

Analysis Of The Influence Of Fake Discount Price Labels For A Product In The Marketplace On The Concept Of Business Competition And Responsibility

¹ Suci Rizka Fadhilla, Nia Rahma Dini², Sylvira Agshelya Wolontery³
^{1,2,3} Andalas University, Padang, Indonesia

Received: May 25, 2024
Revised: June 03, 2024
Accepted: June 24, 2024
Published: June 27, 2024

Corresponding Author:
Author Name*:
Suci Rizka Fadhilla¹
Nia Rahma Dini²
Sylvira Agshelya Wolontery³

Email*:
sucirizkafadhila@gmail.com
niaarahmadini@gmail.com
agshelyasyylvira@gmail.com

Abstrak: Marketplace as an online transaction space in terms of trade turns out to have many fraudulent practices in product sales by sellers, such as the use of fake discount price tags. For this reason, consumer confidence is damaged and unfair business competition occurs. This research uses a juridical normative legal research method and collects secondary data from scientific sources, regulations, and websites. From this research, it can be concluded that the inclusion of fake discount price tags that do not match the price by the seller is related to the concept of unfair business competition because it has acted dishonestly in the product sales process. Not only that, the practice of fake discount price tags turns out to be immaterially detrimental to consumers so that it must be accountable. The party responsible for the losses suffered by consumers is the seller who promotes fake discount prices in the marketplace in line with the Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning Limitations and Responsibilities of Platform Providers and Merchants for Trading Through Electronic Systems (Electronic Commerce) in the Form of User Generated Content.

Keywords : price tag; fake discount, business competition, loss.

INTRODUCTION

Electronic trading activities or often referred to as e-commerce are legal acts regarding trade transactions that use electronic media, such as computer networks.¹ However, this term is increasingly widespread and continues to develop and penetrate all walks of life. It cannot be denied, the presence of e-commerce helps consumers in carrying out all activities related to trade. The scope of e-commerce is not only about how to sell and buy but also various seller-buyer agreements which assume that the interpretation of

¹ Pasal 1 angka 2 Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi dan Transaksi Elektronik



buying and selling does not only revolve around physical goods, but also information and human intellect.²

Reported by the results of the We Are Social survey, Indonesia is one of the countries that holds the title of highest internet users in e-commerce activities, namely 88.1%. ³Even though this data tends to decrease, interest in e-commerce still shows a significant increase in the past 5 years. The reason why buyers prefer to buy and sell in the marketplace to carry out their daily activities is because it not only provides online buying and selling services but also online payments (payments) which save money and time. Apart from that, from the seller's side, using the marketplace for buying and selling can reduce sales capital.

Marketplace is a type of e-commerce platform that is mushrooming in Indonesia. Marketplace allows each seller to sell their products independently on the platform. On the other hand, buyers can also choose various types of products with competitive quality and prices between sellers. The marketplace with the most frequently used visitors in Indonesia is Shopee. Based on data from Similarweb, Shopee has received approximately 140 million visitors in February 2023.⁴

Various features have been presented by marketplaces to attract consumers to buy their products, such as often offering free shipping, discounts, vouchers and other attractive features that make users choose marketplaces over offline stores. However, these features not only provide benefits but can also cause losses to consumers, one of which is to trick consumers regarding discount prices under the guise of a sales strategy.

Reporting from the Detik News website, there was a case where a buyer felt he had been cheated by a seller in the marketplace regarding the price tag listed. According to the buyer, he felt cheated regarding the product price of Rp. 700,000 which was discounted to Rp. 80,000. After investigating, it turned out that the original price of the product was around Rp. 150,000-200,000. The buyer also feels cheated because the main reason he bought the item was because of the discount offered.⁵ This is a fraudulent practice by sellers that violates consumer rights.

The case above is one of the cases of including fake discount prices carried out by sellers to attract consumers to order and buy the product. Fake discount price labels often occur during major online shopping events, such as National Online Shopping Day (Harbolnas), free shipping, price discounts, and so on. A fake discount price tag is displayed by juxtaposing two nominal prices on the price tag in the sales window. The two prices consist of the discount price which is crossed out and then compared with the original price of the item next to it. The discounted price that has been written off is very

² Rita rahayu dan John Day, *Determinant Factors of E-commerce Adoption by SMEs in Developing Country: Evidence from Indonesia*, ScienceDirect: Procedia-Social and Behavioral Sciences 195 (2015), hlm.142

³ Databoks, "Penggunaan E-Commerce Indonesia Tertinggi di Dunia", Databoks, diakses pada tanggal 09 Juni 2024 di halaman <https://databoks.katadata.co.id/datapublish/2021/06/04/penggunaan-e-commerce-indonesia-tertinggi-di-dunia>,

