
Minimum Price for Sales of Shofiya Products in Beteng Trade Center Solo in the Perspective of Law Number 5 1999 on the Prohibition of Monopoly Practices and Unfair Business Competition

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Abstract

This study aims to determine the review of Law No. 5 of 1999 related to the determination of the minimum price for sales of Shofiya products in Beteng Trade Center Solo. This research was motivated by the determination of the minimum sales price (HMP) of Shofiya products in Beteng Trade Center Solo, where price determination included a form of agreement prohibited in Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. The primary data used in this study came from Shofiya managers and Shofiya *resellers*. The results of this study show that in the determination of HMP Shofiya products in Beteng Trade Center Solo, there is no element of agreement between Shofiya and the *reseller*. In addition, there is no evidence that the determination of HMP causes market competition to be disrupted. Thus, it can be concluded that the determination of HMP for Shofiya products does not violate Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.

Keywords: Pricing; Competition Law; Minimum Sales Price.

Abstrak

Penelitian ini bertujuan untuk mengetahui tinjauan Undang-Undang Nomor 5 Tahun 1999 terkait penetapan harga minimum penjualan produk Shofiya di Beteng Trade Center Solo. Penelitian ini dilatarbelakangi oleh penetapan Harga Jual Minimum (HMP) produk Shofiya di Beteng Trade Center Solo, dimana penetapan harga tersebut termasuk bentuk kesepakatan yang dilarang dalam Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat. Data primer yang digunakan dalam penelitian ini berasal dari pengelola Shofiya dan reseller Shofiya. Hasil penelitian ini menunjukkan bahwa dalam penentuan produk HMP Shofiya di Beteng Trade Center Solo tidak ada unsur kesepakatan antara Shofiya dengan reseller. Selain itu, tidak ada bukti bahwa penetapan HMP menyebabkan persaingan pasar terganggu. Dengan demikian dapat disimpulkan bahwa penetapan HMP produk Shofiya tidak melanggar Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat.

Kata Kunci: Harga; Hukum Persaingan; Harga Jual Minimal.

INTRODUCTION

Tight business competition makes business actors have to compete to continue to survive in the business world. This is a challenge for business actors because of the many similar products followed by varying price competitiveness. The sales system becomes essential as one of the strategies to increase profits. Likewise, at the Shofiya store, the largest online store in Beteng Trade Center Solo (BTC). Shofiya stores use a reseller system to market their products, where Shofiya only sells its products to its resellers. Reseller is a person who resells an item from a supplier without stock of goods with a commission that has been determined by the supplier or determined by himself.¹

Every day in the whatsapp group Shofiya will upload pictures and videos of the latest products from Shofiya. Usually, resellers will market these images and videos through various e-commerce, such as Facebook, Instagram, Shopee, Tokopedia and others. In uploading product pictures and videos in the reseller whatsapp group, Shofiya Hijab also lists the reseller price and minimum publish price (HMP) or minimum sales price. Shofiya has a rule that resellers are free to determine the selling price as long as they do not violate the HMP that has been set. The existence of HMP provisions by Shofiya was motivated by complaints from resellers who had difficulty selling Shofiya products because there were several other resellers who sold Shofiya products at very cheap prices.

However, the problem is price fixing, including forms of agreements that are prohibited under articles 5-8 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. The article prohibits business actors from entering into price fixing agreements with other business actors for goods and / or services that can create unfair business competition which is against freedom in determining prices in trade.

When viewed from this, the determination of HMP by Shofiya is not in accordance with Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, but what if the determination of HMP is intended for the good of resellers and to achieve the objectives of the law. The objectives of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition include: a) safeguarding the public interest and increasing national economic efficiency as an effort to improve people's

¹ Ahmad Shafii, *Step By Step Dropshipping And Reseller Business* (Jakarta: PT Elex Media Komputindo, 2013), p. 3.

welfare; b) creating a conducive business climate through business competition arrangements that ensure the certainty of equal business opportunities for large businesses, medium enterprises, and small businesses; c) prevent monopolistic practices and/or unfair business competition caused by business actors; and d) the creation of effectiveness and efficiency in business activities.²

DISCUSSION

Analysis of Minimum Price Determination of Shofiya Product Sales Based on the Perspective of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition

