

## **The Future of Legal Regulation Related to Predatory Pricing Practice in E-commerce Implementation in Indonesia**

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### **Abstract**

This research discusses how the regulation of business competition is in Indonesia currently in regulating predatory pricing practice in e-commerce implementation in Indonesia, and how the legal regulation of predatory pricing practice should be developed in Indonesia to face e-commerce implementation in digital economic era. Type of legal research used was normative one, with juridical normative approach, in which law materials were collected using library study and document study. The normative juridical research would be combined with legal comparative method, in order to see how the regulation of business competition should be in e-commerce implementation in digital economic era in Indonesia in the future. From the result of research, it can be concluded that regulation of predatory pricing is still weak in Indonesia, particularly to foreign business, so that reform and adjustment should be made on the regulation of business competition, particularly concerning predatory pricing in Indonesia in order to answer the challenge of business competition development in digital economic era.

### **Keywords**

Legal Regulation, Business Competition, Digital Economy.

## **Introduction**

Business world is currently entering new era called e-commerce or e-business or business with telematic transaction. Naisbitt predicted that a new world view has been presented, characterized with the appearance of actually real electronic era. People want to unite to operate business more freely; they want to be free either politically or culturally. Currency used is the one used collectively, electronic currency. Other currency than the one will not be needed. Nevertheless, the basic problem Indonesia will face is not related to technological aspect but instead lies on the regulation (Pramono, 2001).

*E-Commerce* refers to the mechanism mediating transaction to sell product and service through electronic transaction. *E-commerce* improves productivity and is cost efficient (Chawla & Kumar, 2021). The parties in digital trading are often unaware of state borders. In globalization era, a state's borders will be obscure or vague. Digital economy, of course, closely relates to technology but we should legally see what the subjects of economic actor are, in which the legal relation established by the parties may cross the state borders, because as known in the presence of technological advance and digital economic era, trading and business are not limited spatially and temporally. Thus, the relation between national and international economies will be getting closer. With the rapid internet growth starting in the middle of 1990s, digital landscape has expanded and changed how business operates and how consumers participate in transaction with business actors. Technology changes how humans work, communicate, buy product and service, and do their daily tasks (Barefoot et al., 2018).

There have been 202.6 millions internet users in Indonesia in early 2021. The figure increases by 15.5 percents or 27 millions compared with that in January 2020. Total Indonesian populations today are 274.9 millions people. It means that internet penetration in Indonesia reaches 73.7 percents in early 2021 (Riyanto, 2021). McKinsey projects Indonesian e-commerce market to grow into US\$ 65 billions in 2022 (Praditya, 2019). A very significant growth of digital economy in Indonesia proves that Indonesians are highly interested in digital economy. The large volume of transaction in digital economy is, of course, followed by the large number of business actors and consumers as well.

As known, a good regulation is the up-to-date one. Although judge can refer to jurisprudence and customary law within society, written regulation is something prioritized in Indonesia because Indonesia is a civil law state. As known, business competition has been governed in Civil Code having been effective since Dutch colonial time, formerly called *Burgerlijk Wetboek* (BW), in Article 1365 stating that “each

unlawful deed bringing loss to others obliges the one who cause the loss due to his fault to compensate the loss”, but it is only in 1999 was specific legislation on business competition developed, exactly several years following Indonesian reform. The legislation governing business competition in Indonesia is Law Number 5 of 1999 about the Prohibition of Monopoly and Unfair Business Competition Practices. The legislators, of course, have not thought of the challenge of digital economic development in Indonesia at that time. Law Number 5 of 1999 about the Prohibition of Monopoly and Unfair Business Competition Practices has not contained yet e-commerce regulation, and otherwise, Law Number 11 of 2008 on Information and Electronic Transaction and Law Number 8 of 1999 about Consumer Protection does not govern business competition (Hotana, 2018). The law about business competition has been enacted in Indonesia for two decades since 1999; thus, it should be questioned whether or not it is still relevant today. Some types of infringement in business competition have been governed in Law Number 5 of 1999, one of which is predatory pricing practice.

