

Prohibition of Monopolistic Practices in Business Trials in Indonesia: Reforming on Business Competition Supervisory Commission

Haiqal Riski Ramadhan✉

Faculty of Law, Universitas Diponegoro, Semarang, Indonesia

Darminto Hartono Paulus

Faculty of Law, Universitas Diponegoro, Semarang, Indonesia

Giovanni Marcello

University of Pensacola Christian College, Florida, United States

✉ haikalriskir@gmail.com

Abstract

Indonesia recognizes the importance of fair competition for economic growth and consumer welfare. To ensure a level playing field, the country has established legislation and regulations that prohibit monopolistic practices and promote healthy competition. Key laws include the Indonesian Anti-Monopoly Law and the Law on Business Competition Supervision and Control. Business trials play a crucial role in enforcing these laws. Courts serve as arbiters in cases involving alleged monopolistic practices, employing thorough examinations of evidence, expert testimonies, and legal arguments presented by the parties involved. The burden of proof rests on the plaintiff, who must demonstrate the existence of anti-competitive behavior and its

adverse effects on the market. The Prohibition of Monopolistic Practices in Business Trials in Indonesia encompasses various types of anti-competitive conduct, such as price fixing, market division, and abuse of dominant market position. Violations of these laws can result in significant penalties, including substantial fines, dissolution of companies, and criminal charges for individuals involved. To strengthen the effectiveness of business trials, Indonesia has established regulatory bodies such as the Business Competition Supervisory Commission (KPPU). The KPPU plays a crucial role in investigating alleged violations, providing recommendations to the courts, and monitoring compliance with rulings. Despite the robust legal framework, challenges remain in enforcement. Collaboration between government agencies, the judiciary, and the business community is essential. Additionally, monitoring and updating the legal framework to address evolving market dynamics and emerging forms of anti-competitive practices are necessary.

Keywords

Prohibition of Monopolistic Practices, Business Trial, Business Competition Supervisory Commission

Introduction

The term "*business*" derives from the word that describes business activities themselves. Business activities encompass various actions undertaken by individuals or organizations (businesses) in a consistent and ongoing manner to acquire goods, services, or assets that can be sold or rented for a profit. Competition plays a crucial role in raising living standards, prompting participants in commercial operations to frequently engage in it.¹ The competitive nature of humans has significantly shaped the world we live in today. Through continuous competition, individuals and entities strive to outdo each other, leading to advancements and progress in various aspects of life. Healthy competition is essential to foster fairness and prosperity for all parties involved. As numerous entities partake in economic and business

¹ Laurensius Arliman, "Penegakan Hukum Bisnis Ditinjau dari Undang-Undang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat," *Lex Jurnalica* 16, No. 3 (2019): 219–229.

activities to ensure their survival, competition remains an integral part of these endeavors.²

Therefore, comprehensive legislation is essential to regulate business competition in economic and commercial activities, ensuring a level playing field for all parties involved.³ The enactment of Law Number 5 of 1999, commonly known as the Antimonopoly Law, exemplifies a significant transformation in economic and business law during the reform era. This law has been long-awaited by business stakeholders as it aims to prevent collusion, corruption, and nepotism, while fostering a favorable business environment. It signifies a crucial step towards curbing unfair practices and promoting transparency and fairness in business operations.

To ensure legal certainty and equal protection for all business actors, Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (hereinafter as Law 5/1999) has been enacted to regulate various prohibitions on monopolistic practices and unhealthy business competition. This prohibition enables businesses or groups of businesses to engage in healthy and fair competition across different industries without causing harm to the community, ultimately preventing market domination through unfair means. Furthermore, in order to foster a climate

² Irwan Sugiarto, "Perspektif Ilmu Ekonomi dan Undang-undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat Terhadap Diskriminasi Harga," *Jurnal Wawasan Hukum* 33, No. 2 (2015): 153-174. It is further explained that the Business Competition Law in Indonesia establishes the Business Competition Supervisory Commission (KPPU) as the primary authority responsible for enforcing the law. KPPU is empowered to investigate alleged violations, impose fines as sanctions, and order the cessation of anti-competitive practices. The law also includes provisions for administrative and criminal penalties for individuals and companies found guilty of breaching its regulations. In recent years, Indonesia has undertaken efforts to strengthen competition regulations, including proposed amendments to the Business Competition Law aimed at enhancing law enforcement and increasing penalties for violations. These proposed changes are intended to enhance the efficacy of the law in addressing monopolistic practices and unfair business competition. See Muhammad Majdy Amiruddin, and Abdul Syatar. "Economic democracy: examining the law enforcement of business competition in indonesia." *WSEAS Transactions on Business and Economics* 18 (2021): 1255-1262; Paramita Prananingtyas, Hari Sutra Disemadi, and Ninik Zakiyah. "The Indonesian Business Competition Law: How the Police Plays a Role." *Jurnal Hukum Novelty* 11, No. 1 (2020): 105-113; Elza Syarief, "Challenges of implementing anti-monopoly and unfair competition law in creating market efficiency in Indonesia." *International Journal of Law* 7, No. 2 (2021): 160-164; Ni Luh Made Mahendrawati, "Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia: A Legal Mechanism to Balance the Public Interest." *International Journal of Criminology and Sociology* 10 (2021): 1023-1028.

³ Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha di Indonesia* (Jakarta: Kencana Prenada Media Group, 2008).

of free trade, it is crucial to develop and harmonize legal frameworks governing international commerce and industry.⁴ Therefore, the enactment of Law 5/1999 is significant not only for the local business community but also for the global community as a whole.

