

Regulating The Marketing and Supply of Tourist Accommodation Services Through a Healthy and Fair Digital Platform

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Abstract

This article focuses on analyzing and identifying the characteristics of losses arising from the marketing and supply of digital tourist accommodation services based on the business competition law system in Indonesia and on the formulation of marketing and supply arrangements for digital tourist accommodation services that are healthy and fair for all tourism accommodation service business actors. normative research methods used in this research, with primary legal materials in the form of laws and regulations related to monopolistic practices and unfair competition. The results of the study show that looking at the characteristics of losses arising from the marketing and supply of digital tourism accommodation services based on the legal system of business competition in Indonesia is considered inappropriate and must be reconceptualized. Furthermore, the regulation of marketing and supply of digital tourist accommodation services that are healthy and fair is still experiencing a vacuum of norms, so it is necessary to formulate the regulation of marketing and supply of tourist accommodation services for all business actors of tourist accommodation services as a means of legal protection in terms of preventing and controlling the potential for unfair business competition practices in the regulation of marketing and supply of digital tourist accommodation services.

Keywords: Marketing Arrangements; Tourism Accommodation Services; Digital Platform; Healthy and Equitable.

The term globalization has become a classic vocabulary, but whether we like it or not, people in all corners of the world are now living in a global, transparent, borderless, interconnected and interdependent habitat. Globalization has penetrated almost all spheres of people's lives, be it in the fields of technology, politics, science,

culture, education and economy (D. Nasution, 2006). The growth of the world economy is gradually very fast, the globalization of technological developments, telecommunications and information makes trade transactions in goods and or services increasingly innovative without any restrictions

on space and territory. The convergence of information technology into the world of the trade industry has given birth to the Industrial Revolution 4.0. This convergence is driven by several technological developments such as the Internet of Things, Block Chain, Artificial Intelligence, Big Data, and Cloud Computing.

The year 2020 is a year that drastically changes the life order of countries in the world, one of which is Indonesia. Human life as a social being who is used to interacting and socializing with others is forced to be limited so that everything is diverted, carried out electronically (Adisti et al., 2021). This is because in 2020 the World Health Organization stated that the world is facing a global pandemic, namely the COVID-19 pandemic, a disease with a very fast spread rate. The COVID-19 pandemic also has an impact on economic aspects, especially in the field of trade, giving rise to trade shifts. The existence of this causality makes digital trade the right solution in facilitating interaction and trade transactions optimally for the community (Antai & Eze, 2023). Regulations regarding electronic commerce are regulated in Article 1 number 24 of Law Number 7 Year 2014 on Trade; Article 1 number 2 of Law Number 19 Year 2016 on Electronic Information and Transactions; Government Regulation Number 80 Year 2019 on Trading Through Electronic Systems.

One area of commerce that has undergone a transition from using manual marketing methods to using digital platforms is tourist accommodation services. Digital platforms have had a significant impact on the way the accommodation industry operates, benefiting travelers and industry players alike. One of the most striking changes and creating new and innovative opportunities in the travel accommodation services industry is the emergence of digital accommodation online search and booking platforms (Guttentag, 2015).

At the beginning of its emergence, marketing and selling tourist accommodation through digital platforms was seen as a practical marketing and sales medium and had many

advantages over manual marketing methods. However, the use of this model creates new problem spaces, including unfair business competition. This competition has led to the displacement of travel agencies that use manual marketing and sales models, which have not only experienced a decline in turnover but also bankruptcy.

The above facts can be taken into consideration from a legal aspect. Especially regarding the scope and even the context that is used as the object of regulation in a legislation in Indonesia, which is inadequate in regulating the increasingly complex service trade model, namely the complexity of marketing tourist accommodation services through digital platforms (Casais et al., 2020), including the state's capacity to protect entrepreneurs participating in the business, which ultimately becomes the main cause of the emergence of all legal problems that befall tourist accommodation service entrepreneurs, especially those who do not use digital marketing models.