An institution has been established to oversee business actors in running their business activities in order not to do unfair business competition, Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*, thereafter called KPPU). Based on KPPU’s annual report, along 2020 there have been 11 cases decided to be not guilty with the case register of 2019 and the fine of IDR 65,911,000,000 (sixty five billions and nine hundreds and eleven millions rupiah). Out of 15 case verdicts, 9 cases are related to delayed notification of merger and acquisition (M&A), 5 to tender, and 1 to pricing and cartel. Viewed from the source of case, there are 13 initiative register cases (including delayed M&A) and 2 cases resulting from public report (Komisi Pengawas Persaingan Usaha (KPPU) RI, 2020). The business competition case increasing from year to year is the challenge needing to be solved, because business competition problem to be faced in the next years, of course, will be inseparable from technology development, particularly in the term of business and trading. Digital economic era with technology utilization will facilitate an individual or company and corporation to do trade and business. The more easily the business is operated, the more is the number of business actors in Indonesia. Based on the business competition supervisory authority’s experience in many states, the number of predatory pricing case is smaller than that of other cases such as cartel. Similarly, there is only 1 (one) verdict the Business Competition Supervisory Commission (KPPU) has made related to predatory price within almost 21 years since this institution was present in Indonesia (Saragih, 2021).

KPPU’s very few verdicts concerning predatory pricing are proportional inversely to the wide impact of predatory pricing practice on e-commerce implementation in Indonesia.

Recently, the Republic of Indonesia's President stated that foreign e-commerce kills Micro-, Small-, and Medium-scale Enterprises (MSMEs), predatory pricing illegal trading practice. The e-commerce business actors doing such deed are not Indonesian original companies. Foreign e-commerce business actors sell plagiaristic products or product imitating domestic MSMEs' products. An article released by the world international institution revealed the destroyed activities of MSMEs, particularly in Islam fashion area, occurring in Indonesia. Meanwhile Indonesian home industry in Muslim fashion area had great progress in 2016-2018 by producing *hijab* (veil) and the industry has employed 3,400 employees costing over US\$ 650 thousands/year (Astutik, 2021).

## **Research Methods**

This study was a juridical normative research. Normative juridical research is a legal research method implemented by means of studying literature or secondary material only (Soekanto, Soejono & Mamudji, 2007). Law materials used were primary and secondary ones. Primary law material used was legislation, while secondary one was related to the problem studied, coming from the explanation of Law, literature books, article, internet, and expert opinion.

## **Results and Discussion**

From the discussion, it can be seen that many infringements occur in business competition in this digital economic era, particularly the one in the form of predatory pricing practice in e-commerce implementation in Indonesia highly affecting Indonesian industries. Therefore, there will be problem statements to be discussed in this article: firstly, how the legal regulation of predatory pricing practice does exist in Indonesia currently in facing e-commerce implementation in digital economic era and secondly, how the legal regulation of pricing predatory practice should be in the future in facing digital economic era development in Indonesia.

## **Regulation of Business Competition existing in Indonesia in Facing Digital Economic Today**

In this digital economic era, Business Competition Supervisory Commission (KPPU) plays an important role in protecting all economic performers in order to be on the healthy and fair business competition track according to KPPU's role, particularly in digital economic sector. As an independent business competition authority, KPPU will serve as a referee that will supervise the running of business process and business competition in e-commerce industry in Indonesia. One of anti-competition behaviors being the focus of

attention in Law Number 5 of 1999 about e-commerce in Indonesia is to set price very low in the attempt of eliminating the competitor's business in corresponding market or called predatory pricing. Predatory pricing is a strategy of setting prices taken by a business actor to eliminate its competitor from the corresponding market in the attempt of maintaining its dominant position as monopolist.

The advantage of e-commerce is that it enables the perfect competition market; a perfect competition market is a market or industrial structure where there are many sellers and buyers, and each of sellers cannot affect the condition of market. Perfect competition is the most ideal market, as it ensures the realization of very efficient product or service production activities (Sadi Is, 2016). Nevertheless, unfair or unhealthy business competition instead occurs in Indonesian e-commerce due to inadequate supervision and regulation not encompassing yet all aspects of e-commerce, thereby endangering domestic industry.