Law No. 5 of 1999 Concerning the Prohibition of Monopoly Practices and Unfair Business Competition was enacted by the government to address the issues of monopoly and unfair business rivalry. According to Article 1 of the law, monopoly is defined as the control exercised by a single business actor or a group of business actors over the production, promotion, and/or utilization of specific goods and/or services. Monopolistic practices, on the other hand, refer to the concentration of economic power by one or more business actors leading to the monopolization of production and/or marketing of certain products or services, resulting in unfair competition and potential harm to the public interest.

Law No. 5/1999, also known as the Antimonopoly Law, includes various provisions, such as the prohibition of specific activities like monopoly practices, monopsony practices, and conspiracy. It also prohibits certain agreements such as oligopoly practices, pricing arrangements, territorial divisions, boycotts, cartels, trusts, and others. The law also addresses the misuse of a dominant position, which occurs when a business actor has a significant market share or holds the highest position compared to competitors in terms of financial capabilities, supply access, sales, and the ability to control the supply or demand for specific goods or services. The misuse of dominant positions, as defined by Law 5/1999, encompasses practices like dual employment and stock ownership, among others.

Method

The purpose of this research is to conduct an analysis of the prohibition of monopolistic practices in business trials in Indonesia, with a specific focus on the role of the Business Competition Supervisory Commission (KPPU) as the mandated agency in the country. To accomplish this, the authors will employ a systematic approach that serves as a roadmap for the research. The research methodology will be based on normative legal study, which involves the collection and analysis of relevant resources and materials. The objective of normative legal research is to provide an explanation of how business law, particularly Law Number 5 of 1999 concerning the Prohibition of Monopoly

⁴ Aryudha D. Prayoga, *Persaingan Usaha dan Hukum yang Mengaturnya di Indonesia* (Jakarta: Proyek ELIPS, 2000).

Practices and Unfair Business Competition, is enforced. Normative legal research primarily relies on literature reviews and document analysis, specifically examining written regulations and secondary data sources.⁵

The Significance of Business Competition Legislation

Business law is a body of legislation that governs the transactions made by business people. Businesses engage in a variety of activities, including⁶: 1) Business in the sense of commercial activity (commerce), or all of the buying and selling that takes place between individuals or groups of individuals both domestically and internationally; 2) Business in the sense of industrial activities, specifically the activity of creating or creating goods or services whose utility exceeds that of the original; and 3) Efforts in the sense of performing services (service), specifically the activity of performing or providing services performed by either individuals or entities. These activities lead to the inference that business law is a set of rules that are either directly or indirectly connected to the operations of businesses in managing the economy. The law of business competition is one subset of business law.⁷

⁵ Laurensius Arliman, "Peranan Metodologi Penelitian Hukum di dalam Perkembangan Ilmu Hukum di Indonesia," *Soumatara Law Review* 1, No. 1 (2018): 112-132.

⁶ Richard Burton Simatupang, *Aspek Hukum dalam Bisnis* (Jakarta: Rineka Cipta, 2007).

⁷ It is further explained that business competition legislation in Indonesia holds significant importance for various stakeholders and the overall economy. It plays a crucial role in promoting fair competition, protecting consumer interests, and enhancing market efficiency. By prohibiting anti-competitive practices such as monopolies, collusion, and unfair trade practices, the legislation ensures a level playing field and encourages innovation and efficiency among businesses. This, in turn, leads to better quality products, a variety of choices, and fair prices for consumers. Additionally, clear and effective competition laws contribute to a favorable investment climate, instilling confidence in investors and attracting investments. By preventing the abuse of market power, the legislation supports economic growth, job creation, and overall economic development. Moreover, it provides a regulatory framework that sets guidelines and standards for businesses, maintaining order and addressing any disputes or violations. In summary, business competition legislation in Indonesia promotes a vibrant and competitive business environment, benefiting businesses, consumers, and the economy as a whole. *See also* E. M. Fox, "Equality, Discrimination, and Competition Law: Lessons from and for South Africa and Indonesia." *Harvard International Law Journal* 41, No. 2 (2000): 579-594; John Owen Haley, "Competition Law for the Asia-Pacific Economic Cooperation Community: Designing Shoes for Many Sizes." *Washington University Global Studies Law Review* 1, No. 1 (2002): 1-13; Ari Tri Wibowo, Tri Lisiani Prihartinah, and Ade Maman Suherman. "The Future of Legal Regulation Related to Predatory Pricing Practice in e-commerce Implementation in Indonesia." *Webology* 19, No. 1 (2022): 2605-2620.

The legislation that governs all aspects of business competition is known as business competition law. Arie Siswanto claims that the law of business competition is a piece of legislation that specifies how the competition must be conducted. A business competition, in Hermansyah's definition, is a collection of legal regulations that control all elements of business competition, including what business players are allowed to do and what they are not allowed to do. Contrarily, a policy relating to issues in the area of business competition is one that business actors must follow in order to manage their operations and safeguard the interests of consumers. In particular, the lowest production costs, prices, and fair levels of profit, as well as technical advancements and product development, are the goals of competition policy⁸.

