

Two Decades of Business Competition Law: How has Indonesian Competition Law Transformed?

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Abstract

This research focuses on the development of competition law in Indonesia, specifically examining the role and impact of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, also known as the Business Competition Law. The objective of this research is to provide an overview of the various changes in business competition law in Indonesia, particularly the establishment of the Business Competition Supervisory Commission (KPPU), responsible for enforcing the law against business competition violations committed by companies or individuals. Additionally, this article will compare Indonesian competition law with that of other countries, such as Australia and Singapore. The research adopts two main methods: a statute approach and a comparative approach. The statute approach involves analyzing three statutory regulations: Law No. 5 of 1999 (Indonesia), Australia Competition and Consumer Amendment Act 2013



(Australia), and Singapore Competition Act 2004 (Singapore). The findings of this study reveal two key weaknesses in Indonesia's Business Competition Law. First, there are deficiencies in both the material and formal aspects of determining prohibitions per se or employing the rule of reason theory. Secondly, there are concerns related to the definition of dominant market positions, necessitating a review of the Business Competition Law to align it with best practices. Additionally, there are issues regarding the neutrality of KPPU as a Quasi-Judicial institution, and the need to safeguard the rights of the reported parties during the judicial process at KPPU. Furthermore, a legal comparison with Australia and Singapore highlights that Indonesia's Business Competition Law lags behind in several areas, resulting in a legal vacuum concerning Mergers and Acquisitions Regulations, Horizontal and Vertical Agreements, Dispute Resolution, and Consumer Protection. In conclusion, this research emphasizes the significance of robust competition laws in promoting fair business competition, economic growth, and foreign investment. It sheds light on the weaknesses of Indonesia's current Business Competition Law and suggests potential areas for improvement based on a comparison with competition laws in Australia and Singapore. Addressing these issues would strengthen Indonesia's competitive landscape and foster a more conducive business environment.

KEYWORDS

Legal Reform, Business Competition Law, Commission for the Supervision of Business Competition

Introduction

In 1997, the Asian economic crisis hit Indonesia, which then triggered a very severe national economic crisis.¹ The Indonesian government then entered into an agreement with the International Monetary Fund (IMF) in

¹ Muhammad Majdy Amiruddin Marilang, and Abdul Syatar, "Economic Democracy: Examining the Law Enforcement of Business Competition in Indonesia," *WSEAS Transactions on Business and Economics* 18 (2021), <https://doi.org/10.37394/23207.2021.18.116>.

1998 to help overcome the economic crisis, with the condition that Indonesia must carry out legal and economic reforms, including the establishment of anti-monopoly laws and regulations. This reform is important because previously Indonesia did not have adequate legal regulations in the field of business competition, so that large business actors could easily practice monopoly and oligopoly practices. On the initiative of the DPR, in 1999 a Draft Law was drafted concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.² The draft law was then approved in the DPR Plenary Session on 18 February 1999, and was attended by the Minister of Industry and Trade, Rahardi Ramelan. After going through a lengthy legislative process, finally on March 5, 1999, President BJ Habibie signed and promulgated Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, also known as the Business Competition Law, which took effect one year after its promulgation.³

The Business Competition Law is an important milestone in efforts to develop healthy and fair business competition in Indonesia, because it provides a legal basis for tighter supervision of business competition. One of the institutions established in this Law is the Business Competition Supervisory Commission or KPPU,⁴ which has the duty and authority to supervise business actors who engage in monopolistic practices or unfair business competition. In addition, the law also gives authority to KPPU to

² Moch Alfi Muzakki, Kholis Roisah, and Rahandy Rizki Prananda, "Legal Political of Well-Known Trademark Protection Reviewed From Development of Trademark Law in Indonesia to Avoid Fraudulent Competition," *Law Reform* 14, No. 2 (2018), <https://doi.org/10.14710/lr.v14i2.20865>; Desi Apriani, "Tinjauan Terhadap Hukum Persaingan Usaha di Indonesia sari Perspektif Hukum Perlindungan Konsumen," *Jurnal Panorama Hukum* 4, No. 1 (2019), <https://doi.org/10.21067/jph.v4i1.3040>.

³ Muzakki, Roisah, and Prananda, "Legal Political of Well-Known Trademark Protection Reviewed From Development of Trademark Law in Indonesia to Avoid Fraudulent Competition."

