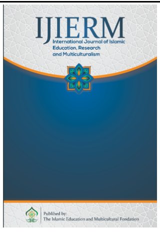

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PREDATORY PRICING COMPETITION THROUGH E-COMMERCE PLATFORMS: ELIMINATING OR DESTROYING? (A REVIEW BASED ON THE THEORY OF HARM)

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Abstrak

Persaingan harga predator melalui platform e-commerce telah menjadi perhatian khusus di era digital. Predatory pricing mengacu pada praktik penetapan harga di bawah standar untuk "menghilangkan atau menghancurkan" pesaing, yang secara signifikan berdampak pada pasar dan konsumen. Oleh karena itu, tujuan dari penelitian ini adalah untuk mengeksplorasi dan menganalisis tolok ukur ambang batas "menghilangkan atau menghancurkan" dalam strategi predatory pricing dengan menggunakan kerangka teori kerugian. Penelitian ini menggunakan metode yuridis normatif, dengan menggunakan pendekatan perundang-undangan, konseptual, teori, dan studi kasus. Kekuatan dari penelitian ini terletak pada penyediaan solusi praktis untuk mengatasi masalah yang ada, sehingga memberikan kontribusi yang berarti di lapangan. Temuan ini menyoroti pentingnya teori kerugian dalam menganalisis pola untuk mendeteksi harga pasar yang menentukan apakah pesaing sedang "dihilangkan" atau "dihancurkan", yang dapat membahayakan pasar dalam konteks digital. Selain itu, penelitian ini juga menggarisbawahi pentingnya mencegah praktik predatory pricing untuk memastikan persaingan yang sehat di platform e-commerce.

Kata Kunci: *Persaingan Usaha, Harga Predator, Platform E-Commerce, Indonesia*

Abstract

Predatory pricing competition through e-commerce platforms has become a specific concern in the digital era. Predatory pricing refers to the practice of setting prices below standard to "eliminate or destroy" competitors, which significantly impacts the market and consumers. Therefore, the purpose of this study is to explore and analyze the benchmarks for the "eliminate or destroy" threshold in predatory pricing strategies using the framework of the theory of harm. This study employs a normative juridical method, utilizing statutory, conceptual, theoretical, and case study approaches. The strength of this study lies in its provision of practical

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solutions to address existing issues, thereby contributing meaningfully to the field. The findings highlight the importance of the theory of harm in analyzing patterns to detect market prices that determine whether a competitor is being "eliminated" or "destroyed," which could harm the market in the digital context. Furthermore, it underscores the necessity of preventing predatory pricing practices to ensure fair competition on e-commerce platforms.

Keywords: *Competition, Predatory Pricing, Platform E-Commerce, Indonesia*

INTRODUCTION

In this digital era, society faces global challenges, particularly concerning rapidly advancing and sophisticated technology. Many people now rely on technology to find the information they need using internet networks. The rapid development of internet technology has had a profound impact on global society. This advancement has transformed various conventional methods and lifestyles into more modern approaches across numerous fields, such as social, cultural, economic, military, administrative, and informational domains, among others. The progression of technology and the ease with which people can communicate and access information have created both opportunities and intensified competition within society. People today are required to adapt to a more modern lifestyle and keep up with these developments to avoid being left behind in the competitive landscape (Moha et al., 2020, p. 101). Along with these developments, the business sector is one of the most affected by technological advancements. One notable example is the emergence of e-commerce platform applications in 2019, which have continued to grow to this day. These platforms have been utilized by business actors to expand their business lines through e-commerce, making it easier for consumers to engage in online transactions.

