Effectiveness of Law No. 5 of 1999 in Handling Cross-Border Business Competition

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Keywords: Business Competition, Extraterritoriality, KPPU, Competition Law, International Cooperation	**Abstract** This paper examines the issues of business competition in an extraterritorial context and its implications for the authority of the Indonesian Business Competition Supervisory Commission (KPPU). The research focuses on the extent to which the KPPU can enforce its duties beyond the borders of Indonesia, particularly concerning the effective application of Law No. 5 of 1999. Analysis of KPPU's decisions in extraterritorial cases, especially those involving share acquisitions, provides insights into the approaches and solutions adopted. The study aims to foster discussion on the role of KPPU in addressing extraterritorial challenges, along with the application of international cooperation and principles of international law in enforcing competition law. The research findings are expected to offer recommendations to enhance the effectiveness of KPPU's enforcement of competition law in a global context.		
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A. INTRODUCTION

The business world, which is competitively intertwined with various sectors, is closely linked to the social, economic and political environment. This engagement, whether direct or indirect, has a significant impact on the sustainability and success of the business world. While sometimes subject to norms and regulations, businesses can be dominant, prioritizing business interests and sometimes ignoring ethical or legal norms[1].

Law plays an important role in regulating people's lives, including in the economic dimension. In economic activities, the role of law is increasingly important to manage limited economic resources, prevent conflicts, and create a stable and fair economic environment. Law also plays a role in overcoming economic disparities and protecting the economic rights of weaker communities[2].

Markets are often competitive and unpredictable, allowing businesses to engage in practices that harm others. In a free market system, the freedom of business often

[1] Mardikaningsih, R., E. I. Azizah, N. N. Putri, M. N. Alfan, M. M. D. H. Rudiansyah. (2022). Business Survival: Competence of Micro, Small and Medium Enterprises. *Journal of Social Science Studies*, 2(1), 1-4.
[2] Negara, D. S. & D. Darmawan. (2023). Digital Empowerment: Ensuring Legal Protections for Online Arisan Engagements. *Bulletin of Science, Technology and Society*, 2(2), 13-19.

brings negative consequences, such as monopolistic or oligopolistic market structures. These practices reflect unhealthy competition, with business actors prioritizing their own interests over those of consumers or competitors. The impacts include harm to consumers and competitors, such as unfair prices, limited product availability, and lack of innovation. Therefore, the government and competition watchdogs need to implement policies that promote fair and equitable competition to ensure markets operate efficiently and provide optimal benefits to society.

Monopoly, as the main element in the economic structure, has the potential to result in the accumulation of wealth concentrated in the hands of a small number of groups. The impact is not only limited to the economic dimension, but can also create significant social disparities[3]. While the right of individuals to own and manage wealth assets is recognized as a legitimate right, problems arise when freedom is abused to form harmful monopolistic practices. In such a situation, it is the responsibility of the state to make corrections to ensure that business competition remains healthy and fair[4].

In a situation of economic globalization, where economies are interrelated and interact globally, increasingly complicated challenges arise. Business and trade competition is not only limited to the local scale, but also consists of product, commodity, and tariff competition at the international level[5]. In line with economic growth, countries are faced with the challenge of ensuring that the regulations and interventions implemented are not only effective at the national level, but can also adjust to the dynamics of global trade[6].

Since the establishment of AFTA (Asean Free Trade) in 1967 and later APEC (Asia Pacific Economic Corporation), Indonesia has realized the need for serious preparation to take part in the dynamics of regional and international trade. Indonesia's involvement in this global trade circle demands serious efforts in drafting and preparing accurate legal instruments and laws. The role of AFTA and APEC as platforms for trade and economic cooperation in the Asian region has had a significant impact on the Indonesian economy.