This paper has two central questions. First, what are the characteristics of losses arising from the marketing and supply of digital tourist accommodation services based on the business competition law system in Indonesia? Second, how is the formulation of norms regulating the marketing and supply of digital tourist accommodation services that are healthy and fair for all business actors of tourist accommodation services? This research is important to be studied, analyzed and researched more deeply considering that the practice of marketing and supply of tourist accommodation services through digital platforms in Indonesia has the opportunity to eliminate the opportunity of marketing and supply of tourist accommodation services entrepreneurs who do not use digital platform-based marketing models to access economic resources and suffer losses in their own country due to the unclear mechanism of marketing and selling accommodation services through digital platforms and on the other hand, the regulation is expected to be able to mitigate

the risks that can arise due to the marketing and sales system of accommodation services through digital platforms (Nooren et al., 2018). Such is the importance of efforts to end the vacuum of norms and the need for new rules.

Research Method

This research uses normative research methods. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find the truth based on the logic of legal science from its normative side. The steady scientific logic in normative legal research is built based on scientific disciplines and the workings of normative legal science, namely legal science whose object is the law itself (Ibrahim, 2015). This research is descriptive analytical in nature which will provide a description of the object under study thoroughly, systematically, and analytically with analysis carried out qualitatively by approaching the problem through legislation, and concepts.

Result and Discussion

Indonesia as a state of law with a democratic system organizes its economy based on the principle of kinship with the principle of economic democracy. In Indonesia, the means of social control over the occurrence of monopolistic practices and unfair business competition are regulated in Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. These regulations are also a means of social engineering aimed at creating a conducive business climate, so that there is a guarantee of equal business opportunities for all business actors (Prayoga, 2000). The main purpose of the enactment of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition is in accordance with the mandate of Article 33 paragraph 4 of the 1945 Constitution of the Republic of Indonesia, which is to safeguard the public interest and improve

national economic efficiency as one of the efforts to improve the welfare of the people.

Competition, as one of the main characteristics of a market economy, tends to be preferred over non-competition or the absence of competition. A competition is referred to as pure competition if there are many firms selling identically the same product in the market. The products of many firms cannot be distinguished by trademarks or labels (Maryanto, 2017). Perfect competition is the most ideal market structure because it is considered that this market system is a market structure that will ensure the realization of activities to produce goods or services with high efficiency (Dinarossi, 2015).

The development of digital platform-based start-up businesses has changed business models in almost all business sectors, including the tourist accommodation sector. Like the application-based online transportation business, the accommodation business is now growing rapidly with the presence of a number of internet technology-based hotel network platform providers. These startups develop a business model by directly embracing hotel owners, to join the web-based platform and Online Travel Agent online application in managing and marketing their accommodations (Sujana, 2021).

Travelers tend to find out about accommodation through digital platforms and consider their decision to stay at a particular hotel based on the existence of good and bad reviews about the hotel and price transparency. Generally, reviews that will be considered are those related to the facilities and services provided. Applications that are very commonly used by tourists to find out reviews of tourist accommodation are through the Traveloka application, Booking.com followed by Agoda and TripAdvisor (Sujana, 2021). In an era where travelers are increasingly savvy and require complete information before making a decision, a lack of information can be an obstacle in attracting travelers' interest and trust.

The model of marketing and selling tourist accommodation through digital platforms offers

various benefits and conveniences compared to the model of marketing and selling accommodation manually, for example in terms of speed, market output, low marketing costs which result in the sales price of tourist accommodation can be sold at a price much cheaper than the price set by the model of marketing accommodation services manually. Consumers really enjoy using this model where they can book tourist accommodation in a practical, fast way, with many choices including price options that make it easier for consumers to make decisions. This phenomenon shows that the digital platform for tourist accommodation services is a very promising business, besides the speed of the process, the demand is also very high (Sutherland & Jarrahi, 2018). However, the use of the marketing and sales model of tourist accommodation through digital platforms, which has recently been very widespread and in demand by the public, in addition to having a significant impact in the business world, has also raised various legal issues.