Competition law contains substantial provisions on prohibited acts (and legal consequences that may arise) and procedural provisions regarding the enforcement of competition law.³ Business competition is regulated in Law Number 5 of 1999, one of the substances of which is to discuss pricing. The law does not explain directly about price fixing, but price fixing in this law is included in the category of prohibited agreements, where a price fixing agreement is an agreement made between fellow competing business actors to set prices for goods and or services that must be paid by consumers or distributors.⁴

In other words, this price fixing is an activity that leads to anti-competition where the implementation of pricing will reduce or even eliminate healthy competition between business actors or sellers, which if competition between business actors does not exist, it will result in economic inequality, many trade sectors will fall apart and cause market distortions. The prohibition of price fixing agreements is regulated in articles 5-8 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition where there are 4 categories in pricing, which are as follows:⁵

1. Price fixing

Price fixing is said to be a restraint of trade because it has bad consequences in price competition, if this price fixing can be done, then freedom in determining prices is reduced and so that competition between business actors is reduced.

² Law Number 5 of 1999

³ Arie Siswanto, *Business Competition Law* (Jakarta: Jakarta Ghalia Indonesia, 2002), p. 23.

⁴ Elsi Kartika Sari and Advendi Simangunsong, *Law in economics* (Jakarta: PT. Gramedia Widiasarana Indonesia, 2007), p. 177.

⁵ Suharsil, *Law on the Prohibition of Monopoly Practices and Unfair Business Competition in Indonesia* (Bogor: Ghalia Indonesia, 2010), p. 118.

Pricing can occur vertically or horizontally. Vertical pricing is when there is more than one company or business actor with the same product and in the same production stage making a pricing agreement with the same amount, this type is a type of pricing that can occur at a time carried out by business actors.

Whereas horizontal pricing is when there is a company or business actor with higher production sets prices to business actors below it to the hands of consumers, or where the factory determines the selling price to the distributor, then the distributor determines the selling price to retailers and retailers then sells to consumers.⁶

2. Price discrimination

Price discrimination is a situation in which sellers or business actors set different prices for the same goods, and the same market to each consumer without being accompanied by a clear reason for price differences such as an increase in production costs, or other reasons.

This practice is prohibited by antitrust laws and unfair competition due to price discrimination if the monopoly in which this agreement results in the buyer or consumer paying for the same product at a different price from other buyers or consumers.

3. Predatory pricing

The practice of pricing below market prices is a design or strategy carried out by dominant business actors who determine selling prices below variable prices in a market, this type of pricing is usually business actors taking advantage of consumers and bringing losses to competing business actors.

4. Resale price maintenance

The occurrence of an agreement or agreement that occurs between suppliers and distributors, where distributors will resell prices set by suppliers or can be said to be a form of vertical pricing, which stipulates that in a situation where business actors are prohibited from entering into agreements with other business actors that require the recipient of goods / services (distributors) may not resell goods / services provided by suppliers at more prices low from the mutually agreed price.

According to article 8 of Law No. 5 of 1999 that the determination of resale prices is said as follows: "*business actors are prohibited from making agreements with other*

⁶ Arie Siswanto, *Business Competition Law* (Jakarta: Jakarta Ghalia Indonesia, 2002), p. 30.

business actors containing requirements that recipients of goods and or services will not sell or resupply the goods and or services they receive, at prices lower than the agreed prices so as to result in unfair business competition".

The price fixing agreement can be:

1. Horizontal Price Fixing

Is a general pricing agreement that occurs between business actors at the same level such as producers of the same service goods that are applied on the same relevant market basis .

2. Vertical Price Fixing

Is a general pricing agreement that occurs between business actors who are not at the same level, for example between producers and wholesalers or with retailers. The result and purpose of holding vertical price fixing by these manufacturers is to reduce or eliminate competition between retailers or eliminate competition between distributors.⁷

Based on the interview that the author has conducted with Anis as the manager of Shofiya, it was found that in Shofiya stores there are regulations for resellers in the form of HMP, where resellers must market Shofiya products according to HMP or above the specified HMP. Shofiya has also announced the HMP since 2021 through a reseller Whatsapp group.⁸ Yono as a reseller said that Shofiya always includes HMP in every product uploaded in the Whatsapp group so that all resellers know the HMP.⁹ Seeing the relationship that occurs between fellow business actors, pricing at Shofiya Store located in Beteng Trade Center Solo is included in the vertical price fixing category where Shofiya as a producer sets a minimum publish price (HMP) or minimum sales price to its resellers.