The Indonesian government, from the outset, was faced with the challenge of harmonizing national regulations and policies with the prevailing trade framework at the regional and international levels. This preparation does not only consist of economic aspects but also involves an adequate legal dimension. To that end, the Indonesian government needs to ensure that the existing legal instruments are

[3] Ningsih, A. S. (2019). Implikasi Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat pada Pelaku Usaha Mikro Kecil dan Menengah (UMKM). *Jurnal Penelitian Hukum De Jure*, 19(2), 207-215.

[4] Mantili, R., H. Kusmayanti., & A. Afriana. (2016). Problematika Penegakan Hukum Persaingan Usaha di Indonesia dalam Rangka Menciptakan Kepastian Hukum. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law),* 3(1), 116-132.

[5] Darmawan, D. (2016). *Pengantar Ekonomi Mikro*. Revka Prima Media, Surabaya.

[6] Mulyadi, D. & I. Rusydi. (2017). Efektivitas Peran Komisi Pengawas Persaingan Usaha (KPPU) dalam Penanganan Kasus Persaingan Usaha Tidak Sehat. *Jurnal Ilmiah Galuh Justisi*, 5(1), 81-95.

capable of supporting active engagement in global trade without leaving the balance of domestic interests.

Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition reflects that Indonesia, as part of a free market society, has entered an economic era that is not only limited to the national scope, but also involves the participation of regional and international communities[7]. In this case, the need for regulatory instruments that can accommodate market dynamics involving stakeholders from various countries becomes a necessity. Extraterritoriality of business competition law enforcement is a necessity that arises along with Indonesia's economic integration in the global scenario. As the implementer of Law No. 5 Year 1999, the Business Competition Supervisory Commission (KPPU) has been involved in various trade cooperation negotiations between Indonesia and several countries and international organizations, including Japan, Australia, New Zealand, ASEAN, OPEC, and others. Its role in international forums is becoming increasingly important, given Indonesia's involvement in the global trade network.

In the extraterritorial framework, several cases that stole the public's attention were the Very Large Crude Carrier (VLCC) case tried through Decision No.07/KPPU-L/2004, the Temasek Holdings case through Decision No.07/KPPU-L/2007, and Decision No.17/KPPU-M/2015. These three decisions reflect KPPU's efforts to face competitive challenges in enforcing competition law at the international level. By involving itself in cases involving entities or business practices from abroad, KPPU seeks to carry out its role carefully and proportionally. This consists of various aspects, from analyzing monopolistic practices to ensuring that the decisions taken can be implemented effectively, even beyond the borders of Indonesia. In this case, the KPPU's decision not only becomes the foundation of national law but also reflects Indonesia's readiness to establish healthy and fair relations in the global economic sphere. Thus, the extraterritoriality of business competition law enforcement by KPPU plays an important role in facing the competitiveness of an increasingly internationally integrated economy, strengthening Indonesia's position in maintaining fair and healthy business competition on the global stage.

In the enforcement of competition law involving the Very Large Crude Carrier (VLCC), Temasek, and takeover cases, there are considerations from legal experts regarding the authority that should be owned by the Business Competition Supervisory Commission (KPPU) or other legal institutions. This question reflects the competitiveness in determining the appropriate jurisdiction in cases involving cross-border entities or transactions.

Legal experts consider whether the case falls under the authority of the KPPU or whether another institution is more suitable to handle the case. This decision is very important in ensuring effective law enforcement and in accordance with applicable regulations. In addition, this study also considers the legal force aspect of

[7] Undang-Undang No. 5 Tahun 1999 perihal Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat.

competition law enforcement in the extraterritorial framework by KPPU. Given the role of KPPU as an institution that operates at the national level, it is necessary to consider how KPPU can effectively handle cases involving foreign parties or transactions that cross Indonesian borders. One of the important considerations in this study is the KPPU case decision No. 17/KPPU-M/2015 related to alleged violations of Law No. 5 of 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition. This decision provides a basis for analyzing and evaluating whether KPPU can effectively handle takeover cases, such as in the acquisition of Woongjin Chemical Co. by Toray Advanced Materials Korea Inc. (TAK).

