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Analysis of Predatory Pricing and Fixed Pricing in Business Dynamics in Indonesia

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Abstract

Predatory pricing is a pricing strategy in which a company lowers the price of its products to a level that may be detrimental to the company itself, with the aim of driving competitors out of the market. Fixed pricing reflects a company's commitment to keep the price of its products at a fixed level or within a certain range for a specified period of time. As competition and demand change, fixed pricing provides stability and consistency in product prices. This study aims (1) to find out the practice of predatory pricing in KPPU Decision Number 03/KPPU-L/2020, and to analyze the concept of approach used by the Business Competition Supervisory Commission Panel in its consideration of deciding fixed pricing cases in KPPU Decision Number 03/KPPU-I/2003. The method used in this research is qualitative. The data sources used in this research are as follows: a) Primary Legal Texts: Legal texts that are authoritative in nature. Judges' decisions, legislative requirements, and official court documents or minutes are some examples of fundamental materials. Based on the data collection and analysis process, this study can be concluded as follows: the importance of understanding competition practices and the use of appropriate approaches in case analysis is emphasized. Predatory pricing practices can damage competition if not recognized and prevented. Similarly, understanding the notion of approaches such as "per se illegal" and "rule of reason" in case analysis can influence the way the Competition Supervisory Commission makes decisions. This is important to maintain fair and healthy competition in the market.

Keywords: predatory pricing, fixed pricing, business

1. Introduction

In an increasingly complex and dynamic business environment, pricing of products and services has become one of the central elements of a company's strategy. A company deciding on the price of its products has a direct impact on its revenue, profitability, and competitive position in the market. Two key approaches in this context are predatory pricing and fixed pricing. The term "predatory pricing" describes a strategy used by businesses to cut the prices of their products temporarily in an effort to repel existing competitors or retain new ones. In contrast, fixed pricing is a strategy where the price of a product is maintained on a fixed level over a period of time. Predatory pricing, often debated in the realm of economics and law, competition involves lowering the price of products to a degree that may be detrimental to the company itself, but the goal is to cripple the competitors. While these actions may provide temporary benefits to consumers in the form of price reductions, their long-term consequences on fair

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competition and innovation have sparked extensive discussions among academics and regulators. Besides the theoretical controversies, predatory pricing also has complicated legal aspects. Many jurisdictions have drafted anti-trust laws to protect fair competition and prevent predatory pricing practices. An in-depth understanding of the legal and economic implications of predatory pricing is essential, both for entrepreneurs who wish to pursue strong pricing strategies and for regulators who are responsible for maintaining fair competition. PT Conch South Kalimantan Cement is also being affected by the decision of the Business Competition Supervisory Commission number 03/KPPU-L/2020 which is comparable to the Predatory Pricing case. Based on the verdict, PT Conch South Kalimantan Cement shut down the activities of its competitors because in the South Kalimantan region there were 3 (three) businesses that stopped selling cement between 2015 and 2019. Furthermore, we move on to fixed pricing, which is the opposite strategy to predatory pricing. Fixed pricing reflects a company's commitment to keep the price of its products at a fixed level or within a certain range for a specified period of time. As competition and demand change, fixed pricing provides stability and consistency in product pricing. The benefits of fixed pricing are not limited to price stability alone. Fixed pricing can also help create a strong brand image, which has a positive impact on consumers' perception of product quality and reliability. In addition, fixed pricing provides certainty for consumers and facilitates their budget planning .

However, similar to predatory pricing, fixed pricing also has risks and limitations that must be considered. One risk is the inability to adjust prices to changes in production costs, market demand, or external factors. In a dynamic business environment, being too rigid in maintaining fixed prices can be detrimental to the company. As in the case of the Decision of the Business Competition Supervisory Commission Number 03/KPPU-I/2003 Fixed Pricing Case that occurred in 2003 involving seven reported business actors in the field of shipping services on the Surabaya-Makassar route. Thus, in looking at the themes of predatory pricing and fixed pricing, we will explore the various dimensions of these two strategies and evaluate their implications in the current business environment. An in-depth analysis of predatory pricing and fixed pricing is not only important for academics pursuing a better theoretical understanding, but also essential for business practitioners seeking to execute effective pricing strategies in the face of increasingly fierce competition. With a more in-depth view of these two concepts, we can be wiser in decision-making and designing strategies that are able to face the evolving business challenges. Here are some possible problem formulations for this paper: (1) “How is the practice of predatory pricing in KPPU Decision Number 03/KPPU-L/2020?” (2) “How does the concept of approach used by the Business Competition Supervisory Commission Panel in its consideration of deciding fixed pricing cases in KPPU Decision Number 03/KPPU-I/2003?”

