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## Critical Study of Business Competition Supervisory Commission's Authority in Handling Business Competition Violations

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**Abstract:** *The purpose of this study is to criticize the authority of the Business Competition Supervisory Commission (KPPU) in overcoming and resolving business competition violations. The authority in question is regulated in Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Business Competition Law) jo. Law Number 11 of 2020 concerning Job Creation. According to the provisions of laws and regulations, KPPU acts as an independent state auxiliary organ. At the practical level, KPPU exercises the authority to investigate, prosecute, and decide. Normative legal research is used by researchers to answer related problems through a legal approach and a comparative approach with literature study methods. The results showed that the implementation of KPPU's authority in handling business competition violations can be said to be still not optimal. Researchers suggest that the ideal authority policy in handling business competition violations can refer to several countries that have similar business competition law enforcement agencies by making adjustments to business competition conditions in Indonesia.*

**Keywords:** *Business Competition; Supervisory Commission; Violation.*

### INTRODUCTION

Business competition can be interpreted as a condition, where several business actors try to obtain or maintain a position in a market.<sup>1</sup> The stronger the position of business actors,

<sup>1</sup> Munir Fuady. (1999). *Hukum Anti Monopoli: Menyongsong Era Persaingan Sehat*. Bandung: Citra Aditya Bakti.

the more profits obtained tend to be.<sup>2</sup> Business competition has both positive and negative impacts.<sup>3</sup> Healthy business competition will provide benefits for consumers. Consumers will be able to have a more varied selection of products with high quality and competitive market prices.<sup>4</sup> Conversely, if the market is controlled by one party or a certain group of parties, then there is an opportunity to shut down the working of the market mechanism, prices are only determined unilaterally for certain groups of entrepreneurs who have power and that will bring losses to consumers.<sup>5</sup>

Regulation of market activities and business competition activities is needed by every country, including supervisory agencies appointed to supervise these matters. The government issued legal products as a form of regulation in business competition, namely Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Business Competition Law).<sup>6</sup> The purpose of the enactment of the Business Competition Law is to maintain the continuity of competition between business actors to stay alive.<sup>7</sup> In addition, the government also wants to protect the competition system as the United States did by implementing, preserve competitive system.<sup>8</sup>

It is a fact that the economy before the Business Competition Law was a national economy characterized by a monopolistic economy. Where collusive practices occur between rulers and businessmen and between fellow businessmen. The national economy is controlled by only a few people in certain circles of power and groups.<sup>9</sup> The urgent need for a supervisory agency to oversee the implementation of the Business Competition Law, the Business Competition Supervisory Commission (KPPU) was formed.<sup>10</sup> KPPU is independent and tasked with supervising business competition, assessing violations of laws, and imposing sanctions.<sup>11</sup>

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<sup>2</sup> Muhammad Rizki & Imron Rosadi. (2019). "Penyelesaian Perkara Persaingan Usaha Oleh Komisi Pengawas Persaingan Usaha di Era Revolusi Industri 4.0". *Journal RechiDee*, 14(1): 150–63.

<sup>3</sup> Suhasril & Mohammad Taufik Makarao. (2010). *Hukum Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat di Indonesia*. Bogor: Ghalia Indonesia.

<sup>4</sup> Irna Nurhayati. (2011). "Kajian Hukum Persaingan Usaha: Kartel Antara Teori dan Praktik". *Jurnal Hukum Bisnis*, 30(2): 12.

<sup>5</sup> Andi Fahmi Lubis, et al. (2012). *Hukum Persaingan Usaha Antara Teks & Konteks*, ed. by Andi Fahmi Lubis and Ningrum Natasya Sirait. Jakarta: ROV Creative Media.

<sup>6</sup> L. Budi Kagramanto. (2008). *Mengenal Hukum Persaingan Usaha (Berdasarkan Undang-Undang Nomer 5 Tahun 1999)*. Surabaya: Laros.

<sup>7</sup> Baiq Ervinna Sapitri. (2015). "Kewenangan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Penanganan Perkara Persaingan Usaha (Studi Perbandingan di Indonesia Dengan Negara-Negara Common Law System)". *Jurnal IUS Kajian Hukum dan Keadilan*, 3(7): 139–58.

<sup>8</sup> L. Budi Kagramanto, *Loc. Cit.*

<sup>9</sup> Muh. Risnain. (2018). "Konsep Penguatan Kewenangan Komisi Pengawas Persaingan Usaha Sebagai Lembaga Quasi-Peradilan Dalam Membangun Perekonomian Nasional yang Sehat dan Adil". *Jurnal IUS Kajian Hukum dan Keadilan*, 6(2): 219. doi: <https://doi.org/10.29303/ius.v6i2.557>.

<sup>10</sup> Dewa Ayu Reninda Suryanitya & Ni Ketut Sri Utari. (2017). "Kedudukan Komisi Pengawas Persaingan Usaha (KPPU) Sebagai Lembaga Pengawas Persaingan Usaha Yang Independen". *Kertha Semaya*, 5(2): 1–5. doi: <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/20549>.