The existence of extraterritorial business competition issues, as highlighted earlier, has emerged as a legal competitiveness that raises questions about the authority of the Business Competition Supervisory Commission (KPPU). As an institution given the duty and authority to enforce business competition law, KPPU is faced with a major challenge when facing cases involving foreign parties or cross-border transactions. The fundamental question related to the extent to which KPPU can carry out its duties in an extraterritorial framework is the focus of the study. It is necessary to clearly understand how Law No. 5 Year 1999 can be effectively applied outside the territory of Indonesia and what impact it has on competition law enforcement. A review of KPPU decisions in extraterritorial cases, especially those related to takeovers, can provide insight into the approaches and solutions applied by this institution. This further research is directed to open a space for discussion regarding the role of the KPPU in handling extraterritorial challenges, as well as the extent to which international cooperation and international legal principles can be applied within the framework of competition law enforcement. The conclusion of this research is expected to provide recommendations or guidelines to improve the effectiveness of competition law enforcement by KPPU, especially when dealing with an increasingly competitive global dimension.

B. RESEARCH METHOD

This research applies a normative legal approach. The research was conducted by evaluating secondary data sources involving primary, secondary, and tertiary legal materials. Primary legal materials consist of documents such as the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1999 regarding the Prohibition of Monopolistic Practices and Unfair Business Competition, Government Regulation No. 57 of 2010 regarding Merger or Consolidation of Business Entities and Acquisition of Company Shares Which May Result in the Occurrence of Monopolistic Practices and Unfair Business Competition, as well as Competition Decisions by the Business Competition Supervisory Commission and Court Decisions relating to unfair business competition in extraterritoriality, such as KPPU case decision No. 17/KPPU-M/2015. Secondary legal materials consist of literature such as books, writings of legal experts, and scientific works of scholars, both published and accessible through electronic media such as the internet. Tertiary legal materials involved sources such as dictionaries, articles, papers, seminars, and interviews with advocates, lecturers, and other parties with experience. After the

data is collected, data analysis is carried out using a qualitative normative analysis method.

C. RESULT AND DISCUSSION

1. The Competition Supervisory Commission's Right to Extraterritorial Acquisition of Shares

The application of competition law is a necessity in every country that adopts a modern economic system. Almost all countries with modern economies in the world, although in different legislative formats, have implemented the principles of competition law. This development occurred massively, especially in developed countries, in the era around 1980 in line with global economic liberalization. The involvement of the state in the legal sphere, including in civil matters, was carried out as a response to the protection of weaker parties to avoid exploitation by stronger parties. This phenomenon reflects the need to create a fair and balanced legal framework, especially in business competition. The term used in this area of law is not limited to "competition law," but also comprises "antitrust law" and "anti-monopoly law." Although various terms are used, the term "competition law" is considered the most appropriate, especially in accordance with the substance of the provisions in Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. This law summarizes the regulation related to antitrust and business competition with all aspects related to it. Thus, through competition law, a country can create a solid foundation to ensure fair competition and prevent monopolistic practices that harm consumers and competitors.

In the realm of business, it should be seen that competition should be considered as something that has a positive impact. In the discipline of Economics, the ideal market condition is perfect competition. There are at least four assumptions that form the basis for achieving perfect competition in a particular market: (a) businesses may not set their own prices; (b) goods and services produced have the freedom to enter and exit the market; (c) business actors are free to enter or exit the market; (d) consumers and competitors have accurate information.

Market control is a phenomenon that is closely related to the possession of a dominant position and significant market power in a particular market[8]. Market dominance becomes a challenge that is difficult to achieve if business actors, either individually or collaboratively, do not have a strong position in the relevant market. This strong position consists of the aspect of ownership or control over a large number of merchandise or services available in the market.

A monopoly occurs when the procurement of a particular merchandise in the market, be it at a local or national level, is controlled by at least one-third by one individual or group. In this case, the monopolist has the ability to control the price of the merchandise. This situation creates an imbalance of power in the market, where

[8] Khasanah, H., S. Arum, & D. Darmawan. (2010). *Pengantar Manajemen Bisnis*. Spektrum Nusa Press, Jakarta.

consumers and competitors have limited choice and pricing, due to the dominant control held by a single entity or group of business actors[9].