2. Literature Review

2.1 Predatory Pricing

Predatory pricing is a pricing strategy in which a firm lowers the price of its products to a degree that may be detrimental to the firm itself, with the aim of driving competitors out of the market. The concept of predatory pricing has been the focus of debate among academics and

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policymakers. The theory of predatory pricing has been initiated by economists such as Areeda and Turner (1975) who identified that this practice can harm competition and result in monopoly, although there is disagreement in identifying when the practice actually harms competition. The basic tenet of this theory is that extremely low prices can lead to sustained losses for the company and eventually destroy it. The implication is the importance of competition law that monitors and prohibits predatory pricing. Predatory pricing, in the context of competition law, refers to a pricing tactic where a firm deliberately sets the price of their products or services below the cost of production temporarily with the aim of driving competitors out of the market or preventing new competitors from entering the market. This practice is considered a form of abuse of a dominant position in competition and aims to create a monopoly. Predatory pricing can cause short-term losses, but the company that carries it out hopes to gain long-term benefits by dominating the market .

1. Concepts and Theories Related to Predatory Pricing:

a) Predation Theory: Predation theory explains that firms can use predatory pricing to create a monopoly by suppressing competitors, and then raise prices after expelling the competitors. This theory was first proposed by Areeda and Turner (1975) in the paper "The Economics of Predatory Pricing."
b) Barriers to Entry: The notion of barriers to entry refers to those things that prevent new competitors from joining the market. Predatory pricing is used to strengthen barriers to entry and maintain a dominant position.
c) Reputation Effects: A strong brand reputation can help a company in executing predatory pricing strategies without damaging the perception of product quality.

2. Article and Elements of Predatory Pricing Prohibition: "Article 20 of Law No. 5 Year 1999 regulates predatory pricing and the prohibition of such practices". This article reads as follows: This regulation basically prohibits the setting of intentionally high prices with the aim of eliminating or damaging the operations of other companies in the market. This prohibition consists of: a) Sales at a discount; b) Sales at less than usual variable costs; or c) Sales at less than usual fixed costs.

Business actors will be penalized in accordance with regulatory requirements for sales below such prices. Meanwhile, the elements of Predatory Pricing Prohibition are as follows:

1) Unfair and Deliberate Pricing: The first element is the use of unfair prices and is done intentionally. This means that the business actor uses unfair prices and has a clear intention to defeat or eliminate competitors in the market.
2) Sales Below Cost: The prohibition covers the sale of products or services below cost price. This indicates that the product or service is supplied at a price lower than the cost of manufacturing or providing it.
3) Sales at Prices Below Average Variable Cost: Predatory pricing strategy can also be seen in selling at a price below the average variable cost. Variable expenses are expenses that change based on the quantity of products produced or services provided.

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4) Sales Below Average Fixed Cost: It is also forbidden to make sales below average fixed costs. Expenses that are fixed in amount and do not depend on the volume of production or delivery are known as fixed expenses.

The corporate actors involved may be sanctioned under the law if an activity meets the above criteria and is deemed predatory pricing. The aim is to stop and punish actions that are detrimental to strong and fair commercial competition in Indonesia. Nature of Predatory Pricing Prohibition: a) Case-by-Case Assessment Characteristics: Predatory pricing assessments are often case-by-case. This means that courts must consider the specific context and facts of each case before concluding whether predatory pricing has occurred. b) Reliance on Evidence: Predatory pricing assessments rely on available evidence. Courts must gather evidence to determine whether a pricing practice constitutes predatory pricing. c) Possible Legal and Civil Consequences: Companies that are found guilty of predatory pricing may face legal and civil consequences. These may include criminal sanctions and claims for damages.