⁴ Carissa Christybella Wijaya et al., "Penegakan Hukum Persaingan Usaha di Indonesia Melalui Harmonisasi Public Enforcement dan Private Enforcement [Competition Law Enforcement in Indonesia through the Harmonization of Public Enforcement and Private Enforcement]," *Law Review*, 2021, <https://doi.org/10.19166/lr.voio.2963>.

conduct investigations, make decisions, and impose binding legal sanctions on business actors who violate business competition rules.

After two decades after the passage of the Business Competition Law, law enforcement on the prohibition of monopolistic practices and unfair business competition by the KPPU has contributed to efforts to improve the Indonesian economy through competition law enforcement, notification of mergers and providing KPPU's advice and considerations to the Government regarding policies that have the potential to cause business competition not healthy. Until 2023, KPPU has decided on 396 (three hundred ninety-six) business competition cases. However, the challenges faced by KPPU are not easy, globalization and demands for openness of the Indonesian market continue to surface and become demands in international trade.⁵ The increase in the number of mergers involving foreign business actors is another challenge. Indonesia is an attractive market and mergers are a tool for effective penetration of companies from other countries in the Indonesian market. Evaluation of the Business Competition Law really needs to be done by updating the Business Competition Law, it was recorded that there were 4 things that were prioritized for updating the Business Competition Law including; Institutional strengthening of KPPU, addition of KPPU's authority in Article 36, definition of business actors related to extraterritoriality jurisdiction, and pre-merger notifications.⁶

⁵ Tri Utomo Wiganarto, Elisatris Gultom, and Sudaryat Permana, "Use Of Indirect Evidence in Disclosure of Cartel Violations According to Business Competition Law in Indonesia," *Protection: Journal of Land And Environmental Law* 1, No. 1 (2022), <https://doi.org/10.38142/pjlel.v1i1.340>; Marilang, Amiruddin, and Syatar, "Economic Democracy: Examining the Law Enforcement of Business Competition in Indonesia"; Izzy Al Kautsar, "Future Competition Law In Indonesia: Analysis of The Phenomenon of Disruptive Innovation," *Syariah: Jurnal Hukum dan Pemikiran* 21, No. 2 (2021), <https://doi.org/10.18592/sjhp.v21i2.4448>.

⁶ Ioannis Lianos, "Competition Law as a Form of Social Regulation," *Antitrust Bulletin* 65, No. 1 (2020), <https://doi.org/10.1177/0003603X19898626>; Muhammad Alim Kurniawan and Siti Anisah, "Penerapan Private Enforcement dalam Penegakan Hukum Persaingan Usaha di Indonesia, Amerika Serikat dan Uni Eropa," *Jurnal Penegakan Hukum Indonesia* 2, No. 2 (2021), <https://doi.org/10.51749/jphi.v2i2.36>.

Then, the Government seeks to attract investment to enter the country by minimizing the problems that have hindered investment so far. One of the sectors directly affected by the Job Creation Law is the business competition sector, especially in the areas of monopoly practices and unfair business competition as stated in the Business Competition Law, the business competition sector is an important element that cannot be separated from investment. The existence of fair business competition is a separate consideration for investors to invest in Indonesia.⁷ There are important points of change related to law enforcement including Articles 44, 45, 47, and 48 relating to objections from the District Court to the Commercial Court, the abolition of the period for reading objection and cassation decisions by the Commercial Court and the Supreme Court, the abolition of the maximum fine limit, Elimination of criminal threats for violations of monopolistic practices and unfair business competition.⁸ However, these changes do not provide a large enough contribution in improving business competition law in Indonesia. There needs to be a comprehensive study and strategic steps in resolving the legal certainty issues that arise.⁹

Based on the description above, the researcher is interested in studying the transformation of business competition law in Indonesia in the Business Competition Law. In this regard, the author further examines the role and comparison of the Business Competition Law regarding the challenges and enforcement of business competition law from Indonesia, Singapore and

⁷ Sukarmi et al., "The Qualified Effects Doctrine in the Extraterritorial of Competition Law Application: An Indonesia Perspective," *Sriwijaya Law Review*, 2021, <https://doi.org/10.28946/slrev.vol5.iss2.1050.pp192-204>.