It is important to note that e-commerce platforms are computer-based technologies that facilitate the sharing of ideas, thoughts, and information through the development of networks and virtual communities. These platforms provide users with fast electronic communication and access to content such as personal information, documents, videos, photos, and transactions. On e-commerce platforms, user engagement typically occurs via computers, tablets, smartphones, and web-based software or applications (Ramli et al., 2020, p. 119). E-commerce platforms, in the context of business competition, are often utilized by business actors to boost transactions. The use of these platforms fosters a highly competitive environment among businesses. This increasingly competitive market pushes e-commerce players to devise effective marketing strategies, particularly to attract consumers. In a competitive market, companies strive to gain more customers by offering products at the lowest possible prices, improving product quality, and enhancing customer service. To succeed in such a competitive environment, businesses must innovate by developing new items with inventive designs. The advantage of competitive dynamics in business lies at the core of marketing performance to tackle market rivalry. Competitive advantage fundamentally arises from the values or benefits created by companies for their customers (Choirunisa & Mulyanti, 2023, p. 11).

In a competitive market, companies compete to attract more customers by offering their products at the lowest possible prices, improving product quality, and enhancing customer service. Businesses must strive to develop new items with innovative designs to succeed in such a market. The increasing use of e-commerce platforms has intensified the concept of competition among businesses, making the market even more competitive. This heightened competition drives many e-commerce players to engage in strategic marketing efforts, particularly to attract consumers. One example is the Shopee e-commerce platform, which operates on a C2C (consumer-to-consumer) model. This application serves as an online shopping platform that focuses on mobile usability, making it easier for users to browse, shop, and sell directly through their smartphones(Jeko I. R., 2025). Upon closer examination, Shopee's platform includes various features that attract business actors, offering programs that facilitate their use of Shopee's e-commerce services. These programs include free shipping, the Shopee 12.12 campaign, flash sales, Ramadan sales, and extra cashback promotions. The costs and discounts in these programs are determined by Shopee's e-commerce operators, sometimes even reducing prices to Rp. 0,- (zero Rupiah).

This practice suggests indications of predatory pricing, where businesses deliberately sell at a loss. Such loss-leader strategies in business competition often benefit financially stronger players, making it difficult for smaller businesses, which typically have limited capital, to compete. Consequently, these activities can lead to the practice of unhealthy competition in the marketplace. As stipulated in Article 20 of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair

Business Competition (hereinafter referred to as the Anti-Monopoly Law), business actors are prohibited from supplying goods and/or services by engaging in loss-selling or setting very low prices with the intent of eliminating or destroying their competitors' businesses in the relevant market, also known as predatory pricing. However, the phrase "eliminating or destroying" as mentioned in the regulation does not provide a comprehensive interpretation, resulting in a lack of clarity. This incompleteness arises from the absence of clear qualifications and boundaries for the meaning of "eliminating or destroying," creating ambiguity regarding actions that may indicate predatory pricing and lead to unfair business competition in the market(Farhandi Himawan & Anna Maria Tri Anggraini, 2023, p. 849). The incompleteness described above tends to create challenges in implementation, as it leaves room for undetected predatory pricing practices. This can lead to legal uncertainty and even conflicts among business actors as a consequence.

THEORETICAL BASIS

Theory of Harm

Predatory pricing practices can be analyzed through various theoretical perspectives, encompassing economics, law, and business competition. From an economic theory perspective, predatory pricing is viewed as a strategy aimed at creating market dominance by setting prices below production costs to eliminate competitors (Bolton et al., 1999, p. 2239). Once competitors exit the market, the business actor raises prices to maximize profits. This strategy is often associated with the concept of monopoly pricing, where a market-dominant actor gains the freedom to set prices without the threat of competition. This perspective highlights the negative impacts of predatory pricing on market efficiency, consumer welfare, and the sustainability of small businesses (Besanko et al., 2014, p. 868). In the theory of competition law, predatory pricing is categorized as an anti-competitive act that contradicts the principles of fair competition. Article 20 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia prohibits loss-selling with the intent to "eliminate" or "destroy" competitors. However, the legal interpretation of this provision is often debated due to the lack of a clear operational definition of "eliminating" and "destroying" (Joskow & Klevorick, 1979, p. 259)