Price controls carried out by monopolistic business actors can have adverse economic impacts, such as unreasonable price increases or a decrease in the quality of goods and services. For this reason, market control and the potential formation of monopolies need attention from regulators and business competition supervisory institutions to prevent practices that can harm consumers and hamper fair competition in the market. Efforts to encourage healthy competition and avoid the formation of monopolies are an important part of efforts to maintain the integrity and balance of the economic market. The urgency of the emergence of monopoly is:

a. Economies of scale exist where the larger a company's production or operations, the more efficient its production costs, providing a competitive advantage associated with greater scale.
b. Having a unique resource that cannot be easily accessed by competitors provides a significant competitive advantage.
c. Monopoly power obtained through government regulation in situations where business actors gain a dominant position in the market through government regulations or policies that favor or benefit them.
d. Patent and copyright regulation on the exclusive rights granted by law to the owner of a particular innovation or intellectual work, giving full control over its use or reproduction.
e. Exclusive business rights to perform or sell a particular product or service, giving complete power over marketing and distribution.

Oligopoly markets, which consist of only a few producers, even two firms in the form of a duopoly, are characterized by producing standardized or differentiated goods. Pricing power in these markets can vary from weak to very strong. In an effort to prevent monopolistic practices and unfair business competition, business actors are prohibited from entering into collective agreements to control the production and or marketing of goods and or services. There is an indicator that a business actor is suspected or deemed to control production and or marketing if two or three businesses control more than 75% of the market share of a certain type of goods or services. This is a positive step to maintain balance and diversity in the market, and to avoid concentration of power that may harm consumers and competitors.

Imperfect competition occurs when business actors enter into agreements, either written or unwritten, with the aim of limiting output and eliminating competition[10]. Practices such as collective pricing, division of territories, determination of winning bidders, boycotts, and resale price fixing, as well as monopolistic and oligopolistic acts, all create an environment where competition

[9] Darmawan, D. (2016). *Pengantar Ekonomi Mikro*. Revka Prima Media, Surabaya.
[10] Simbolon, A. (2012). Kedudukan Hukum Komisi Pengawas Persaingan Usaha Melaksanakan Wewenang Penegakan Hukum Persaingan Usaha. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 24(3), 529-541.

becomes distorted. According to Law No. 5 of 1999, unfair competition consists of anti-competitive acts and fraudulent competition, which involve dishonest or unlawful activities, and may hinder business competition in a way that harms consumers and competitors.

Unfair business competition, which consists of acts of obstructing or preventing competition, is often carried out by business actors who want to hold a monopoly position by unreasonable means, such as eliminating competitors or hindering the continuity of competition[11]. Some businesses perceive competition as negative, as it requires great effort to capture and maintain market share, consumers, and control over prices. In Indonesia, to address unfair business competition, the Government issued Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition as a legal instrument that provides legal certainty and enforcement authority against practices that harm consumers and competitors, and maintain balance in the economic market.

The issuance of Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition was driven by several factors. Initially, the agreement between the International Monetary Fund (IMF) and Indonesia in January 1998, which provided US$ 43 billion in financial assistance, required certain economic and legal reforms as part of the effort to overcome the economic crisis. Although the IMF was not the sole cause, this factor catalyzed the formation of the Laranga Mono Law. Since 1989, intensive discussions in Indonesia regarding the need for a competition-focused law have been ongoing, reinforced by economic reforms since around 1980 that created a critical situation. The emergence of conglomerates controlled by certain families or parties, said to have hindered small and medium enterprises through abusive business practices, was another factor that drove the urgency of drafting this law in an effort to restore balance and integrity in the market economy.