1. Characteristics of Marketing-Related Losses in the Supply of Digital Tourism Accommodation Services

a. Market becomes more concentrated

A concentrated market, also known as a monopolistically or oligopolistically concentrated market, refers to a situation where most or all of the market power in an industry or economic sector is controlled by a small number of firms. In this condition, a few firms or even just one firm can dominate the market, while other competitors have a very limited role in determining the price, quantity, and quality of products or services offered. One of the main factors that lead to a concentrated market is the existence of high entry barriers for new competitors. These barriers can be high capital costs, complex regulations, or technological constraints that are difficult to replicate. Established firms in the industry can utilize these barriers to protect their dominant position and reduce competitive pressure from new competitors;

b. Price discrimination

Price discrimination is a pricing strategy where a company sells the same product or service to different customers at different prices. Price discrimination is often influenced by various factors, including consumer purchasing power, time of purchase and the use of information technology to collect consumer data. Digital platforms have the ability to price discriminate based on consumer data. This can lead to disadvantages for certain groups of consumers who are charged higher prices based on their search history or demographic profile. In an economic and legal context, price discrimination has far-reaching implications from both a market efficiency and social justice perspective;

c. Anti-competitive Practices

Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition expressly emphasizes that there shall be no dominant position in business competition. This is intended to prevent and or prevent consumers from obtaining goods or services that do not compete or a company has no competition in terms of both quality and quantity. Small hotels and local businesses are often unable to compete with the high commission fees and parity pricing policies imposed by digital platforms. As a result, many small businesses are forced to close or reduce their operations. A decrease in revenue can lead to a reduction in employment, a decrease in investment, and an overall decrease in economic activity in the area. This not only hurts those businesses but can also reduce the diversity and quality of services available to consumers;

d. Unfair use of data and algorithms

Digital platforms have access to a vast amount of data on consumer preferences and market trends. They use this data to optimize their offerings and increase their profits. However, the misuse of this data can be detrimental to smaller service providers who do not have access to the same information. Algorithms in digital platforms can prioritize

hotels or services that pay higher commissions or have more favorable commercial relationships, which can hurt other service providers (Bustomi, 2018).

2. Formulation of Norms Regulating Marketing and Supply of Digital Tourism Accommodation Services that are Healthy and Fair for All Tourism Accommodation Service Business Actors

Defining competition law cannot be done from the perspective of just one law. This means examining the various laws that are designed to regulate the market in order to create competitive and healthy competition, but these rules are legitimized to limit the economic behavior of market participants and prioritize the interests of consumers. The essence of competition law is to create a fair and healthy business environment, where economic actors compete openly and transparently without entering into agreements and or prohibited acts such as monopoly, abuse of dominant position, or price conspiracy in order to maintain the interests of the general public (Lianos, 2018).

The existence of competition law at a theoretical level is actually there to protect consumers from illegal actions of economic actors. For example, unreasonable prices and inappropriate product or service quality. In addition, sustainable competition law can stimulate and encourage economic actors to innovate and improve their products and services to remain competitive in the market. Creating a healthy and fair business environment emphasizes the role of competition law in preventing the abuse of market power by capital owners and promoting broader socio-economic progress (Vaheesan, 2019). The essence of fairness in competition law is to create a fair business environment for all market components, including capital owners, business partners, and consumers. Fairness in competition law means that economic actors should not take prohibited actions to win competition or harm competitors and consumers.

Competition law must be enforced fairly according to binding principles and any violations must be dealt with firmly. All economic actors should be subject to the same rules and equal punishment for violating them. Competition law should also protect the interests of consumers by ensuring that they have fair and open access to the products and services that society needs (Stuyck, 2005). Creating a fair and healthy business environment, competition law can help create efficient and innovative markets, which will ultimately benefit the entire society. The essence of public welfare in competition law is to protect the interests of consumers and promote efficiency and innovation in the market. A prosperous business environment will establish competition that forces capital owners to offer high-quality products and services at affordable prices to consumers.