In the context of the theory of harm analysis, predatory pricing is understood as a practice that harms market structure and consumers in the long term. The theory of harm provides a framework to evaluate the impacts of this practice, including the reduction in the number of competitors, increased market concentration, and the risk of monopoly, which diminishes consumer choices. By integrating economic and legal perspectives, the theory of harm enables a comprehensive analysis of the short-term and long-term consequences of predatory pricing (Giocoli, 2014, p. 2). According to Andi Fahmi Lubis, the practice of loss-selling (predatory pricing) is generally aimed at achieving five objectives (Prahmana & Wiradiputra, 2022, p. 9844):

(1) Eliminating competitors in the same relevant market.
(2) Restricting competition by implementing loss-selling prices as an entry barrier.
(3) Gaining significant future profits by driving competitors out of the market.
(4) Reducing past losses through aggressive pricing strategies.
(5) Promotional pricing to introduce new products as part of a marketing strategy.

Based on the formulation of Article 20 of Law No. 5/1999, business actors engaging in loss-selling practices typically aim to achieve objectives one to three simultaneously. Objective four is generally pursued to clear out stock, particularly for items nearing expiration (commonly referred to as a "warehouse clearance"). When predatory pricing is implemented by a business actor, it cannot yet be categorized as an act of "eliminating or destroying" because its application still adheres to the prevailing regulations. As such, the adjustment of these two phrases has not yet concretely defined the specific actions of business actors that could be classified as "eliminating or destroying" under predatory pricing practices. A brief outline from the author includes the following points:

No.	"Get rid of"	"Turning off"
1.	Setting prices below cost to attract consumers and outperform competitors, thereby forcing them out of the market.	Setting prices significantly below production costs with the aim of attracting consumers and driving competitors out of the market. Once competitors are pressured and exit, the business actor can then raise prices.
2.	Blocking competitors' access to critical distribution channels, thereby limiting their ability to reach consumers.	Establishing exclusive agreements with distributors or service providers, preventing

		competitors from accessing consumers or the market.
3.	Engaging in discriminatory practices towards customers or suppliers with the intent to harm competitors. For example, offering special discounts to specific consumers to discourage them from purchasing from competitors.	Utilizing technology or innovations inaccessible to competitors, rendering their products irrelevant or obsolete.
4.	Spreading harmful or misleading information about competitors' products to damage their reputation in the eyes of consumers.	Implementing unrestricted price control for business interests, resulting in absolute market dominance without limitations, which leads to unfair business competition.
5.	Unfairly leveraging legal processes to disrupt competitors' operations.	Disregarding other competitors' environments and continuously setting prices below the standard without a specified time limit.

The most critical element in a nation's economy is business competition. Business competition can impact regulations related to corporate trade, supportive business environments, societal harmony, and much more. Market competition drives businesses to develop and produce various goods at competitive prices, benefiting both producers and customers. Thus, competition in the business world can be a double-edged sword—it may bring advantages or cause harm in efforts to eliminate or destroy competitors, potentially leading to predatory pricing practices. Such practices ultimately result in unhealthy business competition (Hapsari, 2024, p. 12). In the context of predatory pricing, "eliminating" or "destroying" refers to a company's strategy of setting extremely low prices with the intent of driving competitors out of the market. This is done with the expectation that once competitors are eliminated; the company can raise prices and achieve higher profits. However, in a perfectly competitive market, prevailing prices are often determined by the supply and demand of goods or services, where prices reach an equilibrium between consumer demand and producer supply.