⁸ Surya Bhakti, Zainal Asikin, and Sahnun Sahnun, "Eksistensi Komisi Pengawas Persaingan Usaha Dalam Penanganan Persekongkolan Tender Dalam Perspektif Hukum Positif Indonesia," *JESS (Journal of Education on Social Science)* 4, No. 1 (2020), <https://doi.org/10.24036/jess.v4i1.231>; Wijaya et al., "Penegakan Hukum Persaingan Usaha di Indonesia Melalui Harmonisasi Public Enforcement dan Private Enforcement [Competition Law Enforcement in Indonesia through the Harmonization of Public Enforcement and Private Enforcement]."

⁹ Brian Ikejiaku and Cornelia Dayao, "Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US," *Utrecht Journal of International and European Law* 36, No. 1 (2021), <https://doi.org/10.5334/UJIEL.513>.

Australia. Based on this background, the main problem of this paper are, *first*, how is the transformation of business competition law in Indonesia in the supervision of business competition, and *second* what is the comparison between Indonesia's business competition law and that of Singapore and Australia in the supervision of business competition.

Method

The type of research used in this study is normative juridical research, namely research conducted referring to legal norms contained in laws and regulations, court decisions and norms that apply in society.¹⁰ The research typology used is descriptive analytical research. Then, there are 2 (two) approaches used, namely the statute approach and comparative approach by comparing three regulations, namely Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, the Australian Competition and Consumer Amendment Act 2013, and the Singapore Competition Act 2004.

Result and Discussions

Development of Business Competition Law in Indonesia

a. *History of Business Competition Law*

Business competition is one of the economic instruments that is part of a country's economy. Business competition can affect policies relating to trade, industry, a conducive business climate, great business opportunities,

¹⁰ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

efficiency, legal certainty, public interest, and people's welfare. The view of economists defines that competition in the market mechanism can spur business actors to innovate in producing a variety of products at competitive prices that will benefit both producers and consumers. Competition is determined by competition policy.¹¹ Competition laws and regulations in various countries generally place policies on the public interest and people's welfare. According to Robert Bork, a former judge and business competition law expert, he argues that competition in the business world means efforts to gain advantages in market mechanisms where the end result can be accepted and enjoyed by consumers in various forms such as low prices, product variety, service, availability, choice and etc.¹²

As is well known, Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and/or Unfair Business Competition or the Business Competition Law, was born in the reform era which touched various aspects of life.¹³ The Business Competition Law was born as part of a correction to the previous economic system, which was dominated by a few actors. businesses that have access to power. Monopolistic practices and unfair business competition were rife in various sectors and were one of the reasons for the fragile economic fundamentals of Indonesia at that time.¹⁴ Unfair business competition has caused the Indonesian economy to grow inefficiently, not competitive and grow at high costs. The financial crisis that devastated the Indonesian economy at the beginning of the reform era later proved all these allegations.¹⁵

Economic reform efforts with the concept of opening a wider market, became one of the reform processes in the economic sector. Market

¹¹ Lianos, "Competition Law as a Form of Social Regulation."

¹² Konstantinos Stylianou and Marios Iacovides, "The Goals of EU Competition Law: A Comprehensive Empirical Investigation," *Legal Studies* 42, No. 4 (2022), <https://doi.org/10.1017/lst.2022.8>.

¹³ Sukarmi et al., "The Qualified Effects Doctrine in the Extraterritorial of Competition Law Application: An Indonesia Perspective."

¹⁴ Ikejiaku and Dayao, "Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US."

¹⁵ wiganarto, Gultom, and Permana, "Use of Indirect Evidence in Disclosure of Cartel Violations According to Business Competition Law In Indonesia."

openness occurs in almost all sectors. Even for sectors belonging to natural monopoly such as the electricity sector, the telecommunications sector, the drinking water sector, the railway sector, the airport sector, the port sector, the oil and gas sector and several other sectors.¹⁶ Through sectoral laws, sector management was changed from monopoly to competition. In fact, to encourage this change, several independent sector regulators have been established, tasked with overseeing the management of this strategic sector, such as the Oil and Gas Management Agency (BP Migas), the Downstream Oil and Gas Regulatory Agency (BPH Migas), the Indonesian Telecommunication Regulatory Body (BRTI), Indonesian Broadcasting Commission (KPI), Electricity Market Regulatory Agency (Bapeptal) and so on. The enthusiasm of these sectors is managed by fair business competition, with an independent regulator overseeing sectoral activities.¹⁷