Firm supervision and sanction imposition should be done to reduce predatory pricing practice in Indonesia. Nonetheless, some problems will arise when the trade is done by foreign business actors by doing direct transaction through e-commerce media to Indonesian consumers. Foreign business actors will do predatory pricing practice easily because Indonesian consumers are interested in foreign products as the product they want is provided by the foreign business actors only or although many local products are available in the market, the product sold by foreign business actors is much cheaper than that sold by domestic ones and has equal quality. Indonesian Business Competition Supervisory Commission (KPPU) will impose sanction difficultly to foreign business actors doing predatory pricing based on Monopoly and Unfair Business Competition Law, recalling its limited authority.

In predatory pricing, business actor sets price below the duly cost, with an expectation that if their competitors follow the price they will not or cannot assume the loss they will suffer from, and they will be forced to get out of the market. Having defeated their competitors, the business actor will be the dominant one that can set monopoly price aiming to recovery the loss it suffered from during predatory pricing practice and then to get more profit in the future (Leslie, 2013).

Obtaining as much as possible profit is a fair behavior to business actor as long as it does not generate monopoly practice and unfair business competition. Therefore, Indonesian business actor should run business activities corresponding to and in line with Law Number 5 of 1999. There are some parties regulated in Law Number 5 of 1999 about the

Prohibition of Monopoly Practice and Unfair Business Competition. Nevertheless, this research emphasizes on both foreign and domestic business actors which do predatory pricing practice because the regulation of them is one of potential weakness of the Law Number 5 of 1999 in overcoming predatory pricing practice in digital economic era.

Article 1 letter e of Law Number 5 of 1999 about Law Number 5 of 1999 about the Prohibition of Monopoly Practice and Unfair Business Competition states that “Business performer is each individual or corporation established and based or doing activities in Republic of Indonesia’s jurisdiction, either individually or collectively through agreement, organizing a variety of business activities in economic area”. The phrase “business actor” in the law refers to only individual or corporation established and based or doing activities in Republic of Indonesia’s jurisdiction, the criteria of which are elaborated in detail below.

**a. Established (with Indonesian Law)**

Article 109 of Law Number 11 of 2020 about Job Creation amends some articles of Limited Incorporation Law, one of which is Article 7 clause 4, stating “Incorporation acquires corporate status after having been registered in the Minister and gotten registration proof. In the establishment of Limited Incorporation, the word *established* means to be established based on Indonesian law, corresponding to what is regulated in the legislation. The example of limited incorporation is a corporation and a company with corporate status, having been legalized by the Minister.

**b. Based**

Individual or corporation has its base, in this case domicile. Viewed from the word “based” here means based in Republic of Indonesia’s territory. Base or domicile is regulated in Article 17 clause 1 of Civil Code, stating that basically everyone should have findable dwelling. Domicile is the place where an individual is considered as always present in relation to doing his rights and fulfilling his obligation although he stay or live in other places, even corporation can have certain base (Simanjuntak, 2015).

**c. Doing Activities (in Republic of Indonesia’s Territory)**

Doing activities here means that any business activities done by an individual or a corporation is conducted in Republic of Indonesia’s territory, but it does not explain whether or not it includes foreign individual and corporation.

In current digital economic era, trading and business are not limited to certain region, because state borders are no longer a significant problem. Digital economic era, one of which is electronic commerce (e-commerce), presents special opportunity to small- and medium-scale companies to use digital platform to reach customers globally (Meltzer, Joshua P, & Lovelock, 2018). In addition, individual or corporation neither basing nor established based on Indonesian law may run its business activities in Indonesia's territory without representative in the state. This becomes a distinctive constraint to law enforcement against the unfair business competition practice.

It is in contrast to Government Regulation Number 80 of 2019 about Trading through Electronic System (*Perdagangan Melalui Sistem Elektronik* or thereafter called PMSE) stating that business actor is each individual or corporation, including both domestic and foreign business actors, operating business activity in trading area through electronic system. The government regulation clearly applies to both domestic and foreign business actors, so that individual or corporation can receive sanction if it breaks the regulation.

The Government Regulation also explains what the phrase "foreign business actor" means. Article letter 8 explains that "Business Actor basing in foreign countries thereafter called Foreign Business Actor is foreigner or foreign corporation established and basing out of Republic of Indonesia's territory that runs business activities in PMSE area in Republic of Indonesia's territory".