In certain goods or services markets, however, there are often price-setting players (price setters or price leaders), typically large businesses with the lowest cost structures. Therefore, when assessing the intent of a business that sets very low prices, the scale of its production must also be considered. The larger a business's production scale, the lower its production costs, enabling it to offer lower prices in the market. Regarding production scale, a business that supplies goods or services at extremely low prices can be said to aim at eliminating or destroying its competitors if it operates on a large production scale. This large-scale production allows it to bear significantly lower costs, giving it an advantage in setting lower prices that smaller competitors cannot match, thereby potentially driving them out of the market (Drexl, 2015). Thus, the theory of harm provides a critical framework for analyzing and effectively addressing predatory pricing. Specifically, it is highly beneficial in identifying benchmarks for determining the extent to which such behavior harms business actors. In the context of predatory pricing, the theory of harm offers a comprehensive perspective on how this practice can damage competition and consumers. It serves as an essential tool for regulators to monitor and enforce fair competition laws, ensuring that markets remain competitive and free from manipulative practices (Aoláin, 2009, p. 219).

The challenges faced by business actors in the era of digital development include the emergence of unhealthy competition, particularly predatory pricing, which manifests in actions aimed at "eliminating or destroying" competitors. Therefore, as a preventive measure, the theory of harm is essential for identifying market pricing that can be categorized as predatory pricing in the context of "eliminating or destroying." The theory of harm aims to protect competition and the welfare of business actors, support law enforcement, and provide a clear analytical framework to understand and address harmful business practices. Accordingly, this article seeks to identify and analyze predatory pricing actions that fall under the category of "eliminating or destroying," with a particular focus on the theory of harm. Overall, the purpose of this paper is to present an innovative framework reflecting the interests of business actors in achieving fair competition. By applying the theory of harm, it aims to eliminate the factors and impacts of predatory pricing on market stakeholders in both digital and non-digital contexts, thereby fostering healthy market competition.

RESEARCH METHODS

The writing method employed by the author is normative juridical research (Irwansyah, 2020, p. 12). The approaches used by the author include the statutory approach, case approach, and analytical approach, aiming to obtain a comprehensive study of the legal truth and/or construction regarding predatory pricing competition through e-commerce platforms, which can be classified as either "eliminating" or "destroying" within the context of competition law. In this study, the author utilizes primary legal materials, secondary legal materials, and tertiary legal materials (Marzuki, 2021, p. 1). The legal writing techniques used by the author include library research and internet searches.

The legal research analysis technique employs a descriptive-analytical method, which describes the applicable legislation, specifically Law No. 5 of 1999, or positive law, and relates it to legal theory and the phenomenon of the implementation of positive law in society. The legal research analysis is conducted as an activity to provide an evaluation that may involve opposing, criticizing, supporting, supplementing, or commenting on the findings, followed by drawing conclusions based on the author's reasoning with the aid of the chosen theoretical framework. Subsequently, the analysis is carried out. The approaches used by the author include the statutory approach, case approach, and analytical approach.

RESULTS AND DISCUSSION

Legal and Economic Review of Predatory Pricing in the Digital Market

In general, predatory pricing is regulated under Article 20 of Law No. 5 of 1999, which states: "Business actors are prohibited from supplying goods and/or services by engaging in loss-selling or setting extremely low prices with the intent to eliminate or destroy competitors in the relevant market, which may result in monopolistic practices and/or unfair business competition (Hukum Online, 2025, p. 6). The effectiveness of predatory pricing regulation necessitates considerations and perspectives that must adapt to digital developments, which pose risks to fair competition due to the actions of e-commerce platform operators in the global digital business era. Certain rules or regulations may directly contribute to the creation of monopolistic markets for specific types of products or services, leading to the ineffectiveness of predatory pricing regulations. A likely practice associated with such platforms is market control through extremely low pricing strategies.

