating obstacles for new competitors from entering the relevant market. In many countries, including Indonesia, predatory pricing is prohibited, and considered as practices that obstruct competition and is illegal. However, it is difficult to prove that the decreasing price is correlated with predatory pricing. Currently, there is a very sharp competition in the telecommunication business in Indonesia. There is a cheap tariff war among business practitioners. However, it is still considered as reasonable and not to the extent of predatory pricing. In the future, it is time to do some supervision so that the telecommunication operator’s advertisement is expected to be proper, open, and can be accounted for. This study is a descriptive research which intends to provide as much detail as possible about humans, circumstances, other symptoms. The method used in collecting data is by conducting a survey on some advertisements of telecommunication operator

Keywords: predatory pricing, telecommunication, advertisement

1. Introduction

It is undeniable that telecommunications plays an essential role in economic, socio-cultural, political, or defense security activities. For that reason, telecommunication affairs were handled by the government in its early growth. It was then submitted by the government to the Telecommunication Service Provider Agency. The appointed Telecommunication Service Provider Agency is PT. Telkom for domestic telecommunication (local and long distance call), and PT. Indosat for SLI affairs (International Direct Dial). However, by entering the era of globalization, such monopolies cannot be maintained anymore. PT Telkom or Indosat must compete with new players in the international class of telecommunication field in Indonesia.

Telecommunication business in Indonesia has changed since the issuance of Law no. 36 of 1999 on Telecommunications, which revokes the provisions of Law no. 3 year 1989. This new telecommunication law brings a new spirit eliminating the monopoly in the telecommunications world in Indonesia, meaning that everything must be run in accordance with a healthy and reasonable business mechanism.

According to Law No.36 of 1999, implementation of telecommunication networks and services can be done by: BUMD (Regional Owned Enterprises), BUMN (State Owned Enterprises), Private Businesses, Unions. Based on this telecommunication law, the domestic telecommunication segment for the cellular segment has grown so rapidly and mainly managed by private business entities. Therefore, PT. Telkom and PT Indosat have new competitors in the telecommunications business although their market share remains high.
Figure 1. Market share of data service consumers of telecommunication operators in Indonesia in 2014

Figure 2. Market Share of Telecommunication Operators in Indonesia in 2014
Based on the market share table above; Telkomsel 47% - 132.7 million subscribers, Exelcomindo 24% - 68.5 million subscribers, Indosat 21% - 59.7 million subscribers, Smartfren 4% - 11.3 million subscribers, Esia 4% - 12.3 million subscribers. As of early 2014, there were approximately 240 million mobile phone subscribers in Indonesia with an average growth of 31% per year. How is the business competition among telecommunication operators mainly done through advertising media? Is the business competition against the Law no. 5 of 1999 on anti-monopoly and unfair business competition? Is there any predatory pricing in the telecommunication business in Indonesia?

2. Method and Materials

In accordance with the nature of this study, this is a descriptive research intended to provide as much detail as possible about humans, circumstances and other symptoms (Soekanto, 1986). The method used in collecting data is by conducting a survey on some advertisements of telecommunication operators. Sampling is done by applying purposive sampling by considering the telecommunication companies that have big market share. Therefore the main data in this study is secondary data. General characteristics of the secondary data are: in a ready-made state and immediately applicable, both the form and the content have been formed and filled by the previous researcher so that the next researcher has no control over the data collection, processing, analysis or construction, no limited time and place (Soekanto, 1986). Based on its type, secondary data is distinguished into private secondary data which is public (archives, official data of the institution, other data published by the government). Sometimes, the data is also classified into internal and external secondary data (Soekanto, 1986).

3. Result and Discussion

In 2017, there is a change of telecommunication operator structure in Indonesia. There are 11 telecommunication operators, more than in other countries which on average only 3-4 telecommunication operators. Classifications based on technology used in 2017 are; PT Telkom (PSTN& CDMA), PT. Batam Bintan Telekomunikasi (PSTN), PT. Indosat (PSTN,GSM,CDMA), PT. Telkomsel (GSM), PT. XL Axiata (GSM), PT. Axis Telekom Indonesia (GSM), PT. Hutchinson 3 Indonesia (GSM), PT. Bakrie Telekom (CDMA), PT. Smart Fren Telecom (CDMA), PT. Sampoerna (CDMA), PT. Pasific Satelit Nusantara (satelit).

Telecommunication business competition among telecommunication operators continues to occur, along with market demand for cheap phone tariffs. Observing advertisement of telecommunication operator, either through printed or electronic media, it revolves around three main thing which are cheap tariff, bonus provision, product and service sales. Fair competition will result in lower prices and higher production quantities. In addition, markets with healthy competition will also produce at a minimum average cost, which means there is a better production process and less waste of resources. All these things will mean that consumers, communities and countries will get benefit more from the more choice of products and more efficient production processes (Hasan, 2007).

Based on the advertisements offered by telecommunication operators to consumers, it can be concluded that cheap tariff is still the main weapon to attract consumers, although service aspect is also a particular attraction for smart consumers. Although the cheap tariff still becomesa competition matter among operators but there has not been any indication of loss selling with the intention of getting rid of competitors from the market. Predatory prediction indication has not been seen in the competition of telecommunication business in Indonesia. However, the authority in the telecommunication sector, in this case Badan Regulasi Telekomunikasi Indonesia/Indonesian Telecommunication Regulatory Body (BRTI) must remain vigilant against the cheap tariff war and the inclusion of bonuses that are vulnerable to unfair competition practices among business practitioners.
Concept of Law No. 5 year 1999 on Anti Monopoly and Unfair Business Competition

In general, the main problem of the concept used to determine the violation of the Competition Law lies in how to prove the violation of competition Law. Basically, there are two concepts that serve as the basis for determining the occurrence of violations, namely the *perse illegal* and *rule of reason*. Article 20 is the article regulating the *predatory pricing*, which the proving of violation is included in the concept of *rule of reason*.