For business competition itself, the Business Competition Law was born as a form of implementation to encourage fair business competition in all economic sectors. This law is the basis for supervising business competition in every economic sector, both for those whose management has changed from monopoly to competition, as well as for those who are still monopolized. The goal is to prevent monopolistic practices that lead to the creation of expensive and scarce goods/services. The Commission for the Supervision of Business Competition itself was born as the executor of the Business Competition Law, with several main tasks, among others, to enforce competition law, to provide advice and considerations to the Government regarding policies that are the cause of monopolistic practices and/or unfair business competition and to conduct an assessment of mergers in competition perspective. Through this role, the KPPU can strengthen Indonesia's economic reforms through various contributions, including strengthening the opening of access to the economic sector for

¹⁶ Al Kautsar, "Future Competition Law In Indonesia: Analysis of the Phenomenon of Disruptive Innovation."

¹⁷ Ahsana Nadiyya, "Analisis Pengaturan Klausul Non-Kompetisi dalam Perjanjian Kerja: Studi Perbandingan Indonesia, Malaysia, Dan Singapura," *Hukum dan Masyarakat Madani* 11, No. 2 (2021).

anyone who has the ability to participate, eradicating arrangements (horizontal/vertical conspiracy) that are often carried out by business actors, eradicating the abuse of monopoly positions/dominant positions by certain business actors. This has been implemented for 20 (twenty) years. Many supports and challenges have been faced, pros and cons for every action taken by KPPU, but all of them are dynamics to create an Indonesian economy that can prosper its people through fair business competition.

b. *Weaknesses in the Business Competition Laws*

There are several weaknesses in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and/or Unfair Business Competition or the Business Competition Law, including:

1. In terms of practices
 - a) The systematics of the Business Competition Law has not complied with Best Practice

The systematics of the Business Competition Law has not been based on Best Practice this refers to the UNCTAD Model Law on Competition. For example, the UNCTAD Model Law on Competition divides prohibited practices into 3 sections, namely: prohibited agreements, abuse of dominant position, and merger control. Prohibited agreements include cartel practices or agreements between competitors, territorial divisions, bid rigging and quotas. Abuse of dominant position includes discriminatory practices, selling at a loss, and resale price fixing practices. Meanwhile, merger control includes mergers, consolidations, and takeovers.

Unfortunately, the systematics of material law in the Business Competition Law is different from the systematics generally known as best practice. The Business Competition Law divides its material substance into the Chapter on Prohibited Agreements, the Chapter on Prohibited Activities and the Chapter on Abuse of a Dominant Position. The Prohibited Agreements chapter includes not only agreements

between competitors, but also agreements with other parties that are also interpreted in the context of vertical relationships. Thus, this chapter is ambiguous if intended as a form of cartel prohibition. Meanwhile, the Chapter on Prohibited Activities and the Chapter on Abuse of Dominant Position is also ambiguous, because abuse of a dominant position is also an activity, while some of the activities referred to in the Chapter on Prohibited Activities also require market control.

- b) The per se prohibition approach and the rule of reason that are not in accordance with theory

Prohibition per se can be defined as a prohibition against certain actions without the need to prove the impact because the impact of these actions is definitely anti-competitive. While the prohibition of rule of reason can be interpreted that the prohibition of an act depends on the impact of the act, whether the impact is anti-competitive or pro-competitive. Only if the impact is anti-competitive, then the act becomes prohibited. Therefore, the rule of reason approach is often said to require double proof, namely proving (a) the intended act; and (ii) anti-competitive impacts. There are other phrases which also indicate the use of the prohibition of the rule of reason, including Article 24 (conspiracy to hinder production and/or marketing) and Article 25 (abuse of a dominant position).

Meanwhile, the prohibition per se applies to Article 5 (pricing). This is also stated in the Guidelines for Article 58 and several KPPU decisions related to alleged violations of Article 5 of the Business Competition Law. For articles that do not contain phrases/elements indicating the rule of reason, including Article 6 (price discrimination), Article 15 (closed agreements), and Article 27 (cross ownership), it is as if the prohibition per share approach applies.