⁴ Databoks Katadata, id. Diakses pada 9 Juni 2024 di halaman <https://databoks.katadata.co.id/datapublish/2023/03/15/awal-2023-pengunjung-e-commerce-indonesia-menurun>

⁵ News Detik, "Apa Saya Bisa Gugat Jebakan Diskon 'Palsu' di Marketplace?", Detiknews. Diakses pada 9 Juni 2024 di halaman <https://news.detik.com/berita/d-5667253/apa-saya-bisa-gugat-jebakan-diskon-palsu-di-marketplace/1>

disproportionate to the original price of the product, giving the impression that the product has been heavily discounted.

In fact, the discount price listed on the price tag would not be a problem if it were the real thing. Unfortunately, that is just a strategy to make the product sell. This strategy is considered a fraud by some people because they feel cheated by the discount and are tempted to buy the goods, even though initially consumers had no intention of buying the goods. This then raises a dilemma regarding the status of the inclusion of an incorrect discount price, whether it is a violation of the law or not.

Therefore, based on the various problems above, in this article the author will discuss how the fake discount price tag for a product in the marketplace affects the concept of business competition? What is the responsibility for losses experienced by consumers due to fake discount price labels in the marketplace?

METODOLOGI

The research method used in this writing method is normative juridical legal research. As for normative research, namely research that focuses on secondary data sources as the main reference data consisting of primary legal materials, secondary legal materials and tertiary legal materials⁶, while normative juridical research is library legal research by examining library materials or secondary data. This research uses secondary data collection methods and literature studies obtained from books, scientific journals, written works, laws and regulations, and websites.

RESULTS AND DISCUSSION

1. The Influence of a Fake Discount Price Label for a Product by a Seller on the Concept of Business Competition in the Marketplace

According to the Big Indonesian Dictionary, buying and selling is a mutually binding agreement between the seller and the buyer, namely the seller as the party who delivers the goods and the buyer as the party who pays the price of the goods sold.⁷ It is not uncommon to find various problems that occur during the buying and selling process. The problem that is currently being discussed is the number of shops in the marketplace that include fake price labels on their products. Although in fact, according to the market theory of perfect competition, price is a form of agreement between two parties in buying and selling, namely consumers and producers. In reality, the formation of a price usually determined by the seller first without any intervention from consumers or other parties⁸

Price labels function to make it easier for buyers to pay attention to prices, consumers only see the goods accompanied by the price attachment without needing to ask the shopkeeper when they want to buy the

⁶ Kornelius Benuf. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer". Jurnal Gema Keadilan. Volume 7 Edisi 1 Juni 2020.

⁷ Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia Pusat Bahasa, Edisi IV (Cet. 1; Jakarta: PT Gramedia Pustaka, 2008). Hlm. 589.

⁸ Siti Nur Fatoni, Pengantar Ilmu Ekonomi (Dilengkapi Dasar-Dasar Ekonomi Islam), Bandung: Pustaka Setia, 2014, h. 61-63

product.⁹ For consumers, price is a benchmark in purchasing a product and for business actors, price determines the amount of profit earned in doing business. To determine the price tag of a product, the seller will consider various factors, such as discounts, the original price of the item, and the profits that will be obtained.

According to Mariana, a discount is a price cut where the form of reduction from the price can be in the form of a cash discount or other forms of discount.¹⁰ A discount is a form of savings from the original price of a product stated in the description or price tag for the product offered to consumers.¹¹ Discounts are intended to attract consumers' attention so they can buy the goods as soon as possible. Apart from that, discounts are also used to compete with similar products being sold.

The offer of price discounts encourages buyers to buy products impulsively because there are economic benefits of discounts. Just imagine that some products use discounts, of course the discount funds can be used by consumers to buy other products. This often results in impulsive consumer behavior and suddenly feeling like they want the item. Because discounts often have a significant impact on large purchases. Consumers will be more tempted and tempted to purchase a product if the discount price tag is included.

In Law Number 5 of 1999 concerning Prohibition of Monopolies and Unfair Business Competition (UU No. 5 of 1999), the concept of business competition that Indonesia dreams of is the scope of healthy business competition, by avoiding the existence of economic power in individuals or certain groups and avoid actions that lead to unfair business competition practices in society. In the a quo law, several activities that are prohibited in business competition include activities that are monopolistic, monopsony, market control, and business collusion or conspiracy.

