



Implications of the minister of trade regulation number 31 of 2023 on predatory pricing on Tiktok Shop

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Abstract

The innovation that TikTok has made towards electronic commerce by providing buying and selling transaction services on social media platforms has made the government take a stand by reviewing the Minister of Trade Regulation Number 50 of 2020 giving rise to Minister of Trade Regulation Number 31 of 2023 to regulate the running of Social-Commerce with the aim of creating an electronic trading environment that is healthy, beneficial and fair by considering the movement of technological progress. The presence of the TikTok Shop by offering products or goods at very cheap prices has led to allegations of predatory pricing, triggering protests from UMKM traders because they have lost consumers due to not being able to compete on price. This is what the government has paid special attention to as an effort to support the empowerment of UMKM and trade entrepreneurs through domestic electronic systems and to increase customer protection. The researcher's research aims to find out the background to the issuance of Minister of Trade Regulation Number 31 of 2023 and find out the implications of Minister of Trade Regulation Number 31 of 2023 on Predatory Pricing in the TikTok Shop E-Commerce sector. The research carried out is normative legal research, with a juridical approach and descriptive study which takes secondary data materials by examining library materials by adapting data from tertiary, primary and secondary legal materials. Based on research results, it is understood that with the issuance of Minister of Trade Regulation Number 31 of 2023, the TikTok Shop was closed due to problems with its E-Commerce permit and was allowed to operate again after fulfilling the provisions of this regulation. It is known that very cheap prices cannot be categorized as Predatory Pricing if they do not fulfill the elements as described in article 20 of Law Number 5 of 1999 regarding the Prohibition of Monopoly Practices and Unfair Business Competition.

Keywords: Trade, Tiktok shop, technological

Introduction

Technological disruption where in the digital era there are breakthroughs and transformations as a result of the large-scale and fundamental application of digital technology bringing about changes in progressive civilization. Through the internet network, new business models continue to develop from conventional trading systems to being carried out digitally through applications, as a result buyers and sellers in their transactions do not need to meet face to face. Electronic Commerce offers convenience in transactions, where buyers can easily obtain the desired commodities without having to come to the trader's premises. Buyers only need to access the E-Commerce platform service application, where the platform contains various product catalogs and buyers can search for and choose which products they want.

In 2020, the Corona Virus Diseases-19 outbreak that hit Indonesia, as one of the variables of the increasing number of Online Shop users which had an impact on the transaction value on E-Commerce services, experienced a very rapid increase. From the statement made by BI Governor Perry Warjiyo, that online E-Commerce trading during the pandemic is estimated to increase by 33.2%, from 2020 which reached IDR 253 trillion to IDR 337 trillion in 2021^[1].

MSMEs themselves are essential according to the economy of all countries, including developing countries like Indonesia, from these MSMEs many have shown their entrepreneurial strength by capturing the opportunities offered by E-Commerce^[2]. That way, a stable national economy will be achieved which will have an impact on welfare without any social gaps.

Another problem arises where E-Commerce services offer their products to attract buyers' interest by providing promotions as attractive as possible so that buyers or the public increase shopping transactions at E-Commerce services. If this action is carried out continuously, it will certainly threaten and make competitors and new entrepreneurs restless because they are unable to compete in terms of price.

The provision of promotions in the form of discounts on E-Commerce platform services that give rise to speculation of loss-making sales should not necessarily be considered a violation of the provisions of Article 20 of Law Number 5 of 1999, the symptoms need to be studied. Does E-Commerce service implement this practice? If in the same market, the price of a commodity is determined below the price set by another entrepreneur, so that the entrepreneur can be classified as an entrepreneur who carries out Predatory Pricing activities, then action needs to be taken in the form of a horizontal comparison of the prices determined by one entrepreneur and another entrepreneur^[3]. Indonesian President Joko Widodo explained that the form of Predatory Pricing in E-Commerce can cause the displacement of local products based on MSMEs and there are concerns that they will not be able to keep up with it and can even displace local products in E-Commerce, while imported products are sold at low prices. In line with the explanation of the President of the Republic of Indonesia Joko Widodo, the Ministry of Trade has issued special regulations to create healthy trade through electronic systems, support the empowerment of MSMEs and domestic PMSE entrepreneurs and increase security for domestic buyers, based on the Regulation of the Minister of

Trade of the Republic of Indonesia Number 31 of 2023 concerning Business Licensing, Advertising, Guidance and Supervision of Business Actors in Trade through Electronic Systems hereinafter referred to as Permendag Number 31/2023 concerning Business Licensing, Advertising, Strengthening and Supervision of PMSE Entrepreneurs which was ratified on September 26, 2023.