Determining the prohibition of rule of reason or per se which is only based on the presence or absence of the phrase " which may result

in monopolistic practices and or unfair business competition " is inappropriate. Because with this approach, Article 15 (closed agreement) which regulates the prohibition of territorial restrictions, market allocation, tying & bundling, seems to be a per se prohibition. This is of course inappropriate because these actions should be analyzed in the context of the prohibition of the rule of reason, that is, these actions will not automatically result in anti-competitive impacts. On the contrary in Article 22 (tender conspiracy), because there is a phrase "*which can lead to unfair business competition*", the prohibition of bid rigging has the impression of being a rule of reason. Even though it is certain that conspiring in a tender will result in an anti-competitive effect.

Furthermore, the definitions of monopoly practices and unfair business competition in the Business Competition Law are very confusing and not applicable. If seeing the phrase "*which can lead to monopolistic practices and or unfair business competition*" is a condition for having anti-competitive effects, the meanings of "*monopoly practices*" and "*unfair business competition*" in the Business Competition Law refer to a clear and measurable test. In accordance with best practice, the test for anti-competitive impact is generally unreasonable price increases or supply shortages. Tests for anti-competition impacts that are unclear and unmeasurable again create uncertainty for business actors when they want to formulate and implement their business strategy because there will always be the risk of violating the Business Competition Law.

c) Unclear Definition of Dominant Position

The definition of a dominant position is not clear in Article 1 point 4 of the Business Competition Law. The dominant position parameter is when a business actor or group of business actor controls 50% or more of the market share for one type of goods or services, or two or three business actors or groups of business actor control 75% or more

of the market share for one type of goods or services (Article 25 paragraph (2) Law No. 5 of 1999).

d) Existence of Criminal Processes and Sanctions for Violations

The Business Competition Law contains criminal sanctions as stipulated in Article 48 regarding the main punishment and Article 49 regarding additional punishment. Article 48 paragraphs (1) and (2) regulate criminal sanctions for violations of material law and paragraph (3) regulate criminal sanctions for obstruction of justice or obstructing the investigation and/or examination process.

The existence of criminal sanctions against material law constitutes a criminalization of business competition law. In other jurisdictions with older competition laws, only cartel behavior is a criminal subject. Violation of other prohibitions, such as abuse of dominant position, control of mergers and acquisitions, is a violation of administrative law. With the criminalization of all forms of violations in the Business Competition Law, the Business Competition Law becomes redundant and counterproductive, even though the criminal process referred to in the Business Competition Law only occurs if certain conditions are met, but these certain conditions also do not provide much certainty.

Potential problems arise in terms of criminal proceedings related to alleged violations of material law. The first problem is the lack of clarity when criminal proceedings will commence for alleged material law violations. Article 44 paragraphs (4) and (5) of the Business Competition Law basically stipulates that if a business actor does not implement a decision in a business competition case that has permanent legal force, the KPPU will submit the decision to police investigators as sufficient preliminary evidence for investigators to carry out investigation. Thus, there is uncertainty whether criminal proceedings related to alleged material law violations can only be started based on the conditions stated in Article 44 paragraphs (4) and

(5) above, or investigators can start their own investigation of alleged material law violations without submission of initial evidence by KPPU. The second problem is the potential inconsistency in the output of the examination process at KPPU and criminal proceedings. The criminal judge has the authority to re-examine the subject matter, and then regarding the same subject matter, different verdicts and witnesses can be produced between the KPPU's decisions and the decisions of criminal judges, this of course will lead to legal uncertainty.

2. In terms of legal provision

1) Improper application of indirect evidence

The Business Competition Law determines that known evidence in business competition cases, in order of strength of evidence, is witness statements, expert statements, letters and/or documents, instructions, and statements from the reported party. The types and order of evidence are similar to the types and means of evidence in criminal procedural law (KUHAP).

Explicitly the Business Competition Law does not mention indirect evidence as a means of evidence in proving the Business Competition Law. Thus, is it appropriate if indirect evidence is considered as part of directive evidence? There are no further references to this matter that we can make an analysis of, unless we refer to the Criminal Procedure Code and theories of evidentiary law in criminal law.

Previously, the regulation regarding indirect evidence had been introduced by KPPU in KPPU Regulation Number 4 of 2011 concerning Guidelines for Article 5 (Pricing) UU 5/1999 ('Perkom 4/2011'). Both Perkom 1/2019 and Perkom 4/2011 allude to the existence of economic evidence and evidence of communication. The indirect evidence regulated in Perkom 1/2019 is too broad, because if we return to the OECD study, indirect evidence only applies to proving cartels.