The rules of the competition are necessary since market processes may not always function effectively (the existence of asymmetrical and monopoly information). Business players frequently work to reduce or completely prevent competition in the market. Businesses might generate a significantly higher profit thanks to the less or eliminated competition. With the passage of Law Number 5 of 1999 about the Prohibition of Monopoly Practices and Unhealthy Business Rivalry, the regulation of new business competition in Indonesia was made possible. The community's demands for comprehensive reforms in the structure of national and state life, including the abolition of monopolistic practices in all sectors, helped give rise to Law 5/1999⁹. According to the Pancasila and the Republic of Indonesia's 1945 Constitution, the development of the economic field must be focused on achieving the welfare of the people. Additionally, democracy in the economic sphere necessitates equal opportunity for each citizen to participate in the process of production and marketing of goods and/or services, in a healthy, effective manner. In Indonesia, it must be in a healthy and reasonable competition, with unbreakable from the agreement that has been carried out by the State of the Republic of Indonesia on the International Agreement, in order to prevent it from causing a concentration of economic power to specific commercial players¹⁰.

Due to the fact that market processes do not always operate in an effective manner, there is a requirement for competition regulations (the existence of asymmetrical and monopoly information). Market participants regularly engage in activities designed to lessen or eliminate the presence of competition

⁸ Rachmadi Usman, *Hukum Persaingan Usaha di Indonesia* (Jakarta: Gramedia Pustaka Utama, 2004).

⁹ Mariam Darus Badruzaman, *Aneka Hukum Bisnis* (Bandung: Alumni, 2014).

¹⁰ Sugiarto, "Perspektif Ilmu Ekonomi dan Undang-undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat Terhadap Diskriminasi Harga."

altogether. Because there would be less competition or none at all, it is possible that businesses may produce a much bigger profit. In Indonesia, the regulation of new company competition became feasible with the enactment of Law Number 5 of 1999 about the Prohibition of Monopoly Practices and Unhealthy Business Rivalry. This law made it possible to prohibit monopoly practices and unhealthy business rivalry. The demands of the society for extensive reforms in the framework of national and state life, including the elimination of monopolistic activities in all fields, were a contributing factor in the development of Law 5/1999. Both the Pancasila and the Constitution of the Republic of Indonesia from 1945 stipulate that efforts to advance economic activity should be directed toward improving the standard of living of the nation's population. In addition, democracy in the realm of economics demands the provision of equal opportunities for participation by each citizen in the process of the production and sale of products and/or services, in a way that is both healthy and successful¹¹.

Therefore, it is necessary to draft a law that prohibits monopoly practices and unfair business competition in order to uphold the rule of law and offer the same level of protection to every business actor in an effort to foster healthy business competition. This law's goal is to foster an environment in which businesses compete fairly with one another. This legislation offers a guarantee of legal certainty to further stimulate the acceleration of economic growth in an endeavor to further improve public welfare and to facilitate the execution of the spirit and soul of the Constitution that was written in 1945. As a result, the enactment of Law 5/1999 was done with the intention of providing a guarantee of legal certainty as well as the same protection. To every business player with the goal of fostering a conducive business climate, where every business actor can compete in a natural and healthy way, by avoiding the establishment of monopolistic activities and/or other unfair forms of business rivalry. As for some of the goals of the holding of Law 5/1999, some of them include, among other things: 1) Protecting the public interest and boosting the economic efficiency of the nation in an effort to improve the welfare of the people; 2) Creating an environment that is favorable to business by regulating healthy business competition; 3) Preventing monopoly practices and/ or unfair business competition caused by business actors; and 4) Seeking to increase the effectiveness and efficiency of business activities¹².

¹¹ Arliman, "Penegakan Hukum Bisnis Ditinjau dari Undang-Undang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat."

¹² I Ketut Karmi Nurjaya, "Peranan KPPU dalam Menegakkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat," *Jurnal Dinamika Hukum* 9, No. 1 (2009): 83-90.

The formation of an unextended market as a result of Law 5/1999 gives business actors a progressively bigger chance for profit. Businesspeople will be compelled by this circumstance to develop and advertise their products in more inventive ways (goods and services). Consumers will switch to better and more competitive items if this is not done. Indirectly, this means that Law Number 5 of 1999 will help customers by bringing better services, more affordable goods, and higher-quality goods to market. But keep in mind that, as long as these businesses don't engage in actions that are forbidden by Law 5/1999, Law 5/1999 poses no threat to big businesses that were already formed when this law was passed.

Law 5/1999 in Indonesia must be monitored in order for it to be put into effect since its mere existence makes this need necessary. As a direct result of the action taken by Law 5/1999 as a competition for competitive policy, the Business Competition Supervisory Commission (KPPU) was founded with the aim of ensuring and supervising compliance with the conditions of the Antimonopoly Law (competitive policy)¹³. A significant amount of new terminology is included in Law 5/1999. Some of these are very obvious from the basic provisions. Nevertheless, it is necessary to convey at least some of these in order to provide a balanced image¹⁴: This regulation makes a difference between "monopoly" and "monopoly activity" as its initial point of differentiation. The phrase "monopoly" is a neutral term that refers to the control that one business actor or a group of actors has over the production, promotion, and/or usage of goods and/or services. Monopolies can exist in both public and private sectors. It is not necessary for such skill to be harmful. There are certain monopolies that cannot be avoided, either because they are natural (natural monopolies) or because they are legally protected. Both of these factors contribute to the existence of monopolies (statutory monopoly). It is against the law to engage in the practice of monopoly, which is seen as monopoly that leads to unfair commercial competition and has the potential to be detrimental to the public interest. As a result, monopoly can have outcomes that are both helpful and detrimental. Law 5/1999, however, does not have the coherence necessary to properly apply the distinction between the two sentences mentioned. This is made abundantly clear by the heading of the first section of Chapter IV, which is devoted to discussing prohibited actions. Second, although Legislation 5/1999 is frequently referred to as the Antimonopoly Law, the term "monopoly" is only used to describe one kind of activity that is prohibited under this law. This is because the term "monopoly"

¹³ Sandra Dewi, "Mengenal Doktrin dan Prinsip Piercing The Corporate Veil dalam Hukum Perusahaan," *Soumatara Law Review* 1, No. 2 (2018): 380-399.