2.1 Competition Law

In Indonesia, commercial competition and consumer protection are regulated by a competition law. The purpose of competition law is to protect consumers from unfair corporate practices, encourage fair competition in the market, and stop anti-competitive behavior. Protection of Competition Act "Law No. 5 Year 1999" and Consumer Protection Law "Law No. 8 of 1999" serves as the primary legislative framework and enforcing competition laws and regulations, as well as playing an important role in ensuring fair competition and protecting consumer interests. The enforcement of competition rules and regulations in Indonesia is mainly the responsibility of the "Business Competition Supervisory Commission (KPPU)". Finding, investigating, and prosecuting violations of competition laws and regulations, including cartels, abuse of dominant position, and anti-competitive behavior, is the responsibility of KPPU. KPPU also helps ensure that businesses comply with competition law rules by providing clarifications and recommendations. In addition, KPPU has the authority to impose legal and administrative sanctions on competition law violators, such as fines and prohibitions on engaging in practices that harm competition. KPPU's active role in overseeing competition law reflects Indonesia's commitment to creating fair competition and protecting consumers.

Consumer protection plays an important role in Indonesia's commercial competition law. The Consumer Protection Law provides a foundation to protect consumers from dishonest business practices, the sale of low-quality products, and unfair pricing. In accordance with the competition rules, companies are also obliged to provide clear and accurate information to consumers about the products and services they offer. This attempts to ensure that customers can choose wisely and can file a complaint if they are treated unfairly by a business. Therefore, Indonesia's competition law aims to protect consumers to ensure they can make purchases with confidence and also create a healthy business environment. The impact of predatory pricing on fair market competition. Several studies have identified that predatory pricing can harm competition by driving out competitors, generating monopolies, and stifling innovation. However, there are also studies that support the view that low-price practices can also provide

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temporary benefits to consumers.

2.2 Fixed Pricing

Fixed pricing is a pricing strategy in which a company keeps the prices of their products or services at a fixed level or within a certain range within a specified period of time. In this context, the company sets a consistent price for a particular product without changing it regularly. The concepts and theories related to Fixed Pricing are as follows:

a. Price Stability: The concept of price stability is at the core of fixed pricing. Companies try to create predictability in the prices of their products, which can provide certainty to consumers and create a strong brand reputation.
b. Alignment with Brand Strategy: Fixed pricing is often aligned with a company's brand strategy. Fixed prices can support a consistent and high-quality brand reputation.

Articles and Elements of Fixed Pricing Prohibition are contained in "Article 5 of the Consumer Protection and Competition Law No. 5 Year 1999" in this Law has provisions that regulate the principles of fair competition related to fixed pricing, articles that prohibit discriminatory practices and harm consumers are also relevant. Meanwhile, the element of Fixed Pricing Prohibition is Price Inflexibility, Fixed pricing practices include an element of price inflexibility, where the price of a product or service is kept at a fixed level for a certain period of time. Then Discriminatory Pricing:In some cases, fixed pricing may involve discriminatory pricing, where the same price is applied to all market segments without considering differences in production costs or demand.Nature of Fixed Pricing Prohibition:

a) Contextual Regulation: Whether fixed pricing is considered unlawful may depend on the regulatory context in a particular country or jurisdiction. Some countries may see fixed pricing as a legitimate business practice, while others may regulate it more strictly.
b) Specific Provisions: The legal provisions prohibiting fixed pricing may vary depending on the laws applicable in a particular region or country. In some cases, there may be specific provisions that prohibit or regulate fixed pricing practices.
c) Consumer Protection: The nature of the prohibition of fixed pricing often relates to consumer protection. The underlying objective of such provisions is to ensure that consumers get a fair price and avoid harmful pricing practices.

It is therefore important for companies to remain responsive to changes in production costs and market demand, even when applying fixed pricing. This encompasses the management concept of flexibility in pricing to ensure that companies can address the challenges and opportunities that come with changes in the business environment. As for effective pricing strategies, they include models that allow companies to strike a balance between stability and responsiveness. This can include concepts such as dynamic pricing that allows the company to adjust prices based on certain variables.

2.4 Business Dynamics

Business dynamics in the legal view includes a number of rules and regulations that govern the behavior of companies and individuals in a business context. Business law, as a specialized

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legal discipline, focuses on regulation, transactions, competition, contracts, and other legal aspects relating to the business world. One of the most important areas of business law is the law of competition. "Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia" is one example of a regulation that regulates fair business competition practices and prohibits monopolistic behavior that harms competition. Business contracts are a key element in business dynamics, and the contract law is a specialized field that governs the formation, execution, and breach of contracts. This law determines how agreements between parties should be executed and what the consequences will be if one party breaches the contract. Legal risk is an important consideration in business dynamics. Companies must understand their legal responsibilities towards customers, employees and third parties, and must be prepared to handle legal disputes that may arise. In the book "Business Law: Text and Cases" written by Kenneth W. Clarkson, Roger LeRoy Miller, and Frank B. Cross, the dynamics of business in the view of the law are described in depth. The book provides a comprehensive understanding of business law, covering topics such as the law of contracts, the law of competition, the law of corporations, and the law of employment .