Seeing further the Article 7 clause 1 of Government Regulation Number 80 of 2019, foreign business actor making bargaining and/or running PMSE to consumers basing in Republic of Indonesia's jurisdiction and fulfilling certain criteria are considered as fulfilling the physical presence in Indonesia and running business activities permanently in Republic of Indonesia's territory. Certain criteria are contained in Article 7 clause 2 by fulfilling some requirements: transaction volume, transaction value, shipping package volume and traffic or access volume.

Obviously, individual or corporation basing in foreign countries can belong to the definition of business actor in Government Regulation Number 80 of 2019 with certain requirement, but it is noteworthy that this Regulation is issued to implement Article 66 of Law Number 7 of 2014 about Trading. It does not include the regulation governing business competition in Indonesia; thus, Business Competition Law cannot include electronic trading done by foreign business actors.

In enforcing the business competition law, not only government develops the law on business competition but also there is another independent institution taking an action against the infringement of business competition, Business Competition Supervisory Commission (KPPU). KPPU has duty and authority to prevent and to take action against the infringement of competition law and then to resolve the case reported by people or business actors.

Article 7 clause 3 of Government Regulation Number 80 of 2019 about Trading through Electronic system states that the Organization of foreign Trading through Electronic System (PPMSE) fulfilling the criteria as mentioned in Article 7 clause 2 of Government Regulation should obligatorily designate the representative basing in Republic of Indonesia's jurisdiction that can take action as and on behalf of the business actors.

If foreign business actors designate the representative in Republic of Indonesia's territory, KPPU can take action against foreign business actors that break the Law Number 5 of 1999, but the question is what if the foreign business actors do not have representative in Republic of Indonesia's territory and do unfair business competition practice, whether or not KPPU can take action against the foreign business actors with no representative in Indonesia's territory. KPPU has no authority to take action against the foreign business actors recalling that the definition of business actors as mentioned in Law Number 5 of 1999 is limited to domestic business actor only, the establishment of which should be corresponding to Indonesian legislation, the domicile should be in Republic of Indonesia's territory, and trading activities should be done in Indonesia's territory.

We can analyze more in-depth the criteria intended by seeing Article 15 of Republic of Indonesia Minister of Trade's Regulation Number 50 of 2020 about the Stipulation of Business Licensing, Advertising, Business actor Building and Supervision in Trading through Electronic system, stating that foreign Trading Organization through Electronic System (PPMSE) fulfilling certain criteria should obligatorily designate its representative basing in Republic of Indonesia's jurisdiction that can take action as and on behalf of the PPMSE. Certain criteria of foreign PPMSE as aforementioned are:

- a. Having had transaction with over 1,000 (a thousand) consumers in one-year period; and/or
- b. Having shipped over 1,000 (a thousand) packages to consumers in one-year period.

For example, we can see the Conch case – the China-origin cement selling cement under Indonesian cement price indicated doing predatory pricing, reported by Labor Union



Federation of Indonesian Cement Industry (FSP-ISI) to KPPU in KPPU case Number 03/KPPU-L/2020. Business Competition Supervision Commission (KPPU) decided that an infringement has been done by PT Conch South Kalimantan Cement (CONCH) against the Article 20 of Law Number 5 of 1999 in the case of Portland Composite Cement (PCC) selling in South Kalimantan region. So, in this case KPPU could take action against Conch cement as the company has subsidiary representing it in Indonesia (Safuroh, 2021).

Then, what the consumers can do if there is foreign business actor with no Indonesian representative doing unfair business competition. Article 18 of Government Regulation Number 80 of 2019 states that in the case of PMSE harms consumers, the consumers can report the loss they suffer from to the Minister. Business actor not resolving the reporting will be classified into the list of supervision priority by the Minister. The severest sanction to be imposed is temporary blocking of PPMSE service by the authorized related institution as intended based on the Director General of Consumer Protection and Commercial Order (*Perlindungan Konsumen dan Tertib Niaga* or PKTN). It builds on Republic of Indonesia Minister of Trade's Regulation Number 50 of 2020 about the Stipulation of Business Licensing.