The implementation of law in society does not only depend on public legal awareness, but is also strongly influenced by the role of law enforcement officials. Sometimes, some legal regulations cannot be implemented properly because there are law enforcement officers who do not comply with legal provisions as they should, resulting in a decline in the image of the institution. Good role models, integrity, and morality of law enforcement officials are important, given the risk of bribery and abuse of authority. In the modern state structure, law enforcement is carried out by the judicial component and run through the law enforcement bureaucracy, so it is important to ensure quality and trust in the implementation of tasks.

The notion of law enforcement is often misinterpreted as an exclusive involvement in the realm of criminal law or repressive aspects alone. In fact, law enforcement encompasses the realization of abstract ideas and concepts on legal values. It involves a series of activities ranging from the alignment of legal values to

[11] Sidauruk, G. D. (2021). Kepastian Hukum Putusan Komisi Pengawas Persaingan Usaha dalam Penegakan Hukum Persaingan Usaha. *Lex Renaissance*, 6(1), 132-151.

the enactment of positive law in daily practice, with the aim of creating, maintaining, and sustaining the peace of living, both as a form of social engineering and as social control. In its implementation, law enforcement consists of enacting positive law, providing justice in cases, and finding concrete solutions using procedures established by formal law[12].

KPPU, established by Presidential Decree No. 75/1999, plays an important role in addressing business competition issues in Indonesia. Not only relying on the law, KPPU carries out its competitive duties as a law enforcer with the mandate from Law No. 5 Year 1999. Through its authority, KPPU conducts examinations, investigations, and provides decisions related to unfair business competition practices. Its existence has been respected by business actors, and as a state institution, KPPU is recognized for successfully providing public services by carrying out public functions in maintaining the integrity and balance of the Indonesian economic market.

In principle, the KPPU functions as a supervisory institution for the implementation of laws, not as a criminal law enforcer like the police, prosecutors, or judges. However, Article 36 of Law No. 5 Year 1999 provides a basis for KPPU to conduct investigations and inquiries, bringing them into the realm of criminal law. This allows KPPU to seek the material truth regarding violations of Law No. 5/1999, even though the goal is to monitor and ensure compliance with the competition law.

Enforcement of competition law in Indonesia is carried out by the KPPU, but the District Court and the Supreme Court also have a role. The District Court handles challenges to KPPU decisions and competition law violations with a criminal character, while the Supreme Court resolves competition law violation cases in the event of cassation against District Court decisions. This creates a legal structure that involves various institutions in enforcing competition rules and addressing violations that harm consumers and undermine market integrity[13].

The Business Competition Supervisory Commission (KPPU) is an independent institution established and regulated by law to oversee the implementation of business competition law. Apart from the influence of the government and other parties, KPPU is directly responsible to the President as the head of state. Its structure consists of a chairman who doubles as a member, a vice chairman who also doubles as a member, and at least 7 other members. The process of selecting and dismissing KPPU members is carried out by the President after obtaining approval from the House of Representatives, with a term of office of 2 periods, each lasting 5 years. The focus of KPPU is to maintain fair business competition and prevent monopolistic practices that harm consumers and competitors, ensuring the sustainability of a healthy and competitive market. KPPU's obligations, as stipulated in Article 35 of Law No. 5 Year 1999, include:

[12] Negara, D.S. & D. Darmawan. (2023). Digital Empowerment: Ensuring Legal Protections for Online Arisan Engagements. *Bulletin of Science, Technology and Society*, 2(2), 13-19.