The act of placing a fake discount label on a product cannot be explicitly categorized as a form of unfair business competition in Law no. 5 of 1999. However, this is implicitly stated in the meaning of unfair business competition according to Article 1 number (6) of Law no. 5 of 1999.

*"Unfair business competition is competition between business actors in carrying out production and/or marketing activities of goods or services which is carried out by carrying out production and/or marketing activities of goods or services which are carried out dishonestly or against the law or hinder business competition."*¹²

Including a fake discount price on a product is a marketing strategy that is contrary to Law Number 1999 concerning Consumer Protection. In Article 10 of the a quo law, a business actor is prohibited from advertising false statements regarding the price/tariff of an item and offering false discounts. Apart from

⁹ Anonymous, Label Price, Diakses pada 9 Juni 2024.

¹⁰ Sulistining Trimulyani dan Nina Herlina, "Pengaruh Iklan, Diskon dan Brand Ambassador Terhadap Pembelian Impulsif Pada Lazada di Masa Pandemi Covid-19", Liaison Journal Of Best, Vol.1 No. 2 (Juli, 2022), hlm 48.

¹¹ Kajian Pustaka "Diskon (Pengertian, Tujuan, Jenis, Indikator dan Faktor yang Mempengaruhi)", Kajian Pustaka, diakses pada tanggal 9 Juni 2024 di halaman <https://www.kajianpustaka.com/2021/02/diskon.html>,

¹² Pasal 1 angka 6 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen

that, Article 11 letter (f) also regulates the provision that a business actor is prohibited from deceiving consumers by increasing prices or tariffs for goods and/services before holding a sale. Therefore, it can be concluded that the act of attaching a fake discount label to a product is an act against the law.

Unfair business competition occurs when there are unlawful and dishonest actions by business actors that hinder competition in selling the product with other sellers. As explained above, it is clear that the act of placing a fake discount label is an act against the law. Apart from that, this also has implications for sellers of similar products on the market. With the discount listed, consumers will prefer to buy this product compared to similar products at a similar price but without a discount. This clearly hinders existing business competition.

The marketing strategy of including fake discount labels can actually be used by all sellers to compete between similar products. This can become a common and normal thing to do, thereby eliminating the element of unhealthy business competition in it. However, if this continues to be done, apart from causing public deception, it will also threaten official shops (initial producers of the product) and shops that sell the same product at almost the same price but without discounts. For example, Shop A sells an item for Rp. 500,000, then after discounting it becomes Rp. 200,000 only. On the other hand, there is shop B which sells similar goods for Rp. 230,000 without discount. Logically, consumers will immediately buy goods at shop A because it is cheaper and there are discounts. However, on the other hand, apart from not selling the goods, Shop B will also be suspected of selling fake goods because the prices are cheap (even though the prices are almost the same as Shop A). This phenomenon clearly illustrates the existence of unhealthy business competition.

2. Liability for Losses Suffered by Consumers Due to Fake Discount Price Labels on the Marketplace

Legally, every action and action will definitely be responsible for it. In this case of fake discount price labels, consumers actually suffered immaterial losses. Because the fake discount price will cause losses in the form of consumers' desire to buy the product even though the nominal discount on the product actually does not exist. In addition, consumers actions will be more consumptive, prioritising wants over needs by seeing discounts at that time.

Reporting from kemenkeu.id, losses are divided into material and immaterial losses. Material losses are real losses suffered by consumers, while immaterial losses in question are losses that are not directly visible, such as feelings of anger, annoyance, sadness, and other things that are believed to be the impact of a person's actions.¹³ So if we look at the case of a fake discount price label for a product, this indirectly falls into the category of immaterial loss. Because, if you look at the losses experienced by consumers, consumers initially did not want or need to buy the product, but because the price tag on the item was at a big discount, consumers were finally tempted to buy it.¹⁴

¹³ Kemenkeu.go.id. Diakses pada tanggal 9 Juni 2024.

¹⁴ Dede Rohman dkk. "Analisis Impulse Buying Mahasiswa Pada Flash Sale dan Gratis Ongkir Shopee: Keinginan atau kebutuhan?" Jurnal Ecogen, Universitas Negeri Padang. Vo. 6 No. 2 (2023) Hal. 1356-164

Furthermore, according to Article 1365 of the Civil Code (Civil Code) it is explained that every act that violates the law and causes loss requires the person who caused the loss to compensate for the loss. The party who wishes to file a claim for compensation needs to make an application to the court by providing sufficient evidence to support the fact that immaterial loss has occurred.¹⁵ However, the nominal amount of immaterial compensation will be based on the judge's subjective opinion regarding the condition of consumers who feel cheated due to the product's discount price tag and depends on the strength or weakness of the evidence at trial.