Based on the issues as described above, the formulation of the research problem is as follows: First, What is the background to the issuance of Permendag Number 31/2023; Second, What are the implications of Permendag Number 31/2023 on Predatory Pricing on TikTok Shop. Furthermore, the objectives of this study are: 1. Knowing the background of the issuance of Permendag Number 31/2023; 2. Knowing the implications of Minister of Trade Regulation Number 31/2023 on Predatory Pricing on TikTok Shop.

Research methods

This research is written by applying a normative research approach, namely research that examines law from an internal perspective whose object is legal norms. Utilizing descriptive studies to characterize a symptom, or an event that is happening. The data sources of this research are secondary data consisting of: primary legal materials, namely legal materials that have binding force, secondary legal materials, namely legal materials that do not have a strong position and only provide explanations of primary legal materials, and tertiary legal materials are legal materials that provide information about primary legal materials and secondary legal materials. Data collection and legal materials are obtained through literature studies or library research. The data analysis method used is qualitative, namely the research mechanism that produces descriptive analytical data.

Research results and discussion

a. Background to the Issuance of Permendag Number 31/2023 concerning Business Licenses, Advertising, Guarding, and Supervision of PMSE Entrepreneurs

The issuance of the Minister of Trade Regulation Number 31/2023 on September 26, 2023 with the urgency to fulfill the community's need for trade regulations through an electronic system based on legal, sociological, and philosophical elements, in which when described, the following considerations and reasons are obtained:

1. Legal basis, where the issuance of Permendag Number 31/2023 revokes the previous regulation, namely Permendag Number 50/2020 concerning Provisions on Business Licenses, Advertising, Strengthening, and Guarding of PMSE Entrepreneurs which are considered no longer in accordance with legal developments and community needs, therefore a revision is needed which aims to regulate the running of Social Commerce^[4]. From this revision, the following important points are included:^[5]

- a. Interpretation of the business model of Electronic System Business Providers (PPMSE).
- b. Determination of a minimum price of 100 US dollars per unit for finished commodities originating abroad.
- c. provided.
- d. Specific requirements for foreign traders in domestic markets include fulfilling the obligation to provide proof of business legality from the country of origin, meeting standards (mandatory SNI) and halal, affixing

Indonesian language labels to commodities of foreign origin, and the origin of the goods delivery.

- e. The prohibition of Marketplaces and Social Commerce applies as producers.
- f. PPMSE and affiliates are not permitted to control public data and are required to ensure that there is no misuse of user data for use by PPMSE or its affiliated companies.
- g. Social Commerce is only for commodity promotion media and payment transactions are not permitted.

2. Sociological basis, where the protests voiced by traders in Tanah Abang market due to the decline in buyers in Tanah Abang market because they prefer to buy the necessities they want at TikTok Shop which is cheaper which raises speculation of the Predatory Pricing phenomenon which has resulted in many traders in Tanah Abang going bankrupt. The form of effort to provide support in empowering MSMEs, as well as domestic PMSE entrepreneurs, providing consumer protection, providing encouragement for the development of electronic commerce, and adapting to dynamic technological developments, so that it is very necessary to rearrange regulations related to Business Licenses, Advertising, strengthening, and guarding PMSE entrepreneurs^[6].

3. Philosophical basis, as well as considering the legal and sociological elements, and to implement the provisions contained therein to meet the needs of the community, it is necessary to stipulate the Regulation of the Minister of Trade concerning Business Licenses, Advertising, Strengthening, and Safeguarding of PMSE Entrepreneurs.