[13] Simbolon, A. (2012). Kedudukan Hukum Komisi Pengawas Persaingan Usaha Melaksanakan Wewenang Penegakan Hukum Persaingan Usaha. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 24(3), 529-541.

a. Assess agreements that have the potential to create a monopoly or violate competition principles from Article 4 to Article 16. This process involves an in-depth evaluation of aspects of the contract, including exclusive rights, impact on competition, and potential violations of antitrust laws.
b. Assessing the business activities and actions of business actors from Article 17 to Article 24, with a focus on activities that may lead to monopolistic practices and unfair competition. Investigations are conducted into violations of the aforementioned articles.
c. Evaluate the possibility of abuse of a dominant position, pursuant to Articles 25 through 28. This process includes an assessment of business actions that have the potential to harm competition, with an assessment of the possibility of exploitation of a dominant position.
d. Carry out actions pursuant to the Commission's powers, as set out in Article 36, including policy implementation, rule enforcement, and decision-making in accordance with legal principles.
e. Provide critical and constructive views on government policies regarding monopolistic practices and unfair business competition through the submission of recommendations and in-depth analysis.
f. Develop guidelines and/or publications related to this Law to provide practical guidance to stakeholders.
g. Routinely present work reports to the President and Parliament for accountability and transparency, providing detailed information on the Commission's achievements, activities, and accomplishments. These reports aim to build trust and support effective coordination with the government and representatives of the people.

Meanwhile, the authority of KPPU as a supervisor in accordance with Law No. 5 Year 1999 Article 36 consists of:

a. Receive reports from the public and/or business actors on alleged monopolistic practices and/or unfair business competition. KPPU welcomes complaints and information from the public or business actors regarding indications of violations of business competition law. Receiving complaints, KPPU acts as a transparent mechanism to respond to allegations of monopoly or unfair practices, involving investigation and evaluation.
b. Researching alleged business activities and/or actions of business actors that have the potential to cause monopolistic practices and/or unfair business competition. This process involves analyzing potential violations of competition rules, exploring alleged violations, and investigating monopolistic practices. The objective is to identify and analyze possible violations or monopolistic practices that need to be followed up legally.
c. Conducting an investigation and/or examination of alleged monopolistic practices and/or unfair business competition, whether reported by the public or business actors. This involves thoroughly investigating and examining business actors, witnesses, and expert witnesses. This process is

important to maintain market integrity, identify potential violations, and create a healthy and fair business environment.

d. Steps to request information from Indonesian Government agencies in the investigation or examination of business actors that violate the Law can be taken by submitting formal information requests to the authorities, making requests for clarification, or requesting explanations from Indonesian government authorities. This process reflects the coordination and cooperation between the business sector and the government in enforcing competition law to maintain fairness and market integrity.
e. The investigation and examination process involves obtaining, scrutinizing, and assessing letters, documents, or other evidence. This step includes the collection of legal data or documentation related to the case under investigation, detailed examination of the documents or evidence collected, and accurate evaluation of each element of evidence to support or refute the facts in the investigation or examination.
f. The decision to determine whether there is harm to competitors or the public is a fundamental evaluative step in competition law enforcement. This process involves a careful assessment of the implications of a particular action or policy taken by a business actor, with the aim of determining the negative impact on competitors or society as a whole.
g. Notification of the Commission's decision to business actors suspected of monopolistic practices and/or unfair business competition involves a formal announcement or notification to the suspect business parties. This is done by providing detailed information regarding the Commission's decision on the alleged violation of monopoly or unfair business competition. This action aims to provide knowledge to businesses regarding the consequences and steps to be taken by the Commission in enforcing the law and maintaining the balance of fair competition in the market.

The duties and authorities of the Business Competition Supervisory Commission (KPPU) are in line with Articles 35 and 36 of Law No. 5 Year 1999. If there is an alleged violation of the Law on Prohibition of Monopolistic Practices and Unfair Business Competition, KPPU has the right to conduct further examination, including investigation and investigation. This process culminates in the making of a decision that is announced in a hearing open to the public, and must be submitted to the relevant business actors. KPPU decisions must be implemented and business actors have the obligation to submit implementation reports to the commission, making this mechanism an important instrument in maintaining and upholding integrity and balance in economic markets.

Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, clearly adopts the territorial principle, particularly through the definition of "agreement" in Article 1 number 7. This definition states that an agreement is an act of business actors, either written or unwritten. However, when linked to Article 1 number 5, which emphasizes that business actors must carry out

activities in the jurisdiction of the Republic of Indonesia, it appears that this Law only consists of agreements that are conducted within the jurisdiction of the country. This principle confirms that the rules in this Law apply territorially, creating a legal foundation that focuses on business activities within the territory of the Republic of Indonesia.