In fact, Indonesia has introduced a regulation to protect consumer rights in Law no. 8 of 1999 concerning Consumer Protection. This law exists to protect the interests of business actors, especially consumers in Indonesia, considering that Indonesia is currently experiencing economic development in the era of globalization. On this basis, the Consumer Protection Law exists which aims to create a balance of protection for consumers.

The act of labeling fake discount prices that takes place in the marketplace should be one of the actions prohibited in this regulation. Based on Article 9 paragraph (2) of the Consumer Protection Law, it is stated that business actors are prohibited from offering goods and/services as if the goods have met a price cut.¹⁶ Sanctions for violating this article are regulated in Article 62 paragraph (1) of the Consumer Protection Law with the threat of imprisonment for a maximum of 5 (five) years or a maximum fine of two billion rupiah.¹⁷

Not only that, based on the provisions of Article 11 letter (f) of the Consumer Protection Law, sellers are prohibited from increasing the price of goods before making a discount.¹⁸ Raising the price of goods here is done by the seller to create the impression that there has been a price reduction for the product. As for this action, sanctions have also been regulated in Article 62 paragraph (2), namely punishable by a maximum prison sentence of 2 years or a maximum fine of 500 million rupiah.¹⁹

Furthermore, the party that can be held responsible for this action is of course the party that caused harm to consumers. This is in accordance with the provisions in Article 7 paragraph (1) of the Minister of Trade Regulation Number 35/M-DAG/PER/7/2013 of 2013 concerning the Inclusion of Prices of Traded Goods and Tariffs, which states that business actors who trade goods at retail will be responsible for the correctness of the prices of goods and/or service rates listed.²⁰ So, responsibility remains with the seller of the product as the perpetrator, not the marketplace.

¹⁵ SIP Law Firm. "Jenis Ganti Rugi dalam Hukum Perdata Indonesia." Diakses pada 9 Juni 2024 di halaman <https://siplawfirm.id/jenis-ganti-rugi-dalam-hukum-perdata-indonesia/?lang=i>

¹⁶ Pasal 9 Ayat (2) Undang-Undang Tentang Perlindungan Konsumen

¹⁷ Pasal 62 Ayat (1) Undang-Undang Tentang Perlindungan Konsumen

¹⁸ Pasal 11 huruf (f) Undang-Undang Tentang Perlindungan Konsumen

¹⁹ Pasal 62 ayat (2) Undang-Undang Tentang Perlindungan Konsumen

²⁰ Peraturan Menteri Perdagangan Nomor 35/M-DAG/PER/7/2013 tahun 2013 tentang Pencantuman Harga Barang dan Tarif yang Diperdagangkan

This is also reinforced by the Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning Limitations and Responsibilities of Platform Providers and Traders (Merchants) Trading Through Electronic Systems (Electronic Commerce) in the Form of User Generated Content, stating that responsibility for the implementation of electronic systems, especially transactions Trading (e-commerce) is basically charged to the platform provider safely and responsibly, which in this case is the marketplace. However, this provision does not apply if it can be proven that there has been an error and/or negligence on the part of the seller.²¹ In another sense, the seller is responsible if there is an error that harms consumers, if it can be proven.

CONCLUSIONS

This research on the case of fake discount price tags on a product in a marketplace has answered various issues related to the legal relationship between the seller who did this and the definition of unfair business competition in Law No. 5 Year 1999. Such actions can be interpreted as unfair business competition because they hamper fair competition in the market and harm other business actors who sell similar products at reasonable prices. This is because consumers tend to prefer products with fake discounts, even though the actual price may be more expensive than similar products sold by other business actors at the original price.

Not only the theory of business competition, this research also makes us realise that the rampant cases of fake discount price labelling can be held accountable to the court by making a lawsuit if the buyer feels they have suffered a loss. The responsibility in this case rests with the seller, not the marketplace, because the marketplace is only a buying and selling platform that acts as an intermediary. Liability for fake discount price tags has actually been accommodated by the Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning Limitations and Responsibilities of Platform Providers and Merchants for Trading Through Electronic Systems (Electronic Commerce) in the Form of User Generated Content that the responsibility for the implementation of electronic systems is borne by the platform provider.

REFERENCES

Book

Agustina, Shinta. *Manajemen Pemasaran*. Malang: UB Press. 2011.