In article 5 paragraph 1 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, it is stated:

"Business actors are prohibited from entering into agreements with competing business actors to set prices for goods and or services that must be paid by consumers or customers in the same relevant market."

Article 5 of Law No. 5 of 1999 regulates competition between business actors

⁷ Elyta Ras Ginting, *Indonesian Antimonopoly Law Analysis and Comparison of Law No. 5 of 1999* (Bandung: PT Citra Aditya Bakti, 2001), p. 35.

⁸ Interview with Anis, (Surakarta, May 10, 2023).

⁹ Interview with Yono, (Surakarta, May 10, 2023).

horizontally, namely not the relationship between suppliers and retailers, so this article cannot be used as a foothold in regulating the behavior of business actors vertically. In the case discussed by the researcher, the horizontal relationship is the relationship between fellow Shofiya resellers, *and the vertical relationship is the relationship between Shofiya and the resellers*. For vertical pricing arrangements, it is more precisely regulated in article 6 on price discrimination which reads *"Business actors are prohibited from making agreements that result in one buyer having to pay a price different from the price to be paid by other buyers for the same goods and or services"*.

Price discrimination can occur where, (1) Sellers/producers have certain monopolistic power (market power) in *at least one market*, (2) *There is separation between markets that does not allow buyers to resell* (no arbitrage), (3) Buyers in different markets have different levels of demand and elasticity of demand, (4) Monopolistic sellers/producers can take advantage of the existence of differences in *willingness to pay* from each consumer.¹⁰

When these 4 conditions occur, when a company sets different prices for the same goods and services of the same quality and quantity to different buyers, it is certain that seller ~~to~~ have committed price discrimination prohibited by article 6. However, not all pricing conditions that discriminate against prices are prohibited, there are some circumstances where price discrimination is not prohibited, namely:

1. Price discrimination due to different levels of competition

This type of discrimination is usually due to regional factors and consumer populations, areas that have higher populations will relatively increase high market share as well, while areas with fewer populations have low market share, so that the region will reduce prices to build market share

2. Cost Structure

This condition is in the form of coverage in each region, areas that have more access and are easier in terms of distribution can set cheaper prices than areas with more difficult access.

3. Transactions with Small Businesses

Provide convenience and price allowance to small or micro entrepreneurs to support and revive the Indonesian economy

¹⁰ Guidelines for Article 6 of Law No.5 of 1999 by the Business Competition Supervisory Commission

4. Buyers get different value benefits from the products / services they consume, so business actors can charge different prices.

This condition can be in the form of pricing for different facilities, the more expensive the goods / services the better the facilities, and vice versa.

5. Price discrimination is included in the exceptions referred to in Article 50 and Article 51 of Law No.5 of 1999.¹¹

However, not all different pricing is prohibited by law. Because, if the *costs* incurred by the seller for one consumer with another consumer are different, then the price given will certainly be different. Because technically, price discrimination should only be prohibited by law if the difference in prices between consumers and consumers is not in principle a reflection of the marginal *cost* difference incurred by the seller.

Looking at the description in article 6 of Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, the behavior that occurs regarding the determination of the minimum price for the sale of Shofiya products is the realm of article 6 concerning price discrimination because Shofiya sets 2 different prices, namely special prices for resellers and HMP, but if you look at the factors of the occurrence of these prices, both resellers nor Shofiya committed a violation of business competition because seeing from conditions that are not prohibited price discrimination can be categorized Shofiya provides low prices to resellers as a form of transaction with small business actors, where with the help of resellers, products owned by Shofiya as producers will be more widely known by consumers.

Article 7 of Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition which reads "*Business actors are prohibited from making agreements with competing business actors to set prices below market prices, which may result in unfair business competition*" does not apply in this case, because *reseller* business actors with Shofiya this is not a competitor, but a second hand in the distribution of Shofiya products.