An important component of contemporary corporate dynamics is intellectual property protection. The law of intellectual property rights governs copyrights, trademarks, patents and other intellectual property rights relating to creativity and originality in business. The labor law is a key element in the business dynamic that affects the relationship between companies and employees. Labor laws govern the duties and rights of workers and the obligations of employers towards their workforce, including matters such as salary, vacation time, and other legal requirements. From a legal perspective, the issue of business ethics is also very relevant. Violations of business ethics can lead to legal action. Laws on acts of corruption, unethical business practices, as well as legislation relating to corporate governance are usually the focus in this aspect. Business dynamics also take environmental law into account. Environmental resource management and the impact of business on the environment are the focus of these laws. Companies must understand their legal responsibilities in protecting the environment and the legal consequences if they violate environmental protection rules. Overall, an understanding of business law is a key to conducting business in accordance with regulations and ethics. Government regulations, legal references, legislation, as well as legal literature such as business law journals are highly relevant sources in understanding business dynamics from a legal perspective. The study of business law is important for business stakeholders to avoid legal risks and operate in compliance with applicable regulations.

3. Research Method

The normative juridical methodology used in the process is through library research. Data sources used in this research are authoritative legal texts, judges' decisions, legislative requirements, and official court documents or official reports are some examples of fundamental materials. 1) KPPU Number 03/KPPU-L/2020 and Unfair Business Competition. Second, KPPU Resolution 03/KPPU-I/2003. Additional Legal Notes Information obtained from books, government archives, empirical studies, and other sources is referred to as secondary data. The method of analysis is qualitative, meaning that descriptive summaries of

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the data are made to draw conclusions without requiring the use of statistics, mathematics, or other comparative approaches.

4. Finding and Discussion

Case 1: Predatory Pricing Decision of the Business Competition Supervisory Commission Number 03/KPPU-L/2020.

The practice of predatory pricing was used in the case of the defendant PT Conch South Kalimantan Cement which was resolved through the Decision of the Business Competition Supervisory Commission Number 03/KPPU-L/2020. In the decision, PT Conch South Kalimantan Cement was declared to have shut down the business of its competitors because three (3) business actors-PT Cemindo Gemilang (Semen Merah Putih), PT Semen Bosowa Maros (Semen Bosowa), and PT Solusi Bangun Indonesia (Semen Holcim)-stopped selling cement in the South Kalimantan region between 2015 and 2019. As PT Conch South Kalimantan Cement provided cement at a significantly lower price than its competitors, the following events happened to its competitors' businesses, causing them to cease operations in South Kalimantan: (a) profit margins declined to the point where they were no longer economically profitable; (b) they were unable to match the price of Semen Keong, even though the selling price had been reduced since 2016; and/or (c) the management strategy of the competing companies prioritized profitability over selling cement products to areas with negative margins, such as the South Kalimantan market . Semen Conch offered a price that was too good to match, even with efforts made since 2016 by its competitors including Semen Merah Putih, Semen Bosowa, and Semen Holcim to reduce its selling price. Their price cuts were not enough to match Conch Cement's exploitative pricing strategy.

Case 2: Fixed Pricing in the Decision of the Business Competition Supervisory Commission Number 03/KPPU-I/2003.

A Fixed Pricing case occurred in 2003 involving seven reported business actors in the field of shipping services on the Surabaya-Makassar route. This case stems from the price slashing conducted by several reported parties. Price cutting is the practice of business actors lowering prices below the prevailing market price. Due to the price-cutting tactics of the business actors, they decided to make an agreement at Elmi Hotel in Surabaya. On December 23, 2002, the group gathered and decided on the same pricing formula to be used by the seven respondents. Business actors entered into a price-fixing agreement to protect the market from price fluctuations . The situation was conveyed. The Panel of Commissioners for the Supervision of Business Competition in its examination conclusion. In the price-fixing case decided in Decision Number 03/KPPU-I/2003, there were several alleged violations of price fixing. Price fixing below market price (price slashing) and price agreement (price fixing agreement) are each regulated under different prohibitions. The two prohibitions also have different approaches in their prohibition. Due to the variation of restrictions governing alleged behavioral violations specified in Decree No. 03/KPPU-I/2003, there are several alleged price-fixing violations.