¹⁴ Shidarta, "Catatan Seputar Hukum Persaingan Usaha," businesslaw.binus.ac.id, 2013, <http://business-law.binus.ac.id/2013/01/20/catatan-seputar-hukum-persaingan-usaha/>

is only used to describe one kind of activity that is prohibited under this law. A more appropriate name for this would be "monopoly practice." There are various sorts of agreements that are illegal, in addition to the activity categories that are limited. As a consequence of this, referring to the Antimonopoly Law as Law 5/1999, which was the terminology that the DPR used at the time, is now considered incorrect. It is recommended that the name "Anti-Cheating Law" or "Law on the Prohibition of Unhealthy Business Competition" be used rather than "Anti-Cheating Law."

Procedures for the Business Competition Supervisory Commission's Control of Business Competition

According to Law 5/1999, the government established the Business Competition Supervisory Commission (KPPU) with the mandate to determine whether an agreement or business activity violates Law No. 6 of 1999 in order to prohibit the practice of monopoly and unfair competition among business players. According to Article 30 of Law No. Law 5/1999, KPPU is an autonomous institution that is free from the sway of the government and other parties and is answerable to the President. KPPU is guided by Article 3 paragraph (2) of Government Regulation No. 57 of 2010 concerning the merger or fusion of business entities and the taking over of company shares that may result in a practice of monopoly and unfair business competition when determining whether there has been a monopoly practice and unfair business competition in a merger. explains that the Business Competition Supervisory Commission's (KPPU) review of whether a merger leads to monopoly activities and/or unfair business competition is as follows¹⁵:

1. Assessing whether an acquisition could lead to monopolistic behaviors and/or unfair business competition is known as market concentration.
2. Finding market barriers in the market in question is what is meant by "obstacles to entry." If there is an entrance barrier in the market, the purchase tends not to result in alleged monopolistic practices, but large entry barriers in the market have the potential to result in alleged monopoly practices.
3. If an acquisition creates a business actor that is comparatively dominant toward other business actors in the market, making it easier for these businesses to abuse their dominant positions to take the most profit for the company and cause consumer losses, that is an indication of potential anti-competitive behavior.

¹⁵ Usman, *Hukum Persaingan Usaha di Indonesia*.

4. Efficiency is an evaluation of whether the acquisition was made with consideration for business efficiency. In this situation, a comparison between the efficiency created and the merger's anti-internalism impact is required. Healthy competition will take precedence over promoting business actors' efficiency if the anti-counterattack value outweighs the efficiency benefit created by the purchase.
5. When a business entity declares bankruptcy, it is necessary to evaluate whether the acquisition was made with the intention of keeping the business entity active in the market. The purchase does not potentially result in monopolistic tactics or unfair business competition if the corporate entity exits the market and causes higher customer losses.

Although the government and other parties with conflicts of interest are not allowed to influence the Business Competition Supervisory Commission's handling, decision-making, or investigation of a case, they are still accountable to the President for carrying out their duties and exercising their authority. KPPU is another quasi-judicial organization with executive power over situations involving commercial rivalry.

Article 35 of Law 5/1999 specifically defines the duties of the Business Competition Supervisory Commission, and Article 4 of Presidential Decree Number 75 of 1999 confirms these duties. 1. Conduct an analysis of contracts that might lead to unfair business competition, such as oligopoly agreements, price applications, territorial division, boycotts, cartels, trusts, oligopsonies, vertical integration, closed agreements, and contracts with foreign parties. 2. Evaluate the culprits' business methods and/or acts to see whether they may lead to monopolistic behavior or unfair competition, 3. Determining whether or whether abusive use of dominant positions—caused by excessive market power, dual positions, stock ownership and merger, or both—can lead to monopolistic behavior and/or unfavorable business competitiveness financing and purchasing a company or equity¹⁶.

The Business Competition Supervisory Commission has the authority to impose sanctions in the form of administrative actions by ordering the cancellation or termination of the agreement and the agreement and business activities that are prohibited, as well as the abuse of the dominant position, in the event of a violation of Law 5/1999 where business actors or groups of

¹⁶ Mashur Malaka, "Praktek Monopoli dan Persaingan Usaha." *Al-Adl* 7, No. 2 (2014): 39-52; Arie Sulistyoko, "Implementasi Teori Monopoli Richard A. Posner Terhadap Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat." *At-Taradhi: Jurnal Studi Ekonomi* 5, No. 1 (2014). See also Hikmahanto Juwana, "An Overview of Indonesia's Antimonopoly Law." *Washington University Global Studies Law Review* 1, No. 1 (2002): 185-199; Alum Simbolon, "Prevention of Monopolistic Practices and Unfair Business Competition through Business Competition Supervision." *Journal of Legal, Ethical and Regulatory Issues* 22, No. 1 (2019): 1-7.

business actors have made agreements that are prohibited or carried out prohibited activities or abused the dominant position. The Business Competition Supervisory Commission's other equally important duties include advising the government on policies regarding monopoly practices and/or unfair business competition, as well as compiling guidelines and/or publications or socialization campaigns regarding unfavorable business competition.