Competition requires a foundation of interests to be upheld where social justice stands as a reflection of those interests. Social justice is a concept that is often discussed by experts in various fields, including social science, politics, and economics. The concept of social justice concerns the fair and equitable distribution of resources and prosperity to society without exception (Vaheesan, 2019). According to the great moral philosopher and legal theorist Adam Smith, in his teaching on justice, "the end of justice is to secure from injury." Smith's teaching is the basis for the inseparable relationship between law and economics.

The general elucidation of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition states that the purpose of this Law is to ensure that business competition takes into account the principle of social justice. This principle in business competition law is a reflection of the values of justice and welfare. To encourage the growth and development of the business world in a healthy and proper manner (fair to the actors), a non-discriminatory business competition environment (no concentration of economic power) is required. This effort can avoid harmful

practices in business competition that inevitably affect business actors and consumers, which can indirectly stimulate public welfare.

Social justice is often a goal in a country's social and economic development, as it aims to create a fairer and more balanced system for all levels of society. The principle of social justice is also related to human rights, public welfare, and social responsibility, where in this context the state cannot be separated from its responsibility in the welfare of its people or efforts to improve social welfare, where the role of the government is needed as a forum to establish the rules of the game and as a referee who interprets and enforces the rules of the game that have been established (B. Nasution, 2004).

Failure to understand fair and just business competition based on Policy-Oriented Legal Theory will lead to the failure to create a legal product or public policy in the field of human-oriented law. The transformation of human life must be analyzed using studies that are bottom up approach, not merely always rigid and conservative so that it is the opposite. The concepts outlined in Policy-Oriented Legal Theory have created a new paradigm for the formation of a legal product that is more focused so that legislators in the field of business competition and policy makers in it pay more attention to the importance of community participation, so that the resulting legal product is a legal product that successfully achieves the label of a human-oriented legal product or policy. Humans are the only regulatory object. So, the hope of human-oriented legal policy as a narrowing of Policy-Oriented Legal Theory is that government policies are able to humanize the policy or legal product itself (Darmastuti, 2022).

Conclusion

Based on the explanation above, it can be understood that the losses arising from the marketing and supply of digital tourist accommodation services under the competition

law system in Indonesia require special attention from various stakeholders, including the government, regulators, service suppliers and consumers. The dominance of several travel accommodation service marketing platforms creates a less competitive environment, where manual travel accommodation service entrepreneurs find it difficult to compete. This potential loss must be addressed immediately by the Government so that the impact of this loss can be minimized. The hope is that in the future digital and manual tourist accommodation service marketing entrepreneurs can conduct healthy and fair business competition. In addition, to further accommodate the interests of the country, namely increasing economic growth by creating new business opportunities in the field of digital platforms. Related to the Formulation of norms regulating the marketing and supply of digital tourist accommodation services that are healthy and fair for all business actors of tourist accommodation services can be realized by creating economic efficiency and social welfare. The paradigm of healthy and fair business competition and welfare can be represented as a condition of business competition that competes harmoniously (ideal) to maintain the principle of justice for all market components. Business competition with a social justice perspective intends to create social and economic equality between all market components. Social justice means placing the political interests of society as the basis for action in conducting economic activities. The relevance of social justice to competition lies in the goal of state development in the economic sector which aims to create a fair, healthy and balanced market system for all members of society and reflects the values and principles in Pancasila as the foundation of the Indonesian state. This is in accordance with the mandate of the Fifth Precept of Pancasila and the provisions of Article 33 of the 1945 Constitution which significantly protects the public interest. Through this research, it is hoped that the government will immediately make adjustments

to the Law on the Prohibition of Monopolistic Practices to accommodate the interests of the state as well as entrepreneurs and the public using digital platforms to prevent losses due to marketing and supply of tourist accommodation services through digital platforms in the form of

legislative products by taking the right point of view in the form of regulations, especially regarding the regulation of marketing and supply of digital tourist accommodation services that are healthy and fair for all tourist accommodation service business actors.

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