The issuance of Permendag Number 31/2023 so that TikTok Shop was officially banned on Wednesday, October 4, 2023 at 17.00 WIB due to the absence of TikTok Shop's legality as an E-Commerce which then became pros and cons in society. The government is considered to be in a hurry and does not properly consider the advantages and disadvantages of the presence of TikTok Shop in the world of digital commerce. The government's stance in limiting the use of social media and e-commerce is questionable because in fact, quite a few MSME traders use TikTok Shop to market their merchandise. Not a few of them are helped by the presence of TikTok Shop which can market the goods they sell outside the region. According to Mufti Anam, a member of Commission VI of the Indonesian House of Representatives, the government's policy to stop TikTok Shop is considered ineffective in improving the economy in traditional markets, one of which is Tanah Abang Market. In fact, with TikTok Shop closed, Traditional Markets such as Tanah Abang Market remain quiet, in fact the impact is increasingly widespread to sellers on TikTok Shop who can no longer sell their merchandise on the TikTok Shop platform due to the enactment of Permendag Number 31/2023. For that reason, the Government has again taken the following steps Pros and Cons of closing TikTok Shop. Right on National Online Shopping Day (Harbolnas), December 12, 2023, the Government has given permission to TikTok Shop to resume operations with conditions and must comply with government regulations^[7].

From the research results that have been submitted, in this case it is known that the main reason for the closure of TikTok Shop is related to the TikTok Shop licensing as E-Commerce, while TikTok in Indonesia at that time had a

license as a social media which as regulated in the regulation can only do promotions and advertisements and is strictly prohibited from conducting buying and selling transactions, so in order to be able to operate again, TikTok took steps by collaborating with Tokopedia while taking care of its licensing as E-Commerce. Meanwhile, the emergence of speculation about Predatory Pricing is a factor that accompanies why special regulations must be made to regulate the running of Social-Commerce such as TikTok Shop.

Since resuming operations, TikTok Shop has been summoned by the Ministry of Trade to review the implementation of Trade Ministerial Regulation Number 31/2023, which states that the TikTok social media platform may only facilitate promotional or advertising features. Minister of Cooperatives and Small and Medium Enterprises, Teten Masduki, evaluated that the digital platform TikTok still violates regulations in Indonesia. A very clear violation is seen where even though TikTok has partnered with Tokopedia in carrying out buying and selling transactions, until now when buyers make transactions they are still on the TikTok Shop platform itself, not on Tokopedia. Monitoring continues to be carried out by the Ministry of Trade and related parties to ensure the extent to which TikTok Shop complies with existing regulations.

The TikTok Shop - Tokopedia transition process, which was targeted for 3-4 months since TikTok Shop resumed operations, was finally completed on March 27, 2024. Tokopedia President Melissa Siska Juminto explained that in general, TikTok Shop has made significant changes as directed by Permendag Number 31/2023 concerning PMSE, including all payment and transaction activities that were originally carried out by TikTok, as well as user and merchant management, have now been moved to the PT Tokopedia domain and are all managed by Tokopedia with "Shop Tokopedia" which has obtained an Electronic System Organizer Registration Certificate (TDPSE) issued by the Ministry of Communication and Informatics (KemenKominfo).

In addition to the separation of social media and E-Commerce as regulated in Article 21 of the Minister of Trade Regulation Number 31/2023, according to research conducted, Fiki Satari, special staff of the Minister of Cooperatives and SMEs, stated that TikTok Shop still markets commodities at very affordable prices.

b. Implications of trade ministerial regulation number 31/2023 on predatory pricing on TikTok shop

Regarding the speculation of Predatory Pricing carried out by TikTok Shop, it was strengthened by a statement made by the Minister of Trade Zulkifli Hasan during his visit to traders at Tanah Abang market where one of the traders said that the goods he sold were at a wholesale price of IDR 7,000 but TikTok Shop could sell them at a price of IDR 4,000^[8]. In addition to selling goods at very cheap prices, other disturbing activities on the TikTok Shop platform include Flash Sales, where sellers on the TikTok Shop platform will sell their merchandise at unreasonable prices within a certain period of time, which usually coincides with twin dates and months, such as Flash Sale 5.5 which means Special Flash Sale on the fifth of the fifth month (May). In the Flash Sale there are even sellers who give a price of Rp. 1,000 Rupiah for a Women's Fashion Bag.

With such plummeting selling prices, market traders and MSMEs are unable to compete in setting prices. This is because if they apply the same selling price as TikTok Shop, of course they will not get a profit from the sale and do not have extra funds to cover losses from selling goods at prices below production costs.