The following operations are included in the entire range of the Business Competition Supervisory Commission's jurisdiction, as stated in Article 36 of Law 5/1999¹⁷:

- a. Gather information on alleged business practices and/or actions of business actors that can lead to monopoly practices and/or unfair business competition;
- b. Conduct research on these claims;
- c. Conduct an investigation and/or examination of any cases of alleged monopoly practices and/or unfair business competition reported by the community or by business actors;
- d. Drawn a conclusion based on the investigation's and/or examination's findings on the existence or absence of unfair business competition and/or monopoly activities.
- e. Contact business people who may have broken this law's requirements.
- f. Call and present witnesses, experts, and anyone else who is thought to be aware of violations of this law.
- g. Requesting assistance from investigators to present business actors, witnesses, expert witnesses, or any other individual mentioned in letters e and f of this article who is unwilling to respond to the commission's request,
- h. Inquire about inquiries into and/or examinations of business actors that disobey the terms of this legislation from government agencies,
- i. Obtain, look through, and/or evaluate letters, papers, or other proof for an examination or investigation,
- j. Determine and put into action whether there have been losses suffered by other business actors or by the community,
- k. Inform business actors accused of engaging in monopolistic behavior and/or unfair business competition of the commission's decision,
- l. Removing administrative punishments against commercial actors that transgress this law's rules.

¹⁷ Shidarta, "Catatan Seputar Hukum Persaingan Usaha."

The KPPU also has the responsibilities and powers outlined in Article 5 of the Presidential Decree of the Republic of Indonesia No. 75 of 1999 about the Business Competition Supervisory Commission. These include the following: Assessment of contracts, commercial operations, and misuse of dominating positions, execution of power by action, and administrative implementation are the first three¹⁸.

The vocabulary used to describe the types of agreements or actions forbidden by Law 5/1999 is really not organized in a logical order. A term's meaning frequently overlaps with other words. For instance, price determination might be the same as a cartel controlling pricing (price fixing). A boycott could be a closed agreement (exclusive dealing). The following table will make it easier to comprehend the sorts of agreements and acts that Law 5/1999 forbids. By merely examining the indicators of the formation of the sentence words guiding it, one may make a temporary assumption about the nature of the approach Per SE or Rule of Reason specified in each form of agreement/activity. Unacceptable agreement¹⁹:

1. Oligopoly, which is a rule of reason agreement between two or more groups of specific commercial players to control the production and/or marketing of commodities or the usage of services. For instance, a group of business players named A, B, and C produce 75% of the instant noodles sold in Indonesia. This indicates that business players A, B, and C have an oligopolistic relationship.
2. Price fixing, which results in cooperation (collusion) to control pricing by business entities who should be competing. This is also referred to as a cartel for prices. As an illustration, several taxi businesses consented to boost prices. Pricing is one type of agreement that controls prices. Other options include predatory pricing, resale price maintenance, and a sort of price discrimination agreement (discrimination against competitors) (regulating the resale price of a product).
3. The sharing of marketing regions is a guideline of reasoned agreement among business actors who should compete. The goods of Company A and Company B, respectively, are solely sold in Central Java and East Java, respectively.
4. Boiling, which is defined by SE and Rule of Reason agreements among various business players, is characterized by: a) Creating an entrance barrier for new business actors; b) Restricting the space for other business actors to sell or purchase a product. Example: The association of cigarette

¹⁸ Hasnati, "Tanggung Jawab Direksi Terhadap Terjadinya Kredit Macet Pada Perbankan Berdasarkan Undang-Undang Nomor 40 Tahun 2007," *Soumaterna Law Review* 2, No. 1 (2019): 79-93.

¹⁹ Badrulzaman, *Aneka Hukum Bisnis*.

producers and the tobacco farmers' association came to an agreement wherein farmers would sell their tobacco to the organization's cigarette producer members.

5. Cartel, which is defined as an agreement among commercial entities who ought to be in competition and which leads to coordination (collusion) to control production quotas and/or market allocation. Prices may also be used in cartels (becoming price fixing). Example: To ensure that the supply was running short, certain cement businesses decided to curtail output for two months.
6. Trust is the guiding principle behind the business players' collaboration agreement when they join forces to form a larger firm, but each company continues to operate separately. As an illustration, two rival business players (A and B) claim that their companies are merging, but in reality, A and B are still run as two separate businesses.
7. Oligopsoni, it is inherent in the Rule of Reason Agreement that two to three business players, or two s.d. three groups of specific business actors, dominate the supply of products and services in a market. As an illustration, Noodle A, B, and C firms pledge to use 75% of the nation's flour supplies.
8. Vertical Integration (Vertical Integration), its rule of reason agreement between businesses that are in a series of specific products production levels, but all are under a single-hand control (one affiliate), to jointly win the healthy competition. As an illustration, a corporation upstream purchased a company downstream. This purchase results in a dominating position that is later abused to outbid competitors unfairly.
9. Closed Agreement (Exclusive Dealing), a type of contract between product suppliers and sellers that prevents other business actors from having access to the same supply or from buying the items from certain customers. An illustration of this is the agreement between B noodles and flour suppliers that the sort of flour delivered to B shall not be marketed to other commercial actors.
10. Accord with International All types of illegal commercial transactions take place not just with foreign business players but also with domestic business actors.