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4.1 Case Analysis

A. Analysis of Predatory Pricing Practices in KPPU Decision Number 03/KPPU-L/2020.

Business competition is basically characterized by the presence of customers and sellers, products that are bought and sold to meet consumer demand, and the efficiency of making these products. However, to control the market, corporate actors often use the justification of "the end justifies the means", leading to unhealthy market conditions. It is natural for business actors to use money obtained from illegal activities as a means to strengthen their company and eliminate competitors in the industry. Wealth from criminal activities is any property obtained through illicit activities. Referring to the consequences of the illegal act, Pamela H. Bucy notes that the activity can be classified as a money laundering crime if there is an attempt to hide or cover up the situation "*Money Laundering is the concealment of the existence, nature, or illegal source of illicit funds in such a manner that the funds will appear legitimate if discovered".* Money laundering is generally understood as a series of acts (actus reus) committed during the commission of a crime with the aim of concealing or disguising the criminal activity. Since money laundering is largely dependent on the occurrence of the first illegal act, it is often referred to as a "follow-on crime".

The misuse of legal entities is one method of operation, or typology, that is often used by criminals in their illicit acts of money laundering, among others . When a legitimate company is misused, money laundering occurs because the profits of the crime are hidden or disguised under the name of the company, so that the source of the money cannot be identified. Using this strategy, criminals utilize a business to disguise the true owner of the assets from view by making the proceeds of crime appear to come from the company's operations. The above description only applies when the perpetrator is a person working for or associated with the Company's Control Personnel. Any individual who has the ability to decide on company policy or carry it out without requiring permission from a superior is considered to be company control personnel. However, when considering the entities that fall within the scope of money laundering, it is important to remember that organizations as well as individuals can commit money laundering. According to Article 6 paragraph (2) of the Anti-Money Laundering Law, a corporation cannot be considered a money launderer unless it meets certain requirements. These include: (a) the activity must be carried out or directed by the Control Personnel of the Corporation; (b) the activity must be carried out to achieve the purposes and objectives of the Corporation; (c) the action must be taken in accordance with the responsibilities and roles of the person carrying out the activity or issuing the order; and (d) the action must be carried out with the aim of providing profit for the Corporation . Based on this justification, one of the important requirements for a business to be classified as a money launderer is that the money laundering must be carried out with the aim of helping the business.

It can be concluded that in a money laundering scheme there is a possibility that Corporate Control Personnel will commit or be involved in a criminal offense that results in assets (proceeds of crime) being deposited into a company account (so that it appears as if the proceeds are company assets) if the modus operandi (typology) of money laundering is associated with

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the role of the corporation as the perpetrator of money laundering, as previously explained. Corporate Control Personnel are the only ones who utilize the company as a shell company, or a dummy company, if the account is only used for ownership and then seized in its entirety and managed as personal property. John McDowell dan Gary Novis, who work as investigators in the US State Department's Bureau of International Narcotics and Law Enforcement Affairs, expressed concern about using criminal proceeds to strengthen a company's business and potentially cause its competitors' businesses to fail. They say that organized crime in the state of Pennsylvania is notorious for using pizza shops as a front for money laundering related to heroin sales. Due to their access to large amounts of unlawful cash, these firms are able to subsidize the products and services provided by those businesses, thus allowing them to subsidize at much lower than market prices . This can cause legitimate businesses to suffer as they are unable to compete with unauthorized firms, which may ultimately force the legitimate businesses out of business or to die." In the United States, this 1980s incident is referred to as the "Pizza Connection Case." In that case, eighteen offenders were found guilty of running a global network of heroin and cocaine trafficking through pizza parlors in Pennsylvania, distributing drugs worth more than $1.6 billion. Drug offenses were conducted from Sicily, Brooklyn, Brazil, Pennsylvania, and eventually the Midwest. The individuals, including the former heads of New York's Bonnano crime family and the Sicilian Mafia, have received their sentences. From the moment the crime occurred to the moment it happened .