Nur Siti, Fatoni. *Pengantar Ilmu Ekonomi (Dilengkapi Dasar-Dasar Ekonomi Islam)*. Bandung: Pustaka Setia. 2014

Departemen Pendidikan Nasional. *Kamus Besar Bahasa Indonesia Pusat Bahasa, Edisi IV*. Jakarta: PT Gramedia Pustaka. 2008.

Journal Article

²¹ Surat Edaran Menteri Komunikasi dan Informatika Republik Indonesia Nomor 5 Tahun 2016 Tentang Batasan dan Tanggung Jawab Penyedia Platform dan Pedagang (*Merchant*) Perdagangan Melalui Sistem Elektronik (*Electronic Commerce*) yang Berbentuk *User Generated Content*.

- Benuf, Kornelius. “Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer”. Jurnal Gema Keadilan. Volume 7 Edisi 1 Juni (2020).
- Cantika, Putri Mandya Dwi. “Tinjauan Yuridis Terhadap Transaksi Jual Beli Melalui E-commerce.” *Jurnal Fakultas Hukum Universitas Mataram*, (2023)
- Rita, Rahayu dan John Day. *Determinant Factors of E-commerce Adoption by SMEs in Developing Country: Evidence from Indonesia*, Science Direct: Procedia-Social and Behavioral Sciences, (2015).
- Rohman, Dede dkk. “Analisis Impulse Buying Mahasiswa Pada Flash Sale dan Gratis Ongkir Shopee: Keinginan atau kebutuhan?” *Jurnal Ecogen*, Universitas Negeri Padang. Vo. 6 No. 2 (2023) Hal. 1356-164
- Satria, Fauzi Nur dan Lushiani Primasari. “Tindak Pidana Penipuan dalam Transaksi di Situs Jual Beli Online (E-commerce)”, *Jurnal Receive*, Vol. 7, NO. 3 (2018).
- Sulistining, Trimulyani dan Nina Herlina. “Pengaruh Iklan, Diskon dan Brand Ambassador Terhadap Pembelian Impulsif Pada Lazada di masa pandemi COVID-19”, *Liaison Journal Of Best*, Vol. 1, NO 2 (2022)

Legal Documents

- Indonesia. *Peraturan Menteri Perdagangan tentang Pencantuman Harga Barang dan Tarif yang Diperdagangkan*. Peraturan Menteri Perdagangan 35/M-DAG/PER/7/2013 tahun 2013.
- Indonesia. *Surat Edaran Menteri Komunikasi dan Informatika Republik Indonesia Nomor 5 Tahun 2016 Tentang Batasan dan Tanggung Jawab Penyedia Platform dan Pedagang (Merchant) Perdagangan Melalui Sistem Elektronik (Electronic Commerce)*. Siaran Pers Kementerian Komunikasi dan Informatika No. 98/HM/KOMINFO/12/2016
- Indonesia. *Undang-Undang Tentang Informasi dan Transaksi Elektronik*. UU No. 11 Tahun 2008.
- Indonesia. *Undang-Undang Tentang Perlindungan Konsumen*. UU No. 8 Tahun 1999.
- Kitab Undang-Undang Perdata (KUHPerdata)

Website

- Databoks Katadata. “Awal 2023 Pengunjung E-Commerce Indonesia Menurun”, diakses pada 9 Juni 2024 di halaman <https://databoks.katadata.co.id/datapublish/2023/03/15/awal-2023-pengunjung-e-commerce-indonesia-menurun>
- Databoks Katadata. ”Penggunaan E-Commerce Indonesia Tertinggi di Dunia”, diakses pada 9 Juni 2024 di halaman <https://databoks.katadata.co.id/datapublish/2021/06/04/penggunaan-e-commerce-indonesia-tertinggi-di-dunia>
- Anonymous, “Label Price”, diakses pada 9 Juni 2024.

Kajian Pustaka. “Diskon (Pengertian, Tujuan, Jenis, Indikator dan Faktor Yang Mempengaruhi)”, diakses pada 9 Juni 2024 di halaman <https://www.kajianpustaka.com/2021/02/diskon.html>

Kemenkeu.go.id. Diakses pada 9 Juni 2024.

News Detik. “Apa Saya Bisa Gugat Jebakan Diskon ‘Palsu’ di *Marketplace*?”, Diakses pada 9 Juni 2024 di halaman <https://news.detik.com/berita/d-5667253/apa-saya-bisa-gugat-jebakan-diskon-palsu-di-marketplace/1>

SIP Law Firm. “Jenis Ganti Rugi dalam Hukum Perdata Indonesia.” Diakses pada 9 Juni 2024 di halaman <https://siplawfirm.id/jenis-ganti-rugi-dalam-hukum-perdata-indonesia/?lang=i>