Activity Prohibited²⁰:

1. Monopoly-related games managing a business actor's or a certain set of business actors' usage of products or services by mastering their production, promotion, or use. Example: A group of business players

²⁰ Shidarta, "Catatan Seputar Hukum Persaingan Usaha."

- produce 50% of the instant noodles sold in Indonesia. A. This translates to monopolization of business actors (but not necessarily conduct monopoly practices).
2. Monopsony, which is governed by the Rule of Reason, regulates how one business actor or specific group of business players may get the supply of products or services in a market. Example: In one market, a single noodle firm consumed 50% of the flour produced.
 3. Market mastery, its nature of the rule of reason. Listed under the heading of illegal market control actions are the following: Limiting the circulation or sale of other business actors or services; d. acting in a discriminatory manner toward other business actors; e. selling losses. These are examples of entry barriers that prohibit new business actors from entering the market (slam prices). To offer the product for less than the real manufacturing costs, business players A calculate production costs dishonestly.
 4. The essence of conspiracy according to SE and Rule of Reason Activities (conspiracy) to win an unhealthy commercial rivalry, such as conspiring to win the tender, conspiring to steal trade secrets from competing businesses, and conspiring to harm the reputation and quality of rival products. An example would be business people working together with the project manager to win a bid. Or, one businessperson may be compensated by other businesspeople to wilfully accept the tender.

Procedures for the Handle Issues Involving Police Enforcement

Articles 38 to 46 of Law 5/1999 further govern how corporate law enforcement issues are handled. The Business Competition Supervisory Commission can handle business law enforcement proceedings on its own initiative or in response to community complaints or reports. According to Article 40 of Law 5/1999, the Business Competition Supervisory Commission may examine business actors if suspicions of violations of Law 5/1999 exist even in the absence of complaints, provided that the investigation is conducted in accordance with the processes outlined in Article 39. Previously, Law 5/1999's Article 38 stated that anyone who knows that a violation of the law has occurred or is suspected of committing one may report it in writing to the Business Competition Supervisory Commission with a specific description of the violation and by including the reporter's identity. In addition, the party that suffered losses as a result of violations of Law Number 5 of 1999 may file

a written report with the Business Competition Supervisory Commission detailing the incidence of the violations and the losses they resulted in²¹.

As a result, it can be inferred that information for an investigation, inspection, or research into cases of alleged monopoly practices and/or business competition can come from businesspeople's reports of losses or complaints as well as information from the general public or anyone who is aware of the incident. Or there may be suspicions of a Law 5/1999 infringement. This may be communicated to the Business Competition Supervisory Commission or come from an initiative taken by the commission itself. Article 38 paragraph (2) of Law 5/1999 mandates that the Business Competition Supervisory Commission protect the reporter by keeping their name a secret, especially if they are not disadvantaged business operators.

Regarding the 7 (seven)-stage process for processing matters involving suspected breaches of Law 5/1999 1) Report research and clarification, including report reporting, report research and clarification, report research and clarification outcomes, and term time for research and clarification, 2) filing, which include filing as well as filing actions, filing outcomes, and filing timeframe, 3) Report degrees, which comprise the report degree meeting, the report degree outcomes, and the report period for the report degree; 4) Inspection, which comprises the pre-inspection team, pre-inspection procedures, pre-inspection outcomes, and pre-inspection behavioral changes, 5) Advanced examination of the Advanced Examination Team, more examination activities, additional examination outcomes, and additional examination period, 6) The Commission Council Session, which consists of the Commission Council, the Commission Council Session, and the Commission Decision. 7) Decision Implementation, which entails: Submission of Pems n Decision, Monitoring the Decision's Implementation²².

Similar to this, the Business Competition Supervisory Commission's judgment about the results of the examination must be read in a hearing that is open to the public and immediately communicated to the business actors, namely by delivering an excerpt of the decision to the Business²³. According to Article 44 of Law 5/1999, business actors are expected to execute a decision from the Business Competition Supervisory Commission that they have received within 30 days of receiving the judgment and to report their progress to the Commission. However, the Business Competition Supervisory

²¹ Hasnati, "Tanggung Jawab Direksi Terhadap Terjadinya Kredit Macet Pada Perbankan Berdasarkan Undang-Undang Nomor 40 Tahun 2007."

²² Akhmad Yani and Gunawan Wijaya, *Seri Hukum Bisnis Anti Monopoli* (Jakarta: Raja Grafindo Persada, 1999).

²³ Aji Sekarmaji, "Tinjauan atas Permasalahan yang Timbul dalam Penegakkan Hukum Persaingan Usaha," *Jurnal Hukum dan Pembangunan* 39, No. 3 (2009): 401-417.

Commission will submit the judgment to the investigator for further investigation in line with the relevant laws and regulations if the business actors fail to fulfill their commitment to the Business Supervisory Commission's judgement. Investigators may conduct inquiries using the Business Competition Supervisory Commission's ruling as adequate beginning evidence.

Execution is a forcible attempt to carry out a judgment with irrevocable legal effect. Objections to the KPPU's ruling within the parameters of the Anti-Monopoly Law were made both to the District Court and to the Supreme Court, but the objection was dismissed²⁴. The KPPU judgment, which is the punishment that can be executed and must be carried out by the business players who are found guilty, has permanent legal effect. There are two ways to implement a KPPU ruling with lasting legal effect: 1) Willful execution The KPPU judgment has been implemented willingly, which indicates that the business actors who get their own penalties have properly fulfilled all of their KPPU decision-related requirements. 2) Execution by force if business actors who receive punishment from the KPPU do not comply with the decision's provisions voluntarily, the decision will be enforced by force in one of two ways, namely: a) the KPPU will request that the District Court carry out the decision's provisions; b) the KPPU will submit the decision to investigators for review.