2. Legal Position on the Handling of Extraterritorial Business Competition Cases by the KPPU

Competition law is a regulation that deals with business conflicts between business actors, considered as civil disputes. In business competition, disputes arise when a business feels disadvantaged by its competitors. Its resolution involves civil law proceedings and focuses on the norms governing competition. Although business associations can be a party to a dispute if it does not involve a public element, the resolution may face obstacles without the voluntariness of the losing party, as the association is not authorized to conduct seizures or impose sanctions of a public nature[14].

Handling violations of Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition is regulated in Chapter VII, Articles 38-46. Article 38 states that any individual who knows or suspects a violation may report in writing to the Business Competition Supervisory Commission (KPPU). This report must be accompanied by complete and clear information regarding the violation and the losses incurred. This violation does not require a complaint, allowing anyone to report without having to be the injured party. The law authorizes KPPU to conduct direct examinations of business actors, even without an official report, if there are allegations of violations.

KPPU's authority, as explained in Article 36 Paragraphs (6) and (7), discusses KPPU's ability to determine losses for business actors or the public and issue decisions against business actors allegedly involved in monopolistic practices and unfair business competition. Although this provision provides clarity on the KPPU's authority in the domestic realm, it has not been specifically mentioned whether the KPPU has extraterritorial authority. This shows the potential for expansion of legal interpretation related to the global dimension in the enforcement of business competition law by KPPU[15].

The legal approach to violations of Law No. 5 Year 1999 by the KPPU involves both juridical and economic approaches. Juridically, there is the per se illegal approach, assessing actions as violations without considering their impact, and the rule of reason approach, considering the real aspects and effects of business actions. KPPU uses these two approaches to respond to business actors who violate the provisions prohibiting monopolistic practices and unfair business competition. The

[14] Effendi, B. (2020). Pengawasan dan Penegakan Hukum Terhadap Bisnis Digital (E-Commerce) oleh Komisi Pengawas Persaingan Usaha (KPPU) dalam Praktek Persaingan Usaha Tidak Sehat. *Syiah Kuala Law Journal*, 4(1), 21-32.

[15] Hayati, A. N. (2021). Analisis Tantangan dan Penegakan Hukum Persaingan Usaha pada Sektor E-Commerce di Indonesia. *Jurnal Penelitian Hukum De Jure*, 21(1), 109-122.

economic approach involves analyzing the economic impact of business conduct, focusing on aspects such as price, competition, and market efficiency to assess compliance with the Prohibition of Monopolistic Practices and Unfair Business Competition Law.

KPPU, in addition to applying theoretical economic approaches, has the ability to conduct analysis based on market conditions, market power, entry barriers, and pricing strategies of business actors. By considering these factors, KPPU can identify competition violations and ensure that the market operates in a fair, efficient, and healthy manner.

2.1. Inherently Illegal (Per Se Illegal)

The concept of "per se" comes from the Latin meaning "by itself" or "in itself." In competition law, the per se doctrine refers to the view that certain types of agreements or conduct, such as horizontal price fixing, are inherently anti-competitive without the need for concrete evidence that the conduct has harmed competition. In other words, if an activity is clearly detrimental and has a damaging effect, the "per se" principle overrides the need to prove in detail that the conduct has actually harmed competition. The term "per se illegal" or "per se violation" in competition law indicates that certain types of agreements or actions are considered intrinsically harmful to society and anti-competitive, without the need to enter into an argument as to whether or not the event is considered reasonable in competition.