Considering the result of analysis conducted, it can be concluded that KPPU RI can take action only against foreign business actors fulfilling certain criteria and having representative in Indonesia. Those not fulfilling certain criteria are not obliged to designate representative in Indonesia, so that in this case KPPU cannot implement its authority. The measure the consumers can take if foreign business actor with no Indonesian representative harms them is to report it to the Minister. The Minister of Trade can impose sanction by classifying it into list of supervision priority by Minister with temporary blockage of PPMSE service by the authorized related institution being the further sanction.

### **Regulation of Business Competition in Indonesia in the Future should Follow Time Development Particularly in Facing the Challenge of Digital Economic Growth**

Digital economy has grown in developed countries in early 1990. Indonesia is slightly late in the term of technology application for trading and business purposes, as indicated with e-commerce sector just actually having been realized well in 1999. This stage is characterized with the presence of Bhinneka.com and Kaskus forum in that year. Additionally, a news startup - Detik portal - also appeared in the same year. Digital economy consists of various economic activities, including the use of digital information and knowledge as key factor of production, the modern information networks as

important activity space and the effectiveness of Information and Communication Technology (ICT) use as the important driver of productivity growth and economical structure optimization (Nadzroh, 2018).

Technically, the organization of e-commerce in Indonesia has made some progresses, but hesitation still grows about whether or not Indonesian legal system can solve problem arising within society, particularly the problem of unfair business competition in e-commerce. E-commerce within society has occurred very commonly in developed countries where there has been clear rule of law. United States of America is the first state to govern e-commerce in 1997, through developing e-commerce legal framework, i.e. UNCITRAL (*United Nation Commission on International Trade Law*), later becoming the reference and standard regulation for e-commerce in many other states.

Law Number 5 of 1999 has not governed comprehensively yet the role and authority of Business Competition Supervisory Commission (KPPU) in digital business or e-commerce. KPPU's study on digital economic in 2020 focused on learning the factors and the consumer behavior affecting the determination of corresponding market in the sector. Considering the result of study, KPPU found that business competition in online platform, particularly e-commerce, is encouraged by two main interrelated factors: data mastery and information network existence. It means that the company with strong data mastery will create information network very easily. Meanwhile, the company mastering information network will collect a large volume of data. The network mastery can be accomplished through maximizing the role of social media and searching engine. It affects the measure the KPPU needs to take in law enforcement in the sector, particularly to keep paying attention to both factors aforementioned. In setting the corresponding market in this sector, geographical aspect can no longer be determined using traditional method. It is because the geographic aspect of e-commerce is highly determined by delivery fee, product cost, and length of delivery time. Overall, KPPU's study found the following facts:

- a. The main factor considered in choosing e-commerce is customer credibility.
- b. Cost and delivery time are main factors considered by consumers in choosing merchant.
- c. Consumers consider switching to other merchant when there is a cost difference of 10%.
- d. Tolerance of delivery time acceptable to consumers for delivery within the city is 0-3 days.

- e. Consumers still prioritize domestic e-commerce, and choose the foreign one if only no local e-commerce provides the product they want or the foreign one provides cheaper cost.

Meanwhile, in the term of market concentration, KPPU's study found that Indonesian e-commerce is mastered respectively and consistently by *Shopee, Tokopedia, Lazada, Blibli, and Bukalapak* (Komisi Pengawas Persaingan Usaha (KPPU) RI, 2020).

The regulation of business competition in Indonesia should keep developed in the future. Law Number 5 of 1999 about the Prohibition of Monopoly and Unfair Business Competition Practices can no longer ward off the more massive electronic trading. The coverage of law enforcement in the provision of Business Competition Law existing is very narrow because the business actors imposed with sanction are the foreign ones only or the local business actors having relation with the foreign ones.

The growth and development of e-commerce era in Indonesian digital market leads to the concept of business competition in e-commerce. New era of global competition enables the companies to reach international market regardless the state's territorial borders with less capital-intensive business model. It makes some states face the risk and challenge to formulate a new policy to follow this rapid development of global phenomenon. Regarding this, we now receive a reality that e-commerce industry provides an apparently highly open competition stage. Competitive advantage of land production factor (location) is faced with other production factors. The difference of distance in domestic consumers and business actor status (*local versus cross border*) was formerly considered as affecting B2C (Business to Customer). But its portion has reduced now. Cross border trade was formerly competitive to B2B (Business to Business) only and to non-functional product category such as souvenir and heritage-related product.

