



Consumer Protection in Resale Price Maintenance Practices

Chintya Amelia S¹; Pujiyono²; Hari Purwadi³

¹ Student of Magister of Business Law, Sebelas Maret University, Indonesia

² Professor at the Faculty of Law Universitas Sebelas Maret, Indonesia

³ Lecturer at the Faculty of Law Universitas Sebelas Maret, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v8i1.2195>

Abstract

Fair business competition is greatly needed to create a conducive business climate. Regulations governing the fair business competition are expected to ensure the business opportunities for business actors and to prevent monopolistic practices and or unfair business competitions, and at the same time to protect the consumers. In Indonesia, the Resale Price Maintenance (RPM) is applied as an effort or actions of the upstream businesses such as manufacturing companies or suppliers to control the price when the goods are resold. Control and supervision of the Resale Price Maintenance practices are necessary considering that the monopolistic practice that creates unfair business competition is still common in the society. This study aimed to reveal how consumer protection in the Resale Price Maintenance practices works. This study was conducted using the normative or doctrinal research method with the statute and conceptual approaches. From the findings, it can be concluded that the consumer protection in Resale Price Maintenance practices is still very frail so that it is necessary to reconstruct the provisions in resale price maintenance which can be performed by reconstructing the criminal sanctions for business actors who violate the resale price maintenance regulations that can cause monopolistic practices and unfair business competitions.

Keywords: *Reconstruction; Consumer Protection; Resale Price Maintenance; Monopolistic Practice*

1. Introduction

Humans are social creatures whose life is always intended for fulfilling their daily needs. Then comes the economic process when they cannot fulfill their own needs which leads to the necessity for the economic transaction. Thus, economic needs are realized in the form of buying and selling with money as the medium of exchange. Buying and selling bring two important aspects of civil law. First, the selling process, it simply refers to a process to reduce someone's amount of wealth on one hand, while on the other hand it is an obligation, an achievement, or a debt that must be paid off. Second, the selling process brings forth a form of bill or claim which is an intangible moving object. Both of these processes exist reciprocally at the same time on both parties who agreed on the transaction. Thus, in selling and buying

processes there are two sides of civil law, namely the law of material and the law of obligation¹. As explained in the Civil Code article 1457 that buying and selling is an agreement where one party binds himself to deliver a material, while the other party pays the consented price.

Based on this formulation, selling and buying are a form of agreement that establishes an obligation to give something which in this case is the delivery of goods sold by the seller and the delivery of money by the buyer². Fair business activity can improve the national economy and have an impact on the welfare of the society, thus, it is crucially needed to create a conducive business climate. Business actors set the resale price or in the economics literature better known as Resale Price Maintenance (RPM) concept which can be defined as efforts or actions of the upstream businesses such as manufacturing companies or suppliers to control the price when their goods are resold. In this regard, in Indonesia, the regulations that regulate fair business competitions are expected to ensure the certainty of business opportunities for business actors and to prevent monopolistic practices and unfair business competitions.

In Indonesia, the resale price maintenance is governed by Law Number 5 of 1999 interpreted with the rule of reason, which explains that business actors are allowed to make an agreement with other business actors that contains a requirement that the recipients of the product will not resell or resupply the products they received with a price lower than the price agreed upon as long as it does not cause an unfair business competition. In relation to the aforementioned regulation, in reality, monopolistic practices still exist that can cause unfair business competition. There are a few cases regarding the resale price maintenance, one of which is the Semen Gresik distribution case which has been decided by KPPU in decision No. 11/KPPU-I/2005. Moreover, there are still many producers or suppliers who set terms for the resellers not to sell their products with prices lower than the predetermined minimum selling price. Resale price maintenance can harm consumers through the lessening competition mechanism. Often in resale price maintenance, business actors enter into collusive deals that can harm both intermediary and final consumers as well as other business actors. Resale price maintenance is used to smooth the collusion practices by stipulating resale price maintenance, the upstream companies may ensure that the price on the consumers follows the collusion agreement of the upstream companies. It surely has a detrimental effect on the consumers as well as the other business actors and shows the non-optimality of the relevant regulations especially the one concerning consumer protection as stated in Article 8 of Law (Law No. 5 of 1999) regarding the prohibition of Monopolistic Practices and Unfair Business Competitions. It motivates the authors to examine the problem with the formulation of the problem of how to Reconstruct the Resale Price Maintenance Practice Provisions for Consumer Protection.