Nowadays, in order not to rigidly distort business activities, there is gradually a transformation in the implementation of a more flexible and market friendly *perse illegal*. The transformation towards the *rule of reason* more coloring the implementation of anti monopoly law. The subject matter is no longer the structure but rather the conduct or behavior or act. Law No. 5 of 1999 does not prohibit monopoly or oligopoly or dominant position market structure. The forbidden one is the injuries conduct. As long as they do not abuse the power of monopoly, oligopoly or an adverse dominant position, they do not violate the law. The proof of conduct is a *rule of reason* area that has straightforwardly long and exhausting road. The Articles in Law No. 5 of 1999 are largely *rule of reason*, which require proof of impact. The *rule of reason*articles generally end with a sentence ... which results in monopolistic practices or unfair business competition ...

*Rule of reason* is a prohibition on an action or a particular act or practice which will only be prohibited if it brings a negative adverse impact. If the action or deed or practice has no negative impact then it is not prohibited.

Article 20 “A business practitioner shall be prohibited to supply goods and or services by doing loss selling or setting a very low price with the intention of removing or shutting down its competitors' business in the relevant market which results in monopolistic practices and or unfair business competition”.

In business practice, a business practitioner acts by selling a product price or service by setting a very low price to remove the business competitor, as mentioned in the provisions of Article 20 of Law No. 5 of 1999, is called *predatory pricing* (Wikipedia). Predator usually does indeed take a victim, in this case a business competitor becomes the target to be defeated

In the provisions of competition law in the US, competition law is known as *antitrust law*, which has three main elements:

a. prohibiting agreements or practices that restrict free trading and competition between business entities. This includes in particular the repression of cartel.

b. banning abusive behaviour by a firm dominating a market, or anti-competitive practices that tend to lead to such a dominant position. Practices controlled in this way may include *predatory pricing*, tying, price gouging, refusal to deal and many others.

c. supervising the mergers and acquisitions of large corporations, including some joint venture. Transactions that are considered to threaten the competitive process can be prohibited altogether, or approved subject to "remedies" such as an obligation to divest part of the merged business or to offer licenses or access to facilities to enable other businesses to continue competing.

Meanwhile, specific definition of *predatory pricing* in US antitrust law is:

*Predatory pricing*(Wikipedia) (also known as *destroyer pricing*) is the practice of a firm selling a product at very low price with the intention of *driving competitors out of the MARKET*, or *create a BARRIERS TO ENTRY* into the market for potential new competitors. If the other firms cannot sustain equal or lower prices without losing money, they go out of business. The predatory price maker then has fewer competitors or even a monopoly, allowing it to raise prices above what the market would otherwise bear.
In many countries, including the United States, predatory pricing is considered anti-competitive practices and is illegal under antitrust laws. However, it is usually difficult to prove that a drop in prices is due to predatory pricing rather than normal competition, and predatory pricing claims are difficult to prove due to high legal hurdles designed to protect legitimate price competition. Based on the understanding above, it can be seen that predatory pricing is considered a very destructive price which destruct the order (destroyer), while the main purposes are:

1) control the business competitors so they will move out of the formed market;
2) create obstacles so there will not be new competitors entering the relevant market;
3) With the existence of such predatory pricing, competitors who do not have enough "endurance" are likely to be eliminated from business competition. If this happens, then the business practitioner’s goal of creating low price to shut down the business competitor is successful. Thus, in order to say that there is predatory pricing, there must be correlation between the of a very low price offer by a particular business practitioner by eliminating other business competitors and the efforts are successful with the bankruptcy of certain business competitors. However, it will be difficult to prove whether the low offered price is included as predatory or not.
4) In fact, it is not easy for business practitioner to set a very low price. At least, that can only be done by business practitioners who are financially good to have the power to act as "predators". This is because the act of setting a very low price means the loss of some profits or lessened profit margins caused by an aggressive price bidding. Usually, after the creation of predatory pricing and business competitors has been eliminated, it will be followed by recalculation to create a new price that is more feasible above the predatory price, this is often called as "supra competitive price". With the new price, the business practitioners expect to recover all costs incurred during the period of predatory pricing application. Successful implementation of predatory pricing is often also measured by the success of creating barriers to the coming of new competitors in an established markets. Thus the predatory pricing strategy can fail miserably when the competitor targeted to be eliminated is strong enough to survive than the previous estimation or the competitor is completely eliminated because of the very low price offered by the business practitioner but his position is replaced by a new competitor that is more competitive.

4. CONCLUSION

Business competition in the telecommunication business in Indonesia is so high. Cheap tariff wars, bonuses and services are key aspects to increasing market share. The concept of cheap selling to the consumer is still reasonable, and has not touched the level of loss sale which can result in business competitors eliminated from competition. Thus, the low price competition in the telecommunications business in Indonesia has not touched the predatory pricing level, as it is prohibited by the provisions of Article 20 of Law no. 5 of 1999 on Anti-Monopoly and Unfair Business Competition.

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