<sup>11</sup> Dudung Mulyadi & Ibnu Rusydi. (2017). "Efektivitas Peran Komisi Pengawas Persaingan Usaha (KPPU)

It can be said, as a supervisory agency, KPPU has the authority to investigate, prosecute, and decide.<sup>12</sup> The authority of KPPU is very large, because it includes the authority possessed by other institutions.<sup>13</sup> KPPU carries out its functions in a mixed manner, namely regulatory functions, administrative functions, and semi-judicial functions simultaneously.<sup>14</sup> Normatively and at the implementation level, the three authorities owned by the KPPU are not optimal. In the field of investigation, KPPU does not have the authority to conduct seizures and searches as the agency that has the authority to investigate. In the field of prosecution, KPPU does not have the authority to confiscate the papers needed in prosecuting cases. Then on the authority to decide cases, the KPPU does not have the authority to execute the KPPU's own decisions.<sup>15</sup>

Meanwhile, on the other hand, the authority of KPPU as a termination agency.<sup>16</sup> If so, the legitimacy of KPPU as a supervisor of business competition in Indonesia is of course questionable. Previous research that has been conducted related to the authority of KPPU in handling violations of business competition has focused more on the limitations of KPPU's authority as well as the position and uncertainty of its institutional position in the structure of state governance which is considered to have not provided legal certainty in business competition.

The research is contained in research conducted by Rahmadi Indra Tektana entitled Quo Vadis: Legal Certainty of Monopoly Practice Rules and Unfair Business Competition in Law Number 11 of 2020 concerning Job Creation.<sup>17</sup> The next research is in Gloria Damaiyanti Sidauruk's research entitled Legal Certainty of Business Competition Supervisory Commission Decisions in Business Competition Law Enforcement.<sup>18</sup> In addition, there are also research results by Eki Furqon, Helvan Subia Effendi entitled The Position of the Business Competition Supervisory Commission in Deciding Business Competition Violations According to Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business

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Dalam Penanganan Kasus Persaingan Usaha Tidak Sehat". *Jurnal Ilmiah Galuh Justisi*, 5(1): 81. doi: <https://doi.org/10.25157/jigj.v5i1.235>.

<sup>12</sup> Muh. Risnain. (2014). "Eksistensi Lembaga Quasi Judisial Dalam Sistem Kekuasaan Kehakiman di Indonesia: Kajian Terhadap Komisi Pengawas Persaingan Usaha". *Jurnal Hukum dan Peradilan*, 3(1): 49–58.

<sup>13</sup> Susanti Adi Nugraha. (2012). *Hukum Persaingan Usaha di Indonesia, Dalam Teori dan Praktik Serta Penerapan Hukumnya*. Jakarta: Kencana.

<sup>14</sup> Jimly Asshiddiqie. (2007). *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*. Jakarta: Bhuana Ilmu Populer.

<sup>15</sup> Muh. Risnain. *Op. Cit.*

<sup>16</sup> Normand Edwin Elnizar. (2018). *Menggagas Kerjasama Mengawal Revisi UU Persaingan Usaha*, *Hukumonline.com*, <https://www.hukumonline.com/berita/a/hukumonline-terima-kunjungan-indonesian-competition-lawyer-association-lt5ab387c980e87>.

<sup>17</sup> Rahmadi Indra Tektana. (2022). "Quo Vadis: Kepastian Hukum Aturan Praktik Monopoli dan Persaingan Usaha Tidak Sehat Pada Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja". *Jurnal Persaingan Usaha*, 2(1): 43–54.

<sup>18</sup> Gloria Damaiyanti Sidauruk. (2021). "Kepastian Hukum Putusan Komisi Pengawas Persaingan Usaha Dalam Penegakan Hukum Persaingan Usaha", *Jurnal Lex Renaissance*, 6(1): 132–51. doi: <https://doi.org/10.20885/jlr.vol6.iss1.art10>.

Competition.<sup>19</sup>

As a state institution, KPPU has an important role in developing the national economy. It is hoped that KPPU can oversee and supervise business competition that will contribute to national economic development in the future. Researchers will criticize the implementation and ideal policies related to the authority of KPPU in handling business competition violations in a study entitled "Critical Study of the Authority of the Business Competition Commission (KPPU) in Handling Business Competition Violations".