Along with the times, this kind of Predatory Pricing criminal practice has inspired criminals to look for new and unexpected ways to achieve their goals. Therefore, it is important for authorities, especially in understanding predatory pricing practices, to foresee and mitigate risks that may arise, even if they have not yet occurred, so that fair and healthy competition is maintained. Knowledge of predatory pricing practices that have an impact on unfair competition, especially when the company's capital comes from the proceeds of a criminal offense, is an important first step to identify and prevent this risk. In the context of competition, once predatory pricing has taken place, the predator will maintain a normal price or slightly above, without having to sell at a very high price. However, given that criminal proceeds are often used as business funding, this is possible. In this scenario, the business will still make more money, especially if its competitors die or go out of business. Thus, KPPU Decision Number 03/KPPU-L/2020, which contains the element of "intention to eliminate or kill competitors' businesses in the market" still fulfills Article 20 of the Business Competition Law. Therefore, the authorities must conduct a careful investigation to determine the source of the company's funds and reduce the risks that may arise if the allegations of predatory pricing practices lead to unfair business competition and the possibility of using the proceeds of the crime as the company's capital.

From a commercial competition standpoint, this behavior can lead to unfair competition in the market, giving businesses that rely on money obtained from criminal activities an advantage over their competitors who may need to borrow money from financial institutions in order to stay in business. As a consequences, it will be difficult for reputable companies to compete with companies that raise money through illegal means. Therefore, in order for KPPU to take

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preventive action, it is necessary to know the possibility of such a situation occurring . In markets with negative margins, such as the South Kalimantan market, some competing companies may prioritize profits above all else and stop offering cement products. Conch Cement's aggressive pricing tactics forced competing businesses to develop loss-avoidance strategies for management. Conch Cement's predatory pricing tactics were investigated by the Business Competition Supervisory Commission. The behavior was carried out by Conch Cement with the aim of eliminating its competitors in the South Kalimantan cement industry, and they collected data and evidence to support this conclusion. After an in-depth investigation, Decision Number 03/KPPU-L/2020 was issued by the Business Competition Supervisory Commission Panel. Semen Conch Semen South Kalimantan was sentenced in accordance with the verdict in this case after being found to have committed aggressive pricing practices.

B. Analysis of the Conceptual Approach Used by the Panel of Commissioners for the Supervision of Business Competition in Its Consideration of Deciding the Fixed Pricing Case in Decision No. 03/KPPU-I/2003.

In determining the issue of price fixing conducted by business actors in the shipping services industry, the Panel of Commissioners of Business Competition Supervisors took a "per se illegal" stance. This approach refers to actions that are inherently illegal without the need to prove their impact. In this case, the Commission only considered the formal elements of the alleged price fixing violation, namely the existence of an agreement approving the tariff fixing agreement. The Panel ignored the existence of price-slashing behavior. The Competition Supervisory Commission Board did not adhere to the "rule of sense" even though entering into a price-fixing agreement and lowering prices below market value is unlawful. This strategy requires a detailed examination of the acts or activities of business actors to determine whether a particular agreement or activity promotes or hinders commercial competitiveness. n this case, the formal component of the alleged infringement is considered, and the "rule of reason" approach is ignored. The letter of agreement contained in the minutes of the business examination held on December 23, 2002 at Elmi Hotel Surabaya, was taken over by the Panel of the Commission for the Supervision of Business Competition for the purpose of making a decision. The word "per se illegal" is supported by the text of this agreement. The Business Competition Supervisory Commission Board took note of the rationale behind the price-fixing agreements entered into by shipping industry players. They pointed out that Pelindo IV's intention to raise THC port/charge and the market need to be maintained given the intense price competition were the two main drivers of the agreement. The main purpose of the agreement was to maintain the health of the shipping industry and avoid unfavorable competition, which could lead to price gouging that would crowd out competitors. Market safety was an important consideration in this ruling.