Meanwhile Perkom 1/2019 also mentions indirect evidence including that it applies to prohibited activities and abuse of a dominant position.

In addition, the author needs to be of the view that the evidence provided for in Law 5/1999 needs to be reviewed because criminal evidence is not necessarily suitable for proof in business competition law cases. In this context, arrangements regarding indirect evidence need to be adopted but need to be regulated more strictly and in more detail. This is to avoid the use of arbitrary and weak indirect evidence as a basis for declaring a business actor guilty of violating business competition law and subject to sanctions.

2) KPPU as a Quasi-Judicial Institution

The institution of KPPU as a Quasi-Judicial institution has not provided justice for business actors, where the commissioners of KPPU act as judges, as well as KPPU investigators as investigators and prosecutors, need to be reviewed. The actual trial process regarding business competition cases must still be carried out in court because the examination process at KPPU cannot be fully considered as a trial, but an examination carried out by an administrative agency in the executive domain. The trials that have been held at the KPPU so far have not provided a sense of justice for business actors because from the start it is difficult for the KPPU commissioners to be neutral. Judges in court will be able to act impartially so that business actors will get a better sense of justice when sitting in court. Seeing the gap that occurred with the birth of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition or the Business Competition Law, it is necessary to renew the law and revise the Business Competition Law to fill gaps and legal voids that occur in law enforcement on business competition.

3) The Limited Rights of the Reported Party and the Limited Examination of the KPPU's Decisions in a Comprehensive manner

The Business Competition Law gives authority to KPPU to investigate, prosecute and decide cases. The existence of this multifunctional authority should be balanced with the guarantee of the rights of the reported party or the business actor being examined, including the business actor who submitted an objection to the KPPU's decision in court. The Business Competition Law has not yet regulated guaranteeing the rights of the reported party, such as the right to be examined in a fair, objective and transparent manner. The reported party has also not been given the flexibility to present evidence not only at the KPPU level but also at the court level.

Setting the rights of the reported party is very important to ensure a fair and transparent examination process. Some of the rights of the reported being debated in the examination at KPPU include not being given access to the Investigation BAP, determining the confidentiality of the examination documents to be the absolute discretion of the commission assembly, and not conveying the names of witnesses and/or experts submitted by the investigator.

The limitation of a thorough review of a KPPU decision at the District Court level is confirmed in the Supreme Court Regulation Number 3 of 2019 concerning Procedures for Submitting Objections to Decisions of the Business Competition Supervisory Commission or called PERMA No.3 of 2019, specifically Article 12 which states that "Examination of Objections carried out only on the basis of a copy of the KPPU's decision and the case file." In this regard, the author looks back at the role and position of the District Court as a *judex factie*. Article 50 of Law Number 2 of 1986 concerning General Courts as last amended by Law Number 49 of 2009 or referred to as the Law on General Courts

stipulates that the District Court has the authority to examine, decide and resolve criminal and civil cases at the first level.¹⁸

As a *judex factie*, what is examined by the District Court is not only about legal aspects, but also about the facts or evidence as a whole. It is in this context that the District Court should not be bound by evidence that only exists in the KPPU's case files, but can accept and explore other evidence or new evidence submitted by the parties, especially the reported party who filed an objection to the KPPU's decision. Even if the District Court is considered the level of appeal in KPPU cases, the fact is that in civil cases, the High Court can still accept new evidence submitted by the parties before the panel of judges decides on the case.¹⁹

c. Renewal and Revision of the Business Competition Law

The renewal of the business competition law was carried out in Indonesia with the aim of strengthening business competition law enforcement and encouraging the creation of fair competition in the market.²⁰ In 2020, the government submitted a revision to the Business Competition Law which was previously promulgated in 1999. Some of the things regulated in the revision of the Business Competition Law include: increasing the authority and independence of the Business Competition Supervisory Commission (KPPU), regulations regarding mergers and acquisitions of companies that are more firm, as well as regulations regarding business practices that are detrimental to consumers.

Increasing the authority and independence of KPPU is realized by granting the right to carry out wiretapping and searches, as well as imposing criminal sanctions on business actors who obstruct KPPU's duties. In

¹⁸ Bhakti, Asikin, and Sahnun, "Eksistensi Komisi Pengawas Persaingan Usaha Dalam Penanganan Persekongkolan Tender Dalam Perspektif Hukum Positif Indonesia."