Business actors tend to cultivate incentives to gain market power and expand their freedom in conducting business operations. In creating such market power, they engage in actions detrimental to competitors, such as implementing market restrictions, creating barriers to market entry, forming collusive agreements to fix prices, limiting output, controlling the market, and practicing other competitive tactics. The absence of clear limits on business actors engaging in predatory pricing through e-commerce platforms has led to the misuse of market power (abuse of market power) and the exploitation of dominant positions (abuse of dominant position). The primary objective of these practices is to capture a larger market share at the expense of short-term profitability. Predatory pricing competition refers to the actions of business actors selling goods or services at prices below standard. This practice highlights specific qualifications for actions that can be categorized as "eliminating" or "destroying," making it easier to determine whether a particular act qualifies as predatory pricing. Below are the general qualifications used to detect predatory pricing activities through e-commerce platforms (Imron, 2024, p. 1413).

Predatory pricing is often characterized by several key factors. First, it typically involves a focus on short-term losses as a strategy to achieve market dominance, with the expectation of raising prices once weaker competitors are eliminated. This practice is more common in concentrated markets, where a few dominant players can easily influence prices. From a legal perspective, predatory pricing is considered an anti-competitive practice and often draws the attention of regulators. Many countries have laws prohibiting such behavior. While consumers may benefit from lower prices in the short term, the long-term effects can be detrimental. If competitors are driven out and the market becomes monopolized, prices can rise significantly. To demonstrate the presence of predatory pricing, there must be evidence that prices are consistently set below marginal costs and that the business has the intent to eliminate competitors.

For business actors, efficiency can be achieved by producing goods at the lowest possible cost by utilizing minimal resources. However, determining price algorithm patterns to calculate or measure the intended losses is challenging, especially due to the influence of Digital Control System Automation. The author emphasizes applying the Theory of Harm, specifically the Theory of Loss-Selling, to analyze the sustainability aspects of price algorithms by focusing on observable indications. This approach helps conclude whether predatory pricing practices on e-commerce platforms can be classified as actions aimed at "eliminating" or "destroying" competitors.

The theory of harm plays a crucial role in addressing the negative impacts faced by business actors engaged in unfair competition during the transition from traditional markets to modern markets, particularly digital markets (e-commerce platforms). This transitional phase has transformed market structures, leading to the emergence of predatory pricing practices, which begin with the manipulation of market prices beyond the standard pricing for selling goods to consumers. In digital markets, there are generally no specific regulations governing market prices. Therefore, it is essential to establish rules to address predatory pricing practices effectively through robust monitoring mechanisms. Such measures aim to achieve fair competition, ensure the sustainability of digital market businesses, and promote economic efficiency and equity.

Ideally, the author employs an analytical study based on the Theory of Harm that is specifically tailored to business behaviors in certain cases (e.g., evolving with changes in economic perceptions and shifts in analytical focus or perspective). This approach is essential because economic reasoning forms a critical component of the Theory of Harm. Consequently, from a developmental perspective, this theory may evolve over time as theoretical understanding advances. For instance, at the level of specific behaviors, advancements in economic thought have prompted a re-evaluation of the classification of dominance abuse, particularly its impact on specific cases (e.g., discount practices on e-commerce platforms). Such cases reflect the phenomenon of predatory pricing, as loss-selling practices through frequent discount campaigns by e-commerce platforms can be seen as indications of predatory pricing or price-setting strategies that harm competitors.

In this context, loss-selling refers to offering products at extremely low prices, often below production or procurement costs, to attract consumers and establish market dominance. This phenomenon becomes increasingly apparent when considering its impact on imported products and micro, small, and medium enterprises (MSMEs) in Indonesia, highlighting the potential harm to local business actors in the face of predatory pricing practices. Specifically, loss-selling practices in e-commerce can have significant negative impacts on domestic business actors, such as MSMEs that sell products ranging from low-end to high-end clothing. Heavily discounted imported products can lead to prices being lower than those of local products. This situation makes it difficult for local businesses to compete on price, resulting in decreased sales and, in many cases, the closure of their operations (Adam, 2023, p. 1438).