Because of its "per se illegal" attitude, the Assembly of the Competition Oversight Commission of Enterprises took a decision obliging the plaintiff to stop implementing the agreed pricing and announced the cancellation to the public. The KPPU Assembly considered these improvement efforts because it recognized the effectiveness of the agreement and because, based on the theory of the “per se illegal” approach, the agreements were taken into account in determining

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whether price-setting violations in this case could be subject to basic criminal penalties. The Board of the Competition Supervisory Commission decided the Fixed Price Fixing case using a "per se illegal" approach, and took the use of paper agreements as an important aspect of its evaluation, based on a conceptual analysis of the methods used. Market safety and corrective measures were also an integral part of the judgement. Respondents to the Business Competition Supervisory Commission's ruling on Air, Sea, and Railway Transport Business Competition-commonly known as the Surabaya-Makassar Cargo case-are seven leading shipping sector players. PT Lumintu Sinar Perkasa (Report VII), PT Tanto Line (Report VI), PT Samudra Indonesia Tbk (Report V), PT Jayakusuma Perdana Lines (Report IV), PT Pelayaran Meratus (Report I), PT Tempuran Emas Tbk (Report II), and PT (Persero) Djakarta Lloyd (Report III) are the business actors. The Business Competition Supervisory Commission led this case by forming a Monitoring Team to oversee competition in the rail, air, and sea transport industries in Indonesia.

These reasons are as follows: (a) Since the reporting parties are engaged in intense price competition, there is an interest in maintaining the integrity of the market; (b) Pelindo IV is interested in increasing THC port/charge.

The ultimate goal of the agreement is to keep the shipping industry healthy and prevent unfair competition, which could result in price slamming to the point of destroying competitors. The price slamming in question is the setting of a low price of Rp 800,000 to Rp 1,500,000 for the Makassar-Surabaya route. This is the basis for the price agreement. The Business Competition Supervisory Commission considered many evidences in making its decision, such as correspondence and documentation, statements of the reported party as outlined in the BAP, and evidence of the witnesses concerned. Therefore, the Panel of Commissioners for the Supervision of Business Competition declared that the price fixing was legal and proven to be in contravention of Article 5 Paragraph (1) of the price-fixing law. There are two methods available to analyse this decision: the "per se illegal" method and the "rule of reason" method. Activities that are intrinsically prohibited or criminal are referred to as "per se illegal" behaviour. Under this method, an activity is deemed unlawful without requiring evidence of its consequences. In contrast, the "rule of reason" method requires a thorough assessment of a business actor's conduct or activities to ascertain whether a particular agreement or activity promotes or hinders commercial competitiveness . In this case, the "per se illegal" strategy was used. The existence of an agreement authorising the price-fixing agreement was the only formal aspect of the claim of price-fixing violation considered by the Commission Tribunal. The Panel ignored the existence of price-slashing behaviour, which is regulated in Article 7 on price-fixing, which has a "rule of reason" nature in its prohibition. This "per se illegal" argument is further strengthened by the inclusion of agreement letters from the business meeting held on 23 December 2002 at Elmi Hotel Surabaya found in the BAP. In this way, the Panel of the Commission for the Supervision of Business Competition will use the agreement as a consideration in making a decision in this case, especially if the price fixing violation occurs without the need for fundamental criminal sanctions. Consequently, the ICC Panel issued a decision mandating that the respondent stop implementing the price fixing as agreed and

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announce the cancellation to the public. The ICC Panel considered this because it recognised the effectiveness of the agreement and that, under the theory of "per se illegality", the agreement should be considered when determining whether a price-fixing violation requires an underlying criminal penalty .

Based on the author's review of the use of the prohibiting sentence, here is how the notion of per se unlawfulness and the principle of reason are applied to Law Number 5 Year 1999 on the Restriction of Monopolistic Practices and the Restriction of Unfair Business Competition in Price Fixing:

a. The phrase "business actors are prohibited from entering into agreements" is highlighted in Article 5 on the prohibition of price-fixing agreements, and the phrase "may result in unfair business competition" is omitted. This indicates an illegal action in the application of this restriction.
b. The phrase "business actors are prohibited from entering into agreements" is emphasised in Article 6 on the prohibition of price discrimination, and does not include the phrase "may result in unfair business competition". Similar to Article 5's prohibition on price-fixing agreements, this price discrimination restriction takes an unlawful approach from the outset.
c. Setting prices below market value is prohibited under Article 7, which is called predatory pricing. This Article does not require an agreement for the business actor accused of engaging in competition to behave in a certain way. The words "may cause unfair business competition" allude to the restrictive nature of reasoning in its application.
d. Agreements to fix resale prices are prohibited under Article 8. The restriction in this article using the words "may result in unfair business competition" further confirms the nature of the rule of reason prohibition. that the Competition Supervisory Commission must conduct a thorough analysis of the impact of such behaviour on business competition before investigating a possible breach of the prohibition on resale price fixing.