2. Methodology

It is a normative law study or can also be called a doctrinal law, a study which is compiled by referring to the literature or secondary materials consisting of primary and secondary legal materials³. This article was written using the statute, conceptual, and case approaches. The authors used the secondary data with primary and secondary resources of legal materials. Secondary legal materials are all the unofficial law documents such as books, texts, journal articles, and comments on the court judgments⁴.

¹ Fasya, D. W. (2015). *Jual beli dengan hak membeli kembali (Studi komparasi antara Kitab Undang-Undang Hukum Perdata dan Fikih Syafi'i)*. *Jurisdictie: Jurnal Hukum dan Syariah*, 6(1).

² Widjaja, G. & Muljadi, K. (2003). *Jual beli*. Jakarta: Raja Grafindo Persada, pp. 7.

³ Marzuki, P. M. (2014). *Penelitian hukum*. Jakarta: Prenada Media Grup, pp. 55-56.

⁴ Marzuki, P. M. (2014). *Penelitian hukum*, (Edisi Revisi). Jakarta: Kencana Prenada Media Grup, pp. 133.

3. Findings and Discussion

3.1 Resale price maintenance

The market price is the price paid in goods and services transactions according to an agreement between the parties in the relevant market⁵. In Indonesian legal provisions as stated in Article 1 No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competitions that it is prohibited for the business actors to enter into an agreement with business competitors to settle the price of goods and services for the costumers to pay in the same relevant market⁶. This regulation does not apply to an agreement made in a joint venture or an applicable law based agreement⁷. Business actors are prohibited to create an agreement where one buyer has to pay a price different from other buyers for the same goods and services⁸.

Business actors are prohibited to make an agreement with business competitors to set a price lower than the market price which may lead to unfair business competition⁹. Business actors are also not allowed to enter into an agreement with one another which states that the recipients will not resell or resupply the goods and services they received at a price lower than the agreed one which may result in unfair business competition¹⁰. Violation of the above prohibitions is punishable by a fine of as minimum as IDR 5 billion and as maximum as IDR 25 billion or maximum imprisonment of 5 months in lieu of the fine¹¹.

Resale price maintenance as best known in economic literature can be defined as the efforts or actions of upstream businesses such as manufacturing companies or suppliers to control the price at the time product is resold. Thus, resale price maintenance is a form of agreement between two or more business actors on the different levels of production or distribution rates. Resale price maintenance is one of the vertical restraints that restrict the transfer of rights of goods and or services in an economic exchange between two parties that are on different levels.

Included in the resale price maintenance is the establishment of the resale price maintenance formula and the establishment of the resale price range, apart from the specific price maintenance. Determining the minimum resale price will give optimal results as desired by the suppliers if adhered to and implemented by the recipients of the goods. In an intensive competition, the minimum resale pricing will not be obeyed by the recipients of the goods, since determining a lower resale price, those business actors can escalate their sales. Hence, the imposition of sanctions becomes an important part for those who do not put the minimum resale price maintenance agreement into practice. Therefore, evidence of the sanctions for the recipients who disobey the minimum resale price maintenance requirements is important to resolve the conflicts that may occur in the future.

Chicago jurists and economists state that resale price maintenance is not an act that violates the competition law. Every business actor has the right to control a few distribution aspects of their products. Business actors may establish their own retail company or collaborate with others. Establishing our own retail requires capital and energy than collaborating with other parties, however, the latter may leave us out of the direct control¹².

⁵ Article 1 No. 4 of Law Number 5 of 1999.