Pricing is regulated as many as 4 articles in Law No. 5 of 1999 starting from articles 5 to 8. Of the four that have a direct relationship is article 8 which says *that "Business actors are prohibited from making agreements with other business actors that contain requirements that recipients of goods and or services will not sell or resupply the goods and or services*

¹¹ Guidelines for Article 6 of Law No.5 of 1999 by the Business Competition Supervisory Commission

they receive, at prices lower than the agreed prices so as to cause unfair business competition." The article clearly says that a resale pricing agreement on the condition that the retailer may not sell at a price lower than the agreed price is prohibited.

Judging from the editorial, this article includes the rule of reason approach, which is an approach used by business competition authority institutions to make evaluations about the consequences of certain agreements or business activities, in order to determine whether an agreement or activity is inhibiting or supporting competition.¹² This approach allows courts to interpret the law such as considering competitive factors and determining whether or not trade barriers are appropriate. This is because not all agreements and business activities included in the Antimonopoly Law can cause monopolistic practices or unfair business competition or harm the community. Conversely, these agreements and activities can also lead to healthy business competition dynamics. Therefore, this approach is used as a filter to determine whether they give rise to monopolistic practices or unfair business competition or not.¹³ Similarly, in Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, the rule of reason approach can be identified through the use of redactions "that can result" and / or "reasonably suspected".

The elaboration of the elements of Article 8 is as follows:

1. Elements of Business Actors

In accordance with Article 1 Number 5 in the General Provisions of Law No. 5 of 1999, a business actor is "Every individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities in the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements, carrying out various business activities in the economic sector." The business actors referred to in this study are Shofiya as a producer.

2. Elements of the Agreement

In accordance with Article 1 Number 7 in the General Provisions of Law No. 5 of 1999, a business actor is "An agreement is an act of one or more business actors to bind themselves to one or more other business actors under any name, whether written or unwritten." The elements of the agreement in this case were not fulfilled because there was no evidence of agreement between the reseller and Shofiya. Minimum Publish Price

¹² Sebastian Pompe, *Overview of Competition Law Provisions* (Jakarta: The Indonesia Netherlands National Legal Reform, 2010), p. 272.

¹³ Rachmadi Usman, *Competition Law in Indonesia* (Jakarta: Gramedia Pustaka Utama, 2004), p. 97-98.

(HMP) is a rule made by Shofiya unilaterally as a company regulation where ~~it is~~ the reseller's is obliged to comply with the regulation. The absence of a signed agreement between the two parties makes this regulation unenforceable.

3. Elements of Other Business Actors

Other business actors are business actors who have vertical or horizontal relationships and are in a series of production or distribution. The other elements of business actors referred to in this study are Shofiya *resellers* who have a vertical relationship with Shofiya as a producer.

4. Element of Requirements

Terms are conditions that must be heeded and carried out. The element of requirements referred to in this study is not to sell prices below HMP.

5. Recipient Element

The recipient is the party who will receive the agreed goods and/or services. The recipient element referred to in this study is *a reseller*.

6. Item Elements

In accordance with Article 1 Number 16 in the General Provisions of Law No. 5 of 1999, *business actors are "Goods are any objects, both tangible and intangible, both movable and immovable, that can be traded, used, used, or utilized by consumers or business actors"*. The element of goods referred to in this study is Shofiya products.

7. Service Element

In accordance with Article 1 Number 17 in the General Provisions of Law No. 5 of 1999, *business actors are "Services are any services in the form of work or achievements traded in the community for use by consumers or business actors"*. In the law there is the word "and or" among the elements of goods and services so that this is an alternative (optional).

8. Elements of Selling

Selling is handing over the rights to a good and/or service in any form to another party with a certain amount of compensation. The selling element in this study is selling Shofiya products.

9. Element Supply

Supplying is providing goods and/or services to other parties. In the law there is the word "and or" between the elements of supply and sale so that this is an alternative (optional).

10. Elements Can Cause Unfair Business Competition

In accordance with Article 1 Number 6 in the General Provisions of Law No. 5 of 1999, business actors are "*Unfair business competition is competition between business actors in carrying out production and / or marketing activities of goods and or services carried out in a dishonest or unlawful manner or hindering business competition*".