¹⁹ Al Kautsar, "Future Competition Law In Indonesia: Analysis of The Phenomenon Of Disruptive Innovation."

²⁰ Bryane Michael, "Competition Law in the Asia-Pacific Region Makes Small and Medium Enterprises Poorer without Innovation Law," *Journal of the Asia Pacific Economy* 26, No. 3 (2021), <https://doi.org/10.1080/13547860.2020.1771821>.

addition, KPPU is also given the authority to resolve business competition disputes in a non-litigation manner. Regulations regarding corporate mergers and acquisitions are regulated more strictly by requiring business actors to submit notifications and obtain approval from the KPPU before carrying out mergers or acquisitions. This aims to prevent the occurrence of cartel or oligopoly practices that can harm consumers.

Regulations regarding business practices that harm consumers are regulated in more detail, including regulations regarding e-commerce and consumer data protection. This is done considering the growing development of technology and online business which can lead to business practices that are detrimental to consumers. It is hoped that the revision of the Business Competition Law will increase the effectiveness of business competition law enforcement in Indonesia and encourage the creation of fair competition in the market.

Comparison with Indonesia, Singapore and Australia

The following is a comparison table of several things that are not regulated in Law No. 5 of 1999 concerning Business Competition with competition law in Australia and Singapore:²¹

Table 1. Comparison Business Competition Regulation between Indonesia, Singapore, and Australia

Material	Law No. 5 of 1999 (Indonesia)	Australian Competition and Consumer Amendment Act 2013	Singapore Competition Act 2004
Merger and acquisition arrangements	Not regulated in detail, only	Regulated in detail in Chapter IV on mergers and acquisitions,	It is regulated in detail in Chapter 3 regarding the control of merger

²¹ Björn Hessert and Chui Ling Goh, "A Comparative Case Study of Match-Fixing Laws in Singapore, Australia, Germany, and Switzerland," *Asian Journal of Comparative Law* 17, No. 2 (2022), <https://doi.org/10.1017/asjcl.2022.22>; Justin Oliver and Paul Schoff, "Agency and Competition Law in Australia Following ACCC v Flight Centre Travel Group," *Journal of European Competition Law and Practice*, 2017, <https://doi.org/10.1093/jeclap/lpx026>.

Material	Law No. 5 of 1999 (Indonesia)	Australian Competition and Consumer Amendment Act 2013	Singapore Competition Act 2004
	regulated in Article 29	including notification and approval requirements by the Australian Competition and Consumer Commission (ACCC)	approvals, including notification and approval requirements by the Competition Commission
Horizontal and vertical agreement	Stipulated in Article 5 and Article 15, but not regulated in detail	It is regulated in detail in Chapter III regarding agreements, including horizontal and vertical agreements	It is regulated in detail in Chapter 2 regarding agreements, including horizontal and vertical agreements
Dispute resolution	Regulated in Article 17 and Article 18, but not regulated in detail	It is regulated in detail in Chapter VI regarding dispute resolution, including arrangements regarding mediation, arbitration, and court procedures	It is regulated in detail in Chapter 8 regarding court procedures and dispute resolution
Consumer protection	Regulated in Articles 19-23, but not regulated in detail	Regulated in detail in Chapter 2 on consumer protection, including regulations on unfair sales practices, misleading advertisements, and remedial actions for consumers who have been harmed	Regulated in detail in Chapter 4 concerning consumer protection, including arrangements regarding unfair sales practices, misleading advertisements, and remedial actions for consumers who have been harmed

First, with regard to mergers and acquisitions (M&A), the Indonesian Business Competition Law does not provide specific criteria for assessing the impact of M&A on business competition. Meanwhile, the Australia Competition and Consumer Amendment Act 2013 provides for expanding the definition of merger and adding more comprehensive merger testing criteria, including taking into account the potential impact on competition, not only in the current relevant market, but also in markets that may emerge in the future. The Singapore Competition Act 2004 also provides for testing the impact on competition of mergers and acquisitions, and gives

supervisory authorities the power to prohibit or impose conditions on M&A deemed detrimental to competition.²²