⁶ Article 5 Paragraph (1) of Law Number 5 of 1999

⁷ Article 5 Paragraph (2) of Law Number 5 of 1999

⁸ Article 6 of Law Number 5 of 1999

⁹ Article 7 of Law Number 5 of 1999

¹⁰ Article 8 of Law Number 5 of 1999

¹¹ Article 48 Paragraph (2) of Law Number. 5 of 1999

¹² Corones, S. G. (2007). *Competition law in Australia* (4th Ed.) Australia, Thomson Lawbook, p. 526.

There are two types of resale price maintenance, maximum and minimum resale price maintenances. With the maximum resale price fixing, there is still competition between business actors which may benefit the consumers, as the agreement is not to sell at a higher price or above the agreed maximum price, which allows business actors to compete in the selling price as long as it is above the predatory price. Meanwhile, the minimum resale price maintenance (floor price) is an agreement between business actors where the buyers will not resell the purchased goods at a price lower than the agreed one. Thus, the minimum resale price maintenance that has been predetermined by the manufacturing companies and their distributors makes the distribution companies no longer have the freedom to sell their distributed products at a lower price settled by other distribution companies¹³. Hitherto, there are still some cases concerning the resale price maintenance, one of which is the Semen Gresik distribution case which has been decided by KPPU in Decision No. 11/KPPU-I/2005.

In brief, it is a case of the distribution of Gresik cements in four areas in East Java, which includes Blitar, Jombang, Kediri, Kertosono, Nganjuk, Pare, Trenggalek, and Tulungagung. The violation was allegedly committed by PT. Bina Bangun Putra, PT. Varia Usaha, PT. Waru Abadi, PT. Perusahaan Perdagangan Indonesia (Persero), UD. Mujiarto, TB. Lima Mas, CV. Obor Baru, CV. Tiga Bhakti, CV. Sura Raya Trading, CV. Bumi Gresik which are the distributors of Gresik cements and PT. Semen Gresik. To market its products, PT. Semen Gresik, Tbk. as the XI reported party appoints distributors. Then PT. Semen Gresik, Tbk. and the distributors bind themselves in a sale and purchase agreement that places the distributors as independent distributors or independent buyers. In this agreement, the I, II, III, IV, V, VI, VII, VIII, XI, and X reported parties must sell Gresik cement at a price set by the XI reported party. Furthermore, there is a provision that forbids the I to X reported parties to give a discount in advance. The XI reporter party also set redemption price for the distributors, selling price of Gresik cement from the distributors to the Regular Subscriptions also from the distributors and or Regular Subscriptions to stores and minimum retail selling price.

The main element in resale price maintenance is the agreement between business actors which states that the recipients of goods and/or services will not resell or resupply the goods and/or services they received at a lower price than the one that has been agreed upon which may cause an unfair business competition.

According to the price maintenance agreement at the distributor level, the reported parties have violated the regulation in Article 8 of the Law (Law No. 5 of 1999) concerning the Prohibition of monopolistic practice and unfair business competition, since there is no acceptable motive for the agreement to be made, consequently it will only bring forth unfair business competition with no positive impact for the society.

Sanctions for violating Law Number 5 of 1999 include administrative, criminal and additional sanctions. Violation of Article 8 of the (Law No. 5 of 1999) is punishable by a fine of as minimum as IDR 5 billion and as maximum as IDR 25 billion or maximum imprisonment of 5 months in place of the fine.

3.2 Consumer protection in resale price maintenance practice

As stated in the explanation of Article 1 point 2 Consumer Protection Law, consumer is known in the economics literature as the final customer. Therefore, it can be said that all people are consumers as they have the need of goods and services in order to sustain their life, their families, or to preserve their properties¹⁴. Article 2 of the Law (Law No. 8 of 1999) concerning Consumer Protection mentions that the customer protection is based on benefit, justice, balance, security and consumer's safety, and legal certainty.

¹³ Kayne, V. G., et al. (2007). *Vertical restraints: Resale price maintenance territorial and customer restrain*. Practicing Law Institute, pp. 2.