In short term, the act of selling product below capital cost done by a business actor in predatory pricing is very profitable to consumers, but having eliminated the competitors from the market and inhibited the potential new competitor, the dominant or incumbent business actor expects to increase the price significantly. Generally, the price set to compensate the loss is the monopoly (higher) one, thereby can harm the consumers.

Considering the discussion of the result analysis on the regulation existing in Indonesia and the predatory pricing-related case occurring in Indonesia, Business Competition Supervisory Commission (KPPU) can take action only against the business actor having representative in Indonesia's territory. It, of course, makes us aware that there should be a

supervisory institution like KPPU that faces any challenges more readily in this e-commerce era.

In addition to being national demand, the presence of Fair Competition Law is also a demand or a need for juridical parameter in cross-border business relation. Viewed from national life aspect, it can be seen clearly that our cultural (kinship principle) and constitutional (economic democracy) bases indeed decline monopolistic practices in economic life that harms the people in any aspect of cross-border relation, moreover the appearance of economic globalization phenomenon defined as the state's more dependence on other states in various (economic) life aspects requires many states to comply with the standardized regulation in cross-border business as the consequence of WTO, APEC, AFTA, NAFTA, EC, etc.

Many expert opinions state that the state competition in domestic market is very important to a public policy, particularly to measure the state's competitiveness in international market, and to convince foreign investors and exporters to compete in domestic market. As such, the objective of national competition policy is to create and to protect the concept of competition in order to be implemented in pluralistic economic framework. This basic competitive concept essentially contains strong Human Rights element, as it is related to the advancement of competition state and the discretion to choose, to reduce, and to prohibit the concentration of economic powers. For that reason, state intervention (government regulation) is required in developing and maintaining competition state. Even globalization creates conducive atmosphere to cross-border competition that requires policy harmonization called *super national of regional standard*. European Economic Community (EEC) still develops what is called *Minimum Competition Policy Requirements within the Framework of the GATT*. In ASEAN environment, without overriding divergence of economic, political, and social institutional structures, experts have begun to think of the need for development in addition to national competition law and harmonization of commercial regulations, including business competition law among ASEAN communities (Usman, 2013).

Cooperation between business competition institution and related institution in ASEAN countries can be seen from the establishment of ASEAN *Consultative Forum for Competition* (ACFC). In its development, ACFC is recommended to be a medium to distribute information and to exchange experience and any things related to the business competition policy of individual countries (Riva'i & Erhandy, 2018). One of solutions to prevent unfair business competition from occurring in both regional and international levels affecting Indonesian economy is to enter into international cooperation, bilaterally,

regionally, or globally. Electronic commerce will lead to no border spatially and temporally; thus it should be followed with more effective regulation to reach broader region not limited to a state's territory only but should encompass cross-border law enforcement. KPPU's limited authority also inhibits law enforcement in Indonesian business competition in this e-commerce era. ASEAN is expected to do as what European Union has done that has signed (European Economic Community (EEC Treaty)), establishing European Economic Community. A regulation of Business competition has been specified within it and has been effective since 1958. The regulation of Business Competition in European Community is contained in Articles 81 and 82 of EEC Treaty (Knott, 2010).

United Nations (UN) admitted that Indonesia's Business Competition Supervision Commission (KPPU) is the most developed business competition institution in South East Asia and the model of how a competition institution can implement its competition law and policy. It is stated firmly by *United Nations Conference on Trade and Development* (UNCTAD) in the session of peer review on the implementation of business competition law and policy in Indonesia held in Geneva on July 2009. At ASEAN level, KPPU has positioned itself as a developed competition institution in the supervision of business competition in ASEAN and begins to help the competition institutions in other ASEAN countries in developing their competition policy and law. To achieve this, KPPU has developed *ASEAN Consultative Forum on Competition* since 2004 and has been the embryo of sectoral institution establishment in business competition field in ASEAN, *ASEAN Expert Group on Competition* (AEGC) in 2008 (Riva'i & Erhandy, 2018).