The per se illegal approach in competition law requires two criteria to be met, namely a focus on "business conduct" rather than the public, provided that the illegal conduct is the result of "intentional conduct" by the company that could have been avoided. Furthermore, there is a quick identification of the type of practice or boundaries of prohibited conduct, allowing for easy assessment of business conduct, although it is recognized that there is conduct that falls on the unclear boundaries between prohibited and lawful[16]. This approach emphasizes the need for strict treatment of certain business acts that are intrinsically unlawful, provided certain conditions are met, to maintain fair competition and protect the interests of consumers and competitors.

2.2. Rule of Reason

The "Rule of Reason" principle is a different legal approach to the concept of per se illegality. Under the "Rule of Reason", the evaluation of competition law violations involves an in-depth analysis of the particular case. In order to declare an act unlawful, the fact-finder must consider the specific factors and matters relating to the case, focusing on the ability to demonstrate anti-competitive effects or concrete harm to competition. This approach requires the examining authority to not only

[16] Hardyansah, R. (2023). Assessment of the Efficiency of Government Licensing Services in Supporting the Development of Micro and Small Enterprises. *Bulletin of Science, Technology and Society*, 2(2), 5-12.

look at whether an act is unfair or unlawful, but also identify the concrete effects that may harm fair competition.

The "Rule of Reason" principle is applied in competition law to conduct that cannot be deemed illegal without an in-depth analysis of its effects on competitive conditions. In assessing the legality of an action, this principle emphasizes the need to consider factors such as the background of the conduct, the business reason behind it, and other elements that are accurate.

The distinguishing feature of the first "Rule of Reason" rule is seen in the specific requirements for a practice to be considered a violation of the law, while the second feature is manifested through the phrase "reasonably suspected or presumed," indicating uncertainty regarding the potential violation. Law No. 5 Year 1999 applies the "Rule of Reason" theory by detailing that practices that "result or may result in monopolistic practices and/or unfair competition" will be evaluated based on their impact. In classifying agreements and acts, the Law accommodates variations by identifying practices that are prohibited outright (per se illegal), practices that are assessed based on their impact (rule of reason), as well as categories that fall in between, emphasizing a contextualized approach in its legal assessment.

ICC decisions must be announced publicly in a hearing that can be attended by the general public, and the information must be immediately conveyed to the relevant business actors. Business actors who receive this notification have the right to file an objection to the KPPU decision. If no objection is filed within 14 days after the notification, the KPPU decision is deemed accepted and will have permanent legal force. As a consequence, this decision is executorial, which means that execution can be requested to the District Court if necessary. This process involves public announcement, prompt notification, right to object, acceptance within the time limit, final legal force, and enforcement which can be requested through court proceedings.

D. CONCLUSION

The Business Competition Supervisory Commission (KPPU) basically does not have extraterritorial authority in enforcing business competition law, the territorial principle underlying Law No. 5 of 1999 authorizes KPPU to enforce business competition law both in the territory of Indonesia and in an extraterritorial framework. Article 1 paragraph (7) and Article 1 paragraph (5) reflect elements of the territorial principle that authorize KPPU to make decisions in cases of share takeovers outside the territory of Indonesia. In KPPU Decision No. 17/KPPU-M/2015, which ruled that Toray Advanced Materials Korea Inc (TAK) violated Article 29 of Law No. 5 Year 1999, the principle of per se illegality allows KPPU to impose fines in an extraterritorial framework, and this decision must be obeyed by TAK.

Suggestions for the enforcement of unfair competition law by the Business Competition Supervisory Commission (KPPU) in the extraterritorial framework involve several important aspects. Closer cooperation and coordination between

KPPU and competition watchdogs from other countries is needed. This may involve the exchange of information, data, and discussion of cases that have cross-border impacts. Furthermore, increased understanding of international regulations relating to business competition needs to be considered to ensure that KPPU's law enforcement is in line with the principles of international law. Then, it is necessary to increase the capacity and technical expertise of the KPPU in dealing with aspects of globalization and global market dynamics. Finally, it is necessary to consider strengthening the national legal framework that supports extraterritorial enforcement of competition law, including updating accurate laws. With these steps, KPPU can more effectively maintain fairness in business competition in the global market.

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