Price-fixing agreements have two forms of price-fixing based on the constraints they can impose on the relevant market, namely horizontal price-fixing and vertical price-fixing. When multiple businesses decide to sell their goods at the same price point at the same stage of production, it is known as horizontal price fixing. The purpose of this agreement is to maintain the same price at the same level of output. In the market, horizontal price fixing will give rise to horizontal barriers. The fact that the business actors setting the price have comparable production levels indicates that the agreed price will only be applied to the same level of production. Lower production levels may have an impact on prices, although prices resulting from horizontal price fixing cannot be directly applied to businesses at other levels. Vertical price fixing, on the other hand, is a price-setting process where multiple firms at different stages of production decide on the price at which products should be sold by other firms with lower production levels. 28 In other words, businesses operating at different stages of production engage in a vertical price-fixing process. Usually, businesses with higher production levels impose this on businesses with lower output levels. Businesses that provide products or services to customers may also engage in vertical price fixing.

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When seen in the case number 03/KPPUI/2003 involving 7 (seven) on the shipment, Makassar Surabaya-Makassar seventh is an entrepreneur who has business activity that serves maritime transportation in the field of transportation of products and or passengers. If it is associated with the form of pricing based on the type of market concerned by the level of production, then the pricing behavior carried out by the seven is a form of horizontal pricing. Each of the seven operators is at the same level of production, namely as a manufacturer of freight and passenger shipping services. Each has a fleet of ships serving the Makassar-Surabaya Makassar line. At the time of implementation of the agreement, they were present as entrepreneurs serving the Makassar-Surabaya-Makassar ferry line. Present in the agreement of December 23, 2002, Elmi Hotel Surabaya as Witness I, Head of the Shipping Agency. The seven parties are enterprises operating in the field of navigation jointly, this is evident from the involvement of the chairman of the association in the price agreement between the parties. The horizontal structure of this price agreement is clarified by the fulfillment of the "market" or "related market" aspect in article 5 prohibition. The same relevant market is intended to be achieved with the same marketing strategy towards the production of goods and/or services. If these conditions are met, the reporting party's entire production or commercial activity is horizontal.

5. Conclusion

The practice of competition infringement is different in the two situations that have been detailed. The first case, Business Competition Supervisory Commission Decision Number 03/KPPU-L/2020, shows how PT Conch South Kalimantan Cement used a predatory pricing strategy. The practice of providing cement at significantly lower prices led to the closure of competing companies in the South Kalimantan region. This extremely low pricing adversely affected competitors who could not compete with these prices. This case reflects the importance of understanding predatory pricing practices to maintain fair and healthy competition. The second case, Business Competition Supervisory Commission Decision Number 03/KPPU-I/2003, involved a price-fixing case in the shipping services sector. This case stems from price-slashing behavior by several business actors, which led to an agreement to set the same price at Elmi Hotel in Surabaya. A "per se illegal" approach was used in the decision, despite the fact that there were two prohibitions controlling the claimed infringing behavior: below-market pricing (price gouging) and price fixing agreements (price fixing agreements). This ignores price gouging behavior, which has prohibited "rule of sense" characteristics, and instead relies on the existence of an agreement as a formal component. In both cases, the importance of an understanding of competition practices and the use of an appropriate approach in case analysis was emphasized. Predatory pricing practices can damage competition if not recognized and prevented. Similarly, understanding the notion of approaches such as "per se illegal" and "rule of reason" in case analysis can influence the way the Competition Supervisory Commission makes decisions. This is important to maintain fair and healthy competition in the market.

There are several recommendations that may be useful for business practitioners, policy makers, and researchers. First, business practitioners need to understand that pricing strategy is not the sole tool to win long-term competition. While predatory pricing may result in short-term gains, be aware that it can undermine business sustainability. In contrast, fixed pricing can

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create stability, but it must be constantly updated and adjusted to market changes. Therefore, practitioners should seek a balance between these two strategies, focusing on sustainability and innovation. Secondly, policymakers should consider the importance of appropriate regulations to prevent unhealthy predatory pricing practices, while still supporting healthy competition in the industry. Finally, further research should be conducted to explore the implications of these two pricing strategies across different industries and contexts. This will help us understand more about how predatory pricing and fixed pricing can support or hinder economic growth, innovation, and consumer welfare.

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