The Anti-Monopoly Law, which was enacted as Law No. 5 of 1999, includes two distinct legal facets, namely Civil Law and Criminal Law. The District Court has been asked to carry out the civil administrative punishments that the KPPU has issued, as stated in Article 47 of the Anti-Monopoly Law. The terms of the execution as carried out by the execution of the General Court's judgment, namely the provisions in HIR and RBG, were implemented by the District Court at the request of the KPPU²⁵.

The KPPU decision is submitted to the investigator in an effort to impose criminal sanctions on business actors who are thought to have violated criminal laws based on the Anti-Monopoly Law. However, this submission is made even though the KPPU lacks the authority to do so; instead, the general court has that authority. The KPPU's judgment is simply a preliminary piece of evidence for the police, who are the only investigators conducting the inquiry, and does not necessarily prove that business actors have violated the Anti-Monopoly Law²⁶.

²⁴ Dewi, "Mengenal Doktrin dan Prinsip Piercing the Corporate Veil dalam Hukum Perusahaan."

²⁵ Nurjaya, "Peranan KPPU Dalam Menegakkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat."

²⁶ Suyud Margono, *Hukum Anti Monopoli* (Jakarta: PT Sinar Grafika, 2009).

The KPPU's role in enforcing Law Number 5 of 1999 is to act in accordance with the authority of the KPPU as specified in Article 36, particularly related to the authority to conduct an investigation or examination of alleged monopoly practices cases and or unfair business competition that have been reported by the community or by business actors or discovered by the commission as a result of research²⁷. In addition, the commission was given authority to evaluate whether or not there were damages suffered by other business actors or the community and to punish those actors with administrative measures for breaking the law. Assuming the preceding description of the KPPU's function is accurate, the KPPU is regarded as a judicial institution with the power to conduct trials in the same manner as courts generally²⁸. In relation to the foregoing, we need to pay attention to Article 10 of Law Number 4 Year about Judicial Power, which stipulates that: Paragraph (1) A Supreme Court, the Right Agency under it, and a Constitutional Court exercise judicial power. In paragraph (2), it is stated that the State Administrative Court, military court, religious court, and general court environment are all included in the judicial body that reports to the Supreme Court.

According to the provisions of Article 10 of Law Number 4 of 2004, it is evident that there are only four different types of judicial bodies in the legal system, and those bodies are only known to those that are specified by the law. The KPPU is not a body but rather an institution that was created specifically to carry out supervisory functions in the application of the Anti-Monopoly Law. Because only a court could carry out the execution of a judgment that had legal force, the KPPU that made the judgement on the business actors who had broken the Anti-Monopoly Law was not given the jurisdiction to do so²⁹. In connection with this, in accordance with Article 46 paragraph (2), the KPPU must request the District Court's implementation of its decisions that have permanent legal force. For KPPU decisions that have a criminal component, the KPPU must submit the decision to the investigator in accordance with Article 44 paragraph (4).

Conclusion

This study concluded that the effectiveness of Law 5/1999 in achieving its goals is influenced by various factors, including the indicators provided by the

²⁷ Simatupang, *Aspek Hukum dalam Bisnis*.

²⁸ Meita Fadhilah, "Penegakan Hukum Persaingan Usaha Tidak Sehat Oleh Komisi Pengawas Persaingan Usaha (KPPU) dalam Kerangka Ekstrateritorial," *Jurnal Wawasan Yuridika* 3, No. 1 (2019): 55–72.

²⁹ Nurjaya, "Peranan KPPU dalam Menegakkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat."

legislation. It is crucial to assess the practicality of these indicators within the current state of business law reform. Additionally, the prevalent company structures in Indonesia should be taken into consideration, and efforts should be made to harmonize Law 5/1999 with other laws governing corporate issues. Continued efforts to modify company law beyond the passage of Law 5/1999 are necessary. The successful implementation of Law 5/1999 depends on the government's political will and commitment. A strong and unwavering commitment is essential for effective enforcement. Therefore, the government should establish institutional arrangements that enable the implementation of Law 5/1999 and ensure the presence of reliable personnel to support its enforcement. This requires a comprehensive examination not only of the provisions of Law 5/1999 but also of all relevant areas of commercial law. Community education and socialization are also vital for the successful execution of Law 5/1999, as public awareness and understanding contribute to its effective implementation. In relation to this, the role of KPPU as the mandated authority is crucial in enforcing the provisions of Law 5/1999, investigating violations, and imposing appropriate sanctions to promote fair competition and protect consumer interests.

References

- Amiruddin, Muhammad Majdy, and Abdul Syatar. "Economic democracy: examining the law enforcement of business competition in indonesia." *WSEAS Transactions on Business and Economics* 18 (2021): 1255-1262. <https://doi.org/10.37394/23207.2021.18.116>
- Arliman, Laurensius. "Penegakan Hukum Bisnis Ditinjau dari Undang-Undang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat," *Lex Jurnalica* 16, No. 3 (2019): 219–229. <https://doi.org/10.47007/lj.v16i3.2936>
- Arliman, Laurensius. "Peranan Metodologi Penelitian Hukum di dalam Perkembangan Ilmu Hukum di Indonesia," *Soumatra Law Review* 1, No. 1 (2018): 112-132. <https://doi.org/10.22216/soumlaw.v1i1.3346>
- Badruzaman, Mariam Darus. *Aneka Hukum Bisnis* (Bandung: Alumni, 2014).
- Dewi, Sandra. "Mengenal Doktrin dan Prinsip Piercing The Corporate Veil dalam Hukum Perusahaan," *Soumatra Law Review* 1, No. 2 (2018): 380-399. <https://doi.org/10.22216/soumlaw.v1i2.3744>
- Fadhilah, Meita. "Penegakan Hukum Persaingan Usaha Tidak Sehat oleh Komisi Pengawas Persaingan Usaha (KPPU) dalam Kerangka Ekstrateritorial," *Jurnal Wawasan Yuridika* 3, No. 1 (2019): 55–72. <http://dx.doi.org/10.25072/jwy.v3i1.217>