According to KPPU, there are 3 types of resale pricing, namely; (1) *Maximum Resale Price*, (2) *Specified Resale Price*, and (3) *Minimum Resale Price*.¹⁴

1. *Maximum Resale Price* is to set the resale price with the highest presentation, for example the selling price given by suppliers to retailers worth Rp.200,000, then the MRP agreed between the two is Rp.300,000 so that retailers who sell above that nominal to consumers will be subject to breach of agreement.
2. *Specified Resale Price* is the setting of a resale price in which the supplier sets a specific price to the retailer mentioned in the contract. For example, the agreed selling price is Rp.80,000 for a facial moisturizing product, then retailers may not sell goods cheaper or more expensive than the agreed price.
3. *Minimum Resale Price* is the opposite of *Maximum Resale Price* where the selling price required by the supplier to the retailer is not lower than the agreed price, for example the price of the blender obtained by the retailer from the supplier is Rp. 120,000 then in the contract that occurs the selling price of the blender must not be lower than the price of Rp. 160,000 so that the nominal is the lowest retail price for the product.

To assess whether the determination of the minimum price for the sale of Shofiya products is an act that violates the KPPU law, it does not immediately justify, but there are several things that must be proven first, including accompanied by evidence whether there has been a negative impact of this behavior so that the competition process in the market becomes disrupted and eliminates competitive activities in the market carried out by unscrupulous people who have a dominant position.

The determination of HMP began in 2020 due to complaints from Shofiya resellers regarding price competition in online shops. Based on the interview that the researcher conducted with Anis as the manager of Shofiya, it can be seen that before the establishment of HMP, there was unhealthy competition between Shofiya resellers. There are several

¹⁴ KPPU Regulation Number 8 of 2011 concerning Article 8 Guidelines concerning Resale Price Determination based on Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition.

resellers who set the selling price of Shofiya products at a low price. This makes other *resellers* follow the price to get buyers because buyers tend to choose to buy Shofiya products at the cheapest price, so they get very little profit. Another negative impact caused is to make *it* difficult for out-of-town resellers to get buyers, because they sell at higher prices because they consider the operational costs incurred, one of which is the cost of delivery services (*jastip*). So this prompted Shofiya to issue the HMP policy.

From the results of interviews that have been conducted with 10 *resellers*, resellers feel helped by this HMP regulation. Fauzi as a *Shofiya reseller* said that he felt helped by the HMP regulation because before the regulation there were many *resellers* who sold with very little profit, which was not in accordance with the operational costs incurred. In addition, Eka as a reseller also said that he felt helped by the determination of HMP because in the *marketplace* there is a discount for sellers so that if the selling price is too low, it cannot cover the discount. 8 other *resellers* also felt helped by this HMP.

Looking at the purpose of determining HMP by Shofiya and the impact caused by HMP to *resellers*, the determination of HMP by Shofiya does not meet the element of "May Cause Unfair Business Competition". This is because HMP is set as a form of policy so that there is no unhealthy price war between *resellers*. In addition, *resellers* feel the positive impact of this HMP regulation, including being able to get appropriate benefits. Market competition is also not disturbed because *resellers* are still free to determine the selling price of Shofiya products above HMP.

From the explanation above, it can be concluded that the determination of HMP Shofiya does not violate article 8 of Law Number 8 of 1999 due to the absence of elements of agreement and it is not proven that the HMP causes unfair business competition.

CONCLUSION

The determination of the minimum price for the sale of Shofiya products falls into the realm of article 8 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition regarding resale price determination agreements. After conducting research, there are several elements that are not fulfilled from the article. This is because there is no agreement between *Shofiya and resellers* regarding the determination of HMP, but the HMP is a company regulation made unilaterally by Shofiya which must be obeyed by *Shofiya resellers*, so that the elements of the agreement in this

article are not fulfilled. In addition, HMP is set as a form of policy so that there is no unhealthy price war between resellers *and* resellers *feel the positive impact of the HMP determination*. Market competition is also not disturbed because *resellers* are still free to determine the selling price of Shofiya products above HMP, so the element "may cause unfair business competition" is also not fulfilled in this article. Therefore, the minimum price of sales of Shofiya products does not violate Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.

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