Digital economy observer Ignatius Untung Surapati expressed the opinion that what TikTok Shop did was not Predatory Pricing. This is based on what TikTok Shop did by providing subsidies (in the form of discounts) to its users who want to make transactions where this is also done by other E-Commerce and Social Commerce platforms such as purchasing vouchers and others, with the aim that it can attract consumer interest to shop on its platform rather than competing platforms. According to him, every seller has a goal, namely to make a profit. It's just that both of them sell goods in different places. TikTok itself denies the existence of predatory pricing practices. TikTok has expressed various rejections regarding the allegations. Digital economy observer Ignatius Untung Surapati expressed the opinion that what TikTok Shop did was not Predatory Pricing. This is based on what TikTok Shop did by providing subsidies (in the form of discounts) to its users who want to make transactions where this is also done by other E-Commerce and Social Commerce platforms such as purchasing vouchers and others, with the aim that this can attract consumer attention to shop on its platform rather than competing platforms, one of which is TikTok cannot determine the selling price of commodities and the low price arises because flash sales sell commodities at low prices with the intention of running out of stock^[9].

President of the Republic of Indonesia Joko Widodo in various activities, one of which was at the Palace, Wednesday, October 4, 2023, touched on the Predatory Pricing carried out by TikTok Shop, which if allowed to continue, Indonesia will be colonized economically. On another occasion during the National Coordination Meeting of Korpri on Tuesday, October 3, 2023, the President touched on the issue of strict regulations in response to technological developments that if we are not ready, the ones affected will be MSMEs and traditional market traders as has happened^[10]. However, in fact, the contents of the policy in Permendag 31/2023 do not yet regulate Predatory Pricing.

The push to evaluate and revise Permendag Number 31/2023 was also proposed by the Minister of Cooperatives and Small and Medium Enterprises (MenkopUKM) Teten Masduki. Teten explained that the lack of regulation of Predatory Pricing in the Ministerial Regulation risks hitting competitiveness in E-Commerce, Teten recommended that a ban be formed on marketing commodities at prices below the cost of production (HPP) in E-Commerce.

Meanwhile, regarding accusations of predatory pricing, TikTok management explained that as a platform, they cannot set their own product selling prices, but sellers set prices according to the business strategy they want or implement^[11]. Products sold on the TikTok Shop platform can also be found on other E-Commerce platforms at similar prices.

Explaining further, Tokopedia President Melissa Siska Juminto regarding TikTok Shop's commitment - Tokopedia supports the government to eradicate Predatory Pricing in the E-Commerce sector, for that reason, it has taken firm action by closing Merchants found to be doing Predatory

Pricing. Despite the closure, Predatory Pricing activities still exist because E-Commerce is not the only place, there are also offline stores because there are problems that occur in the supply chain ^[12]. Seeing this condition, Melissa said that in order to eradicate Predatory Pricing to its roots, active cooperation from the government, especially Customs, is needed in monitoring imported goods entering Indonesia. Melissa also expressed her support for the proposal to prohibit E-Commerce platforms from marketing their products below HPP or production cost in order to achieve a healthier industry ^[13]. As real evidence of her support, Melissa expressed her willingness to cooperate in helping in implementing the regulation if it is indeed enacted.

In the context of Predatory Pricing, KPPU as an independent business competition supervisory authority emphasized that it is still in the process of investigating whether what TikTok Shop did was a monopolistic practice or Predatory Pricing, because not all very low prices can be categorized as Predatory Pricing. KPPU is also still waiting for a report regarding Predatory Pricing against TikTok Shop as an initial step in the investigation regarding Predatory Pricing in order to find evidence of the action ^[14].

From the results of the study, it is known that there is a legal vacuum in the body of the Minister of Trade Regulation Number 31/2023 which does not specifically regulate the indicators or provisions for a business actor to be said to be carrying out Predatory Pricing and there are differing opinions on whether or not the alleged TikTok Shop is carrying out Predatory Pricing. For proving what TikTok Shop does is Predatory Pricing or not is not an easy thing. Referring to Law Number 5 of 1999, there are a number of elements that must be met for TikTok Shop to be categorized as Predatory Pricing. In this context, TikTok Shop offers a low price (below production costs), so it can be suspected of Predatory Pricing. However, TikTok Shop cannot be said to be breaking the law.

In the author's analysis regarding Predatory Pricing against TikTok Shop, referring to the elements of Predatory Pricing as explained in Article 20 of Law Number 5/1999, the following facts were found:

1. In the element of business actors, where in this case TikTok Shop is the one that facilitates traders in selling and promoting their merchandise. It can be concluded that there are 2 (two) business actors involved in it. TikTok Shop's position as an intermediary (place) that facilitates the running of electronic buying and selling transactions, while those who have full authority to set the selling price are traders who utilize TikTok Shop to market their merchandise according to the sales strategy they want.