The Theory of Harm Approach in Predatory Pricing

The Theory of Harm is an analytical framework designed to identify and evaluate the impact of business actors' actions on market dynamics. This theory focuses on how specific actions, such as setting excessively low prices, can affect market structure, competitors' behavior, and overall consumer welfare. Within this framework, the Theory of Harm is not merely aimed at detecting violations but also at understanding how such actions can disrupt market equilibrium. By analyzing the broader implications of predatory pricing, this approach provides insights into the ways these practices alter competitive dynamics and create long-term effects on the market ecosystem (Hovenkamp, 2005, p. 86). In the context of predatory pricing, the Theory of Harm is used to explore whether the strategy of setting extremely low prices is genuinely intended to enhance market efficiency or, conversely, to create barriers that prevent competitors from surviving. Such strategies are often accompanied by the expectation of achieving greater profits in the future once competitors are forced out of the market (Hildebrand, 2003, p. 520). However, the analysis within the Theory of Harm does not solely focus on the intent of the business actor but rather on the actual impact of their actions on competition and market sustainability (Zuhdi et al., 2025, p. 48).

This approach becomes particularly important in the digital era, where e-commerce platforms play a significant role in shaping modern market dynamics. With large-scale operations and the ability to access consumer data extensively, digital business actors have the potential to influence the market in ways previously unseen in conventional trade models. Therefore, the Theory of Harm emerges as a relevant tool to assess whether certain actions, such as massive discount programs or extremely low pricing offers, genuinely reflect healthy competition or pose a threat to the sustainability of competition. The Theory of Harm provides a crucial analytical framework for regulators in overseeing business practices, particularly predatory pricing. This approach aids regulators in assessing whether the low-pricing strategies employed by business actors are intended to foster healthy competition or, conversely, create market imbalances that are detrimental (Kaplow, 2011, p. 683). By analyzing various factors such as the impact on competitors, market structure, and potential risks of monopoly, the Theory of Harm enables regulators to make data-driven and evidence-based decisions.

In the context of regulation in Indonesia, Article 20 of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition provides a legal basis for prohibiting loss-selling (predatory pricing). However, the implementation of this article often faces challenges in proving that the actions of business actors are genuinely intended to "eliminate" or "destroy" competitors. This is where the Theory of Harm plays a strategic role. Through this approach, regulators can focus more on the concrete impacts of business actors' actions on the market, rather than merely examining their intent or motives. This is particularly relevant in the digital era, where business practices tend to be more complex and harder to trace.

For example, in cases of predatory pricing on e-commerce platforms, business actors often set prices extremely low, even below production costs, under the pretext of benefiting consumers. In the short term, consumers may indeed enjoy lower prices. However, the Theory of Harm enables regulators to assess the long-term implications, such as the potential loss of competitors unable to keep up, increased market concentration, and the risk of monopolization. When the market is dominated by a few large players, consumers may ultimately suffer due to limited choices and the possibility of price hikes in the future. This approach also helps regulators identify scenarios where predatory pricing is implemented using digital technology. For instance, e-commerce platforms with extensive access to consumer data can use algorithms to implement dynamic pricing, which may appear beneficial on the surface but is designed to lock consumers into specific ecosystems and prevent new competitors from entering the market. By understanding these mechanisms through the Theory of Harm, regulators can formulate more effective policies to prevent anti-competitive practices.

Furthermore, the Theory of Harm provides guidance for regulators to evaluate whether existing regulations are robust enough to address new challenges in the digital era. In Indonesia, for instance, Article 20 of Law No. 5 of 1999 could be strengthened by establishing specific indicators to identify predatory pricing, such as the duration of low-pricing practices, their impact on market structure, and the extent of losses incurred by competitors. By doing so, regulations can function not only as a preventive tool but also as an adaptive instrument aligned with market dynamics. In Indonesia, one prominent example of predatory pricing involves the low-pricing strategies employed by major e-commerce platforms like Shopee and Tokopedia. Programs such as flash sales, massive discounts, and free shipping have become key strategies to attract consumers. While these strategies benefit consumers in the short term, they often harm small and medium-sized enterprises (SMEs), which lack the capital to compete. SMEs are frequently forced to shut down their businesses because they cannot match the competitive prices offered by large platforms with vast resources.