¹⁴ Sidabalok, J. (2014). *Hukum perlindungan konsumen di Indonesia*. Bandung: Citra Aditya Bakti, pp. 14

The principle of benefit mandates that every effort to create consumer protection must provide maximum benefit for the consumers' and business actors' overall interests. The principle of justice means that the community can have maximum participation and open opportunities to the consumers and business actors to fulfill obligations and to achieve their rights fairly. The principle of balance is intended to provide a balance between the interests of consumers, business actors and government in material and spiritual senses. Mandated in the principle of security and consumers' safety to guarantee consumers' security and safety in using or consuming the goods and the services. The principle of legal certainty is to build both the consumers and the business actors awareness to obey the law and to ensure justice for them in implementing the consumer protection, and the government is guaranteeing the legal certainty¹⁵.

Legal protection for the consumers is vital considering their weak bargaining standpoint. The importance of the government regulating consumers' legal protection is generally considered on its urgency. This consideration is commonly taken by taking into account the country's development stage, industrial and technology growth, also development philosophy and policies¹⁶. Consumer protection is a term used to describe the legal protection for the consumers to fulfill their daily needs from anything that may harm them. In Law, it is a new term, specifically in Indonesia whilst it has been discussed in developed countries along with the development of industry and technology¹⁷.

Consumer Protection Law is the overall principles and rules that regulate and protect consumers in relation and problems with the provision and the use of the products between providers and users in social life. It is related to the provision in Article 64 of the Consumer Protection Law which states that all the regulations aim to protect the consumers that have existed at the time this law is enacted, they will remain valid as long as they are not specifically regulated and/or do not conflict with this Law¹⁸.

The demands of free market and globalization and in an attempt to build an efficient economy have forced Indonesia in 1999 to enact Law Number 5 of 1999 regarding the prohibition of Monopolistic Practices and Unfair Business Competition. The enactment of this Law will certainly affect Indonesia's internal and external practices thus can create healthier business practices and increase its economic efficiency. The Law aims to achieve two efficiencies which are the efficiency for producers and the efficiency for society as well¹⁹.

Article 8 of the Law Number 5 of 1999 states that: "business actors are prohibited to enter into an agreement with other business actors which states that the recipients of goods and/or services will not resell or resupply the goods and/or the services they received at a price lower than the one that has been agreed upon which may cause an unfair business competition." The provision governing the resale price maintenance in the Law Number 5 of 1999 which interpreted using the rule of reason states that business actors are allowed to make an agreement with other business actors which contains a requirement that the recipients of the product will not resell or resupply the products they receive with a price lower than the price agreed upon as long as it does not cause an unfair business competition.

The authors consider, empirically, as stated above that even with the resale price maintenance, monopolistic practices and unfair business competitions are still exist. Currently, Law Number 5 of 1999 regarding the Prohibition of Monopolistic Practice and Unfair Business Competition regulates the provisions of sanctions, which are administrative, criminal, and additional sanctions. Violation of Article 8 of the Law (Law No. 5 of 1999) is punishable by a fine of as minimum as IDR 5 billion and as maximum as IDR 25 billion or maximum imprisonment of 5 months in lieu of the fine. However, these

¹⁵ Miru, A. & Yodo, S. (2010). *Hukum perlindungan konsumen*. Jakarta: Raja Grafindo Persada, pp. 25.

¹⁶ Barkatullah, A. H. (2010). *Hak-hak konsumen*. Bandung: Nusa Media, pp. 23.

¹⁷ Sidabalok, J. (2014). *Hukum perlindungan konsumen di Indonesia*. Bandung: Citra Aditya Bakti, pp. 24.

¹⁸ Zulham. (2013). *Hukum perlindungan konsumen*. Jakarta: Kencana Prenada Media, pp. 24.

¹⁹ Sukarmi. (2010). Peran UU larangan praktek monopoli dan persaingan usaha tidak sehat dalam meningkatkan persaingan usaha di era AFTA. *Jurnal Persaingan Usaha*, pp.42.

sanctions are considered ineffective and do not cause a deterrent effect on business actors so that monopolistic practices and unfair business competitions in resale price maintenance still occur which are very detrimental to the consumers.