2. In the element of intention, that has been confirmed by TikTok Shop regarding discount voucher subsidies and free shipping, this is done as a form of promotional strategy in this case to attract consumer interest which is also done by other platforms. There is no intention to eliminate competitors. Deputy Minister of Communication and Informatics (Wamenkominfo), Nezar Patria stated TikTok's stance in complying with regulations in Indonesia and TikTok's commitment to routinely report developments in following applicable regulations ^[15]. This is related to collaboration with the local platform Tokopedia expressed by TikTok E-commerce Executive Director Stephanie Susilo, where Tokopedia and TikTok are considered to have the same goals, namely strengthening the development of

the digital economy in Indonesia with the essence of empowering and expanding the market for MSMEs.

3. In the element of the words "eliminate" or "kill", TikTok Shop conveys that there are discount activities, flash sales with the aim of attracting consumer purchasing power to buy its products as an effort to drain inventory and avoid greater losses in the past, not with the aim of "eliminating" or "killing" competitors' businesses.

4. In the element of Monopolistic Practices, in this case TikTok Shop is not the only E-Commerce that dominates the digital market in Indonesia, there are still Competitors in similar markets, where promotional activities as a business strategy carried out by TikTok Shop can also be carried out by existing E-Commerce, TikTok Shop also does not act as a producer, so it does not cause the marketing of certain products to be centralized.

5. In the element of unfair business competition, this element is not fulfilled because the goods and products sold on the TikTok Shop platform do not violate the provisions of the E-Commerce platform, and do not hinder competitors or new business actors from entering the market because these goods and products can also be found on other E-Commerce platforms at similar prices.

In fact, TikTok Shop is cooperative in trying to comply with existing regulations and adapting to be in line with existing regulations, one of which is by collaborating with the Tokopedia platform with the aim of... Strengthening the development of Indonesia's digital economy with the essence of empowering and expanding the market for MSME players, which is what needs to be considered by TikTok Shop, where public figures such as Raffi Ahmad, Ruben Onsu, Baim Wong also sell on the platform. TikTok Shop that can easily dominate sales on the platform This is because they already have followers and fans, resulting in unbalanced competition and can hinder MSMEs from entering the market.

Closing

a. Conclusion

From the study that has been described, the author draws the following summary: First, the issuance of the Minister of Trade Regulation Number 31/2023 revokes the regulation of the Minister of Trade Regulation Number 50/2020 concerning Business Licenses, Advertising, Strengthening and Guarding of PMSE Entrepreneurs with the urgency of regulating the running of Social-Commerce. in this case TikTok Shop to create a stable, fair, and healthy economy and avoid business competition that is detrimental to other parties. Second, There is a legal vacuum in the body of Permendag Number 31/2023 concerning the substance of articles containing provisions, indicators, categories, and guidelines to ensure that a business actor carries out Predatory Pricing actions or not, so that activities to market commodities at the most economical prices are still found on the TikTok Shop platform. From the author's analysis, activities such as those carried out by TikTok Shop, including discounts (price cuts), flash sales, voucher subsidies and free shipping, cannot be categorized as Predatory Pricing because the elements as regulated in Article 20 of Law Number 5/1999 have not been implemented, and there has been no report by the relevant parties to the KPPU regarding Predatory Pricing actions on the platform TikTok Shop so that KPPU has not been able to determine whether TikTok Shop's actions include

Predatory Pricing which violates the law and is then subject to sanctions.

b. Suggestions

From the results of this research, the author makes the following suggestions: First, the Government is expected to carry out supervision and evaluate the regulation of Permendag Number 31/2023 whether it has met the urgency of current community needs and existing legal developments. Second, the Government is expected to immediately revise Permendag Number 31/2023 by adding the substance of articles containing provisions, indicators, categories and guidelines related to Predatory Pricing, including providing limits on the cost of goods sold (HPP) and prohibiting E-Commerce platforms from marketing their products below the cost of production (HPP). In this case, KPPU as an independent institution supervising business competition is expected to be proactive in exploring and investigating Predatory Pricing against TikTok Shop without having to wait for a report first, and to provide strict sanctions for parties proven to have carried out Predatory Pricing with administrative sanctions or in accordance with applicable positive law, related to the legal vacuum regarding the regulation, while with no revision yet, law enforcement can be carried out by accommodating other related regulations such as the ITE Law or consumer protection to ensnare perpetrators with appropriate sanctions.

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