A major legal issue in this context is the lack of clarity and specificity in regulations concerning predatory pricing. Article 20 of Law

No. 5 of 1999 prohibits loss-selling practices but does not clearly define or provide criteria for what constitutes "eliminating" or "destroying" competitors. This creates a legal loophole that can be exploited by large business actors to continue such practices without facing adequate sanctions. Additionally, the regulation has yet to fully account for the complexities of digital markets, such as the use of big data and algorithms in pricing strategies, which are often central to anti-competitive practices on e-commerce platforms. Another issue is the lack of effective oversight and law enforcement by the Business Competition Supervisory Commission (KPPU). In many cases, KPPU struggles to prove that the low prices set by major business actors are aimed at eliminating competitors. Evidence such as financial reports and business strategies is often difficult to obtain, especially when the companies involved are part of global entities that do not fully fall under Indonesia's jurisdiction (Raditya et al., 2024, p. 289). This challenge is further exacerbated by the rapidly evolving dynamics of digital markets, where data and algorithms play a key role in business decision-making but are not adequately addressed by current regulations (Anggara et al., 2022, p. 347).

To enhance the relevance and effectiveness of Article 20 of Law No. 5 of 1999 in regulating predatory pricing practices in the digital era, a reformulation is needed to include clearer definitions, criteria, and oversight authorities. The current regulation lacks specificity in defining actions that "eliminate" or "destroy" competitors, often creating legal loopholes that can be exploited by large business actors. The reformulation should include objective criteria, such as consistently setting prices below marginal or average variable costs, indications of the ability to raise prices after competitors are driven out, and impacts on market structure that led to concentration or monopolization (Pramadanty et al., 2024, p. 239). The regulation must also incorporate the digital context by addressing the use of technology, big data, and algorithms in low-pricing strategies. In this regard, it is essential to grant additional authority to the Business Competition Supervisory Commission (KPPU) to conduct technology-based investigations. This includes analyzing pricing patterns, auditing algorithms, and requesting pricing data from digital platforms. Such measures will ensure that violations within the digital ecosystem can be more effectively identified and addressed (Evans & Schmalensee, 2005, p. 5).

The updated regulation should also include stricter sanctions to create a deterrent effect, such as administrative fines proportional to the company's revenue during the violation period, obligations to cease predatory pricing practices, and restitution for affected small business actors (Kaawoan et al., 2024, p. 846). This reformulation aims not only to prevent anti-competitive practices but also to restore the market balance that has been disrupted. It is expected to maintain fair competition, particularly in increasingly complex digital markets, while providing protection to small business actors and consumers from the adverse effects of predatory pricing.

CONCLUSION

Predatory pricing is a strategy employed by business actors to set product prices below production costs with the aim of driving competitors out of the market or preventing new entrants. This practice remains a highly controversial issue under the regulatory framework of Law No. 5 of 1999, which has yet to fully address maintaining competitive balance in digital markets. As a result, digital businesses compete to dominate the market by setting unreasonable prices, creating barriers for other business actors.
Predatory pricing primarily focuses on undermining fair competition by harming businesses that aim to compete ethically, resulting in economic inequality, financial losses, and, in many cases, the discontinuation of affected businesses.

This is where the concept of the "Theory of Harm" becomes relevant. The theory is rooted in practicality: since the application of law involves practical reasoning and common sense, and since the law on the abuse of dominance prohibits behaviors that harm protected legal principles, it is essential to clarify how legal provisions align with their underlying objectives and principles and how they apply to various factual scenarios. In other words, there is a need for a narrative that precisely explains how a business practice causes harm to competition and, therefore, should be deemed illegal under the law. This approach ensures that regulatory measures are both effective and aligned with the principles of fair competition, particularly in the context of evolving digital markets.

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