The recognition of KPPU to be a good business competition institution will enable it to initiate the establishment of law and cooperation between business competition institutions at both regional and international levels in the future to enforce the business enforcement law in order to prevent more monopoly and unfair business competition practices from occurring through e-commerce media. The growth of economic digital should be followed with the development of regulation governing it in order to remove any potential abuse in e-commerce transaction implementation to get personal benefit and to harm others.

Then, what is another way to be taken to enable this business competition regulation, particularly concerning the authority of Business Competition Supervisory Commission (KPPU), to cover all needs in this e-commerce era? We should probably see Huala Adolf's opinion, classifying jurisdiction principle into four (Adolf, 2011):

- a. Firstly, territorial jurisdiction principle. The state, according to this principle, has jurisdiction over all problems or events occurring inside its territory. This principle is so important in international that it is stated that territory is fundamental basis to the enforcement of state jurisdiction.
- b. Secondly, personal jurisdiction principle. In this principle, a state can judge the crime committed by its citizens wherever they are. Otherwise, it is the state's obligation to protect its citizens wherever they are. These two propositions then develop into new principles being the part of personal jurisdiction principle: (1) active personal jurisdiction (the one enacted to citizens abroad) and (2) passive personal jurisdiction (the one enacted to foreigners committing unlawful deed (including crime against its citizen).
- c. Thirdly, protection jurisdiction principle. Based on this principle, a state can enforce its jurisdiction against foreigners committing crime abroad that putatively can endanger the state's interest, security, integrity, and independence. The crime intended can be government-overthrowing plan, currency counterfeiting, spy, or offense against diplomat abroad. Essentially, this principle functions to protect governmental functions.
- d. Fourthly, universal jurisdiction principle. In this principle, the states have jurisdiction over any crimes considered endangering international communities. The principle of universal jurisdiction departs from an assumption that no international justice organization can judge the crime committed by individual; so that it should be dealt with by individual states.

Then, we can see that some Indonesian regulations have used extra-territoriality principle as the reference of law enforcement, i.e. the regulation of Information and Electronic Transaction. Based on the provision of Article 2 of Law Number 11 of 2008 about Information and Electronic Transaction, this law implements the expansion of territorial-principle criminal jurisdiction and criminal jurisdiction. Extra-territorial principle is used here as it asserts the enactment of Indonesian criminal law to the perpetrator of crime out of Indonesia's territory. The enactment of territorial-principle criminal jurisdiction expansion is limited, only based on the legal consequence occurring in Indonesia's jurisdiction (objective territorial principle of criminal jurisdiction; in the formulation "out of Indonesia's territory with legal consequence in Indonesia's jurisdiction").

Based on the principles of jurisdiction as suggested by Huala Adolf, the regulation of business competition, particularly concerning the authority of Business Competition Supervisory Commission (KPPU), can refer to extra-territorial principle. Why? Because,

as known, jurisdiction goes beyond the state's territorial border (extra-territorial jurisdiction principle) identified in international law nomenclature. In the state's attempt of enforcing its sovereignty to beyond its territorial border, it can base itself on an argument that it is done for the sake of (1) protecting its citizens (passive personal jurisdiction principle), (2) state security excuse (protection jurisdiction principle), and (3) no justice with legitimacy to judge individual (universal jurisdiction principle).

## **Summary**

1. Based on the business competition law enacted today, particularly in taking action against predatory pricing practice, it can be concluded that KPPU RI can take action only against the foreign business actors fulfilling certain criteria and having representative in Indonesia. The foreign business actors not fulfilling the criteria are not obliged to designate representative in Indonesia, so that in this case KPPU cannot undertake its authority and the one authorized to impose sanction is Minister of Trade based on consumers' report, by means of classifying them into list of supervision priority by the Minister with temporary blockage of Trade Organization through Electronic System (PPMSE) service by the authorized related institution being the further sanction.
2. In the future, both regional and international cooperation should be established by the states concerning the regulation of supervision over unfair business competition supervision, particularly predatory pricing, and a regulation of business competition is then required to face electronic business and transaction (*e-commerce*) based on extra-territorial principle, so that law enforcement in business competition field can be implemented maximally and KPPU can undertake its task well in resolving the adverse infringement of business competition regulation in Indonesia.

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