This study in relation to the aforementioned cases, suggests that the reconstruction of the Consumer Protection Law on Resale Price Maintenance needs to be done by analyzing synchronization, consistency, and harmonization with the concept of economic democracy adopted in Indonesia. Thereafter, the legislation products especially those related to the provision of sanctions for violations of the resale price maintenance need to be revised, in the form of administrative, criminal, and additional sanctions. As Law Number 5 the year of 1999 has set a fine of as minimum as IDR 5 billion and as maximum as IDR 25 billion is considered too small for those who violate these regulations and the imprisonment as maximum as 5 months in lieu of the fine also does not cause a deterrent effect.

Hence, the threat of criminal sanction should be maximized by raising the amount of fine that exceeds the amount of the profit obtained from the violation which value can be calculated. The imposition of the new fine can be determined by the percentage using the fines proportional calculation guidelines because every business actor cannot be punished equally knowing that they own different profits and financial abilities. The imposition of the fine can be altered to a minimum of 10% and a maximum of 50% of their sales value during the violation period. In this way, the amount of the new fine using percentage is believed to be more incriminated and can cause a deterrent effect.

Conclusion

The resale price maintenance practice in Indonesia is performed with an agreement between business actors which states that the recipients will not resell or resupply the goods and the services they received with a price lower than the price agreed upon as long as it does not cause an unfair business competition. The consumers and business actors must be given special protection because of the various possibilities for unfair business competition. Truthfully, there are still many disputes in business competition, particularly monopolistic practice that can harm the consumers and the society which refers to the Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practice and Unfair Business Competition and the Consumer Protection Law has not optimally protected the consumers and business actors' interests. Reconstruction of the Resale Price Maintenance provisions needs to be carried out by analyzing synchronization, consistency, and harmonization with the concept of economic democracy adopted in Indonesia. Furthermore, the legislation products particularly those related to the provision of sanctions for violations of the resale price maintenance must be revised as well, in the form of administrative, criminal, and additional sanctions. So that the menace of criminal sanction can be maximized by raising the amount of fine that exceeds the amount of the profit obtained from the violation which value can be calculated. The imposition of the new fine can be determined by the percentage with the guidelines to calculate a proportional fine. Consequently, the amount of the new fine is considered to be more incriminated and can create a deterrent effect since it uses a larger percentage.

References

a. Books

- Miru, A. & Yodo, S. (2010). *Hukum perlindungan konsumen*. Jakarta: Raja Grafindo Persada.
- Barkatullah, A. H. (2010). *Hak-hak konsumen*. Bandung: Nusa Media.
- Corones, S. G. (2007). *Competition law in Australia* (4th Ed.) Australia, Thomson Lawbook
- Sidabalok, J. (2014). *Hukum perlindungan konsumen di Indonesia*. Bandung: Citra Aditya Bakti,
- Marzuki, P. M. (2014). *Penelitian hukum*. Jakarta: Prenada Media Grup

- Marzuki, P. M. (2014). *Penelitian hukum*, (Edisi Revisi). Jakarta: Kencana Prenada Media Grup.
- Sidabalok, J. (2014). *Hukum perlindungan konsumen di Indonesia*. Bandung: Citra Aditya Bakti.
- Widjaja, G. & Muljadi, K. (2003). *Jual beli*. Jakarta: Raja Grafindo Persada.
- Zulham. (2013). *Hukum perlindungan konsumen*. Jakarta: Kencana Prenada Media.

b. Regulations

Law No. 5 of 1999 regarding the prohibition of Monopolistic Practices and Unfair Business Competitions.

KPPU in Decision No. 11/KPPU-I/2005.

c. Journals

- Kayne, V. G., et al. (2007). *Vertical restraints: Resale price maintenance territorial and customer restrain*. Practicing Law Institute, pp. 2.
- Fasya, D. W. (2015). Jual beli dengan hak membeli kembali (Studi komparasi antara Kitab Undang-Undang Hukum Perdata dan Fikih Syafi'i). *Jurisdictie: Jurnal Hukum dan Syariah*, 6(1).
- Sukarmi. (2010). Peran UU larangan praktek monopoli dan persaingan usaha tidak sehat dalam meningkatkan persaingan usaha di era AFTA. *Jurnal Persaingan Usaha*, pp.42.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).