- Fox, E. M. "Equality, Discrimination, and Competition Law: Lessons from and for South Africa and Indonesia." *Harvard International Law Journal* 41, No. 2 (2000): 579-594.
- Haley, John Owen. "Competition Law for the Asia-Pacific Economic Cooperation Community: Designing Shoes for Many Sizes." *Washington University Global Studies Law Review* 1, No. 1 (2002): 1-13.
- Hasnati, Hasnati. "Tanggung Jawab Direksi Terhadap Terjadinya Kredit Macet Pada Perbankan Berdasarkan Undang-Undang Nomor 40 Tahun 2007," *Soumatara Law Review* 2, No. 1 (2019): 79-93. <https://doi.org/10.22216/soumlaw.v2i1.3319>
- Hermansyah, Hermansyah. *Pokok-Pokok Hukum Persaingan Usaha di Indonesia* (Jakarta: Kencana Prenada Media Group, 2008).
- Juwana, Hikmahanto. "An Overview of Indonesia's Antimonopoly Law." *Washington University Global Studies Law Review* 1, No. 1 (2002): 185-199.
- Mahendrawati, Ni Luh Made. "Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia: A Legal Mechanism to Balance the Public Interest." *International Journal of Criminology and Sociology* 10 (2021): 1023-1028. <https://doi.org/10.6000/1929-4409.2021.10.120>
- Malaka, Mashur. "Praktek Monopoli dan Persaingan Usaha." *Al-'Adl* 7, No. 2 (2014): 39-52. <http://dx.doi.org/10.31332/aladl.v7i2.218>
- Margono, Suyud. *Hukum Anti Monopoli* (Jakarta: PT Sinar Grafika, 2009).
- Nurjaya, I Ketut Karmi. "Peranan KPPU dalam Menegakkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat," *Jurnal Dinamika Hukum* 9, No. 1 (2009): 83-90. <http://dx.doi.org/10.20884/1.jdh.2009.9.1.69>
- Prananingtyas, Paramita, Hari Sutra Disemadi, and Ninik Zakiyah. "The Indonesian Business Competition Law: How the Police Plays a Role." *Jurnal Hukum Novelty* 11, No. 1 (2020): 105-113. <http://dx.doi.org/10.26555/novelty.v11i1.a15224>
- Prayoga, Aryudha D. *Persaingan Usaha dan Hukum yang Mengaturinya di Indonesia* (Jakarta: Proyek ELIPS, 2000).
- Sekarmaji, Aji. "Tinjauan atas Permasalahan yang Timbul dalam Penegakkan Hukum Persaingan Usaha," *Jurnal Hukum dan Pembangunan* 39, No. 3 (2009): 401-417. <http://dx.doi.org/10.21143/jhp.vol39.no3.1510>
- Shidarta, "Catatan Seputar Hukum Persaingan Usaha," businesslaw.binus.ac.id, 2013, <http://businesslaw.binus.ac.id/2013/01/20/catatan-seputar-hukum-persaingan-usaha/>
- Simatupang, Richard Burton. *Aspek Hukum dalam Bisnis* (Jakarta: Rineka Cipta, 2007).

- Simbolon, Alum. "Prevention of Monopolistic Practices and Unfair Business Competition through Business Competition Supervision." *Journal of Legal, Ethical and Regulatory Issues* 22, No. 1 (2019): 1-7.
- Sugiarto, Irwan. "Perspektif Ilmu Ekonomi dan Undang-undang Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat Terhadap Diskriminasi Harga," *Jurnal Wawasan Hukum* 33, No. 2 (2015): 153-174. <http://dx.doi.org/10.25072/jwy.v33i2.101>
- Sulistiyoko, Arie. "Implementasi Teori Monopoli Richard A. Posner Terhadap Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat." *At-Taradhi: Jurnal Studi Ekonomi* 5, No. 1 (2014). <https://dx.doi.org/10.18592/taradhi.v5i1.75>
- Syarief, Elza. "Challenges of implementing anti-monopoly and unfair competition law in creating market efficiency in Indonesia." *International Journal of Law* 7, No. 2 (2021): 160-164.
- Usman, Rachmadi. *Hukum Persaingan Usaha di Indonesia* (Jakarta: Gramedia Pustaka Utama, 2004).
- Wibowo, Ari Tri, Tri Lisiani Prihartinah, and Ade Maman Suherman. "The Future of Legal Regulation Related to Predatory Pricing Practice in e-commerce Implementation in Indonesia." *Webology* 19, No. 1 (2022): 2605-2620. <http://doi.org/10.14704/WEB/V19I1/WEB19173>
- Yani, Akhmad, and Gunawan Wijaya. *Seri Hukum Bisnis Anti Monopoli* (Jakarta: Raja Grafindo Persada, 1999).

Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.