Second, with regard to price fixing, the Indonesian Competition Law only prohibits price monopoly practices, while the 2013 Australian Competition and Consumer Amendment Act prohibits anti-competitive pricing practices, including price fixing, bid rigging and market sharing. The Singapore Competition Act 2004 also regulates cartel practices, which include price fixing, market sharing and output restrictions.²³

Third, related to law enforcement, the Indonesian Business Competition Law gives authority to the Business Competition Supervisory Commission (KPPU) to investigate business competition violations, but does not specify the sanctions given. The Australia Competition and Consumer Amendment Act 2013 provides for criminal and civil penalties for competition violations, including prison terms for individuals involved in cartel practices. The Singapore Competition Act 2004 also provides for criminal and civil sanctions, including imprisonment for individuals involved in cartel practices.²⁴

From this comparison, it appears that Australia and Singapore have stricter rules in the protection and enforcement of business competition law, particularly in relation to M&A, price fixing and criminal sanctions. This shows the commitment of these countries in maintaining fair and fair

²² Caron Beaton-Wells, "Private Enforcement of Competition Law in Australia - Inching Forwards?," *Melbourne University Law Review*, 2016; Baskaran Balasingham and Tai Neilson, "Digital Platforms and Journalism in Australia: Analysing the Role of Competition Law," *World Competition* 45, No. 2 (2022), <https://doi.org/10.54648/WOCO2022011>; Tess Hardy and Shae McCrystal, "The Importance of Competition and Consumer Law in Regulating Gig Work and Beyond," *Journal of Industrial Relations* 64, No. 5 (2022), <https://doi.org/10.1177/00221856211068868>.

²³ Steven Van Uytsel, Shuya Hayashi, and John O. Haley, "Introduction to the Research Handbook on Asian Competition Law," *Research Handbook on Asian Competition Law*, 2020, <https://doi.org/10.4337/9781785361838.00009>; Michael, "Competition Law in the Asia-Pacific Region Makes Small and Medium Enterprises Poorer without Innovation Law"; Thomas K. Cheng, "A Tale of Two Competition Law Regimes — The Telecom-Sector Competition Regulation in Hong Kong and Singapore," *World Competition* 30, No. Issue 3 (2007), <https://doi.org/10.54648/woco2007031>.

²⁴ Xinxin Jia, "Competition Law in Australia of Section 46," *Scientific and Social Research* 3, No. 1 (2021), <https://doi.org/10.36922/ssr.v3i1.1067>.

business competition for business actors. Meanwhile, Indonesia's Business Competition Law still needs to be updated and perfected so that it can be more effective in protecting fair business competition and facing global challenges in the future.

The comparison above shows that the Business Competition Law in Indonesia needs to be updated to suit global demands and include more detailed arrangements on various matters such as mergers and acquisitions, agreements, dispute resolution, and consumer protection. This needs to be done so that supervision of business competition in Indonesia can run more effectively and efficiently in maintaining fairness and fair business competition.

Conclusion

Based on the results of the research and discussion, it is found that there are several things that need to be corrected in the Business Competition Law related to business competition law and economics. Several things that need to be improved include determining the prohibition per se or rule of reason approach that is in accordance with the theoretical basis of business competition law and economics, reviewing the concept and definition of "dominant position" and articles that require a dominant position to result in violations, reviewing the concept and effectiveness of the articles or prohibitions in the Business Competition Law that have never been or are very rarely applied in business competition cases. Also, arrangements regarding legal guarantees for the rights of the reported party both in the process at the KPPU and in testing the KPPU's decisions in court.

Then, from a comparison made between the Indonesian Competition Law and the 2013 Australian Competition and Consumer Amendment Act and the 2004 Singapore Competition Act, it appears that there are differences in the protection and enforcement of business competition law between the three countries. Australia and Singapore have stricter and more

comprehensive regulations related to M&A, pricing and criminal sanctions, while Indonesia's Competition Law still needs to be updated so that it can be more effective in protecting fair business competition and facing global challenges in the future. Therefore, it is necessary to update and improve the Business Competition Law in Indonesia so that it can cover more detailed arrangements on various matters such as mergers and acquisitions, agreements, dispute resolution, and consumer protection, so that supervision of business competition in Indonesia can run more effectively and efficiently in maintaining fairness and fair business competition.

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“Unfair trade practices should
be regulated because they’re
unfair”

Joe Kaeser
Former CEO Siemens AG

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