## **RESEARCH METHOD**

This research is a prescriptive research that is included in normative legal research. Legislative approaches and comparative approaches were used in this study to help researchers answer existing problems. Researchers use secondary data obtained through literature studies. Laws and other related regulations are used as a reference or what we call primary legal material. The laws and regulations in question are Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Business Competition Law) jo. Law Number 11 of 2020 concerning Job Creation (Job Creation Law). While secondary legal materials are obtained from journal articles, books, or scientific publications relevant to the authority of the Business Competition Supervisory Commission (KPPU). Analysis of legal materials is carried out using descriptive methods in order to produce conclusions that can be accounted for.<sup>20</sup>

## **DISCUSSION**

### **A. KPPU's Position in Handling Business Competition Violations**

The establishment of KPPU was based on the spirit of the Indonesian nation to oversee the implementation of the mandate of Article 33 paragraphs (1) and (4) of the Constitution of the Republic of Indonesia in 1945 (1945 Constitution). In that article, the constitution states that the economy is based on the principles of kinship and economic democracy. The national economic system is intended and can be controlled by the people through their representatives based on the principles of equitable efficiency, togetherness, environmental insight, maintaining a balance of progress and national economic unity, sustainability, and independence.

The existence of the Business Competition Law in Indonesia requires the presence of KPPU to be able to supervise its implementation. The establishment of KPPU is none other than to ensure and supervise the compliance of the provisions in the Business Competition Law which applies as the basis for competition policy of business actors. KPPU is an independent institution, which handles, decides, or investigates a case, regardless of the power of other parties. Nevertheless, KPPU has a responsibility to

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<sup>19</sup> Eki Furqon & Helvan Subia Effendi. (2020). "Kedudukan Komisi Pengawas Persaingan Usaha Dalam Memutus Pelanggaran Persaingan Usaha Menurut Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat". *Jurnal Hukum dan Keadilan*, 7(2): 23–35.

<sup>20</sup> Peter Mahmud Marzuki. (2008). *Pengantar Ilmu Hukum*. Jakarta: Kencana.

the president for the implementation of his duties and authorities.

The duties of KPPU mandated by law to be able to carry out supervisory functions are to assess business activities, agreements, and the presence or absence of abuse or violations that allow monopolistic practices and unfair business competition. KPPU has the right to provide advice and consideration on government policies, take action in accordance with its authority, formulate guidelines based on related laws and regulations, and provide reports to the president and the House of Representatives (DPR).

To carry out the above duties, Article 36 of the Business Competition Law authorizes KPPU to: a) receive reports of suspected monopolistic practices and/or unfair business competition; b) conduct research on the allegations at point a; c) conduct investigations and/or examinations of cases at points a and b, both from reports and own findings; d) conclude the results of the investigation and/or examination; e) summoning business actors suspected of having committed violations; f) summon and present witnesses, expert witnesses, and any person deemed to be aware of the offence; g) request the assistance of the investigator to present the parties to points e and f; h) request information from government agencies in connection with investigations and/or examinations; i) obtain, examine, and/or assess letters, documents, or evidence; j) decide and establish the presence or absence of losses; k) notify the verdict; l) impose sanctions.

The provisions of Article 36 basically describe the categories of authority of KPPU into three functions, namely investigation (a, b, c, d), prosecution (e, f, g, h, i), and judicial (j, k, l).<sup>21</sup> Interestingly, the judicial authority of KPPU is not owned by other independent institutions. So the question arises, is KPPU an administrative institution or a judicial institution? And what is the position of KPPU in the justice system in Indonesia? Jimly stated that KPPU is a judicial institution in a broad sense. KPPU can also be referred to as a quasi-judicial institution. This KPPU function can be included in the state administrative court considering KPPU as an administrative judicial institution.<sup>22</sup> However, when viewed from the scope of dispute resolution, KPPU can be categorized in the general judicial environment.<sup>23</sup>

As a state institution supporting the main state auxiliary organ,<sup>24</sup> KPPU has the authority to enforce business competition law. KPPU is also called a quasi-independent institution, because it is an institution that assists the implementation of the duties of the main state institutions (executive, legislative, and judicial),<sup>25</sup> and is formed outside

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<sup>21</sup> Muh. Risnain. *Op. Cit.*

<sup>22</sup> Ridwan. (2009). *Tiga Dimensi Hukum Administrasi dan Peradilan Administrasi*. Yogyakarta: FH UII Press.

<sup>23</sup> Jimly Asshiddiqie. (2014). *Fungsi Campuran KPPU Sebagai Quasi-Peradilan*. [http://www.jimly.com/makalah/namafile/61/Makalah\\_KPPU\\_Koreksian.pdf](http://www.jimly.com/makalah/namafile/61/Makalah_KPPU_Koreksian.pdf).

<sup>24</sup> Asmah & Melantik Rompegading. (2021). "Implementasi Hukum Persaingan Usaha di Masa Pandemi Bagi UMKM di Kota Makassar". *Jurnal Persaingan Usaha*, 1(1), 05–15. DOI: <https://doi.org/10.55869/kppu.v1i1.8>

<sup>25</sup> Jimly Asshiddiqie. (2006). *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*,

the constitution. The importance of the role of quasi-institutions is a form of effort for countries that are transitioning from authoritarian states to democracies.<sup>26</sup> However, the law enforcement function of KPPU does not necessarily make KPPU a special judicial institution for business competition.

Meanwhile, in carrying out its duties and authorities, KPPU still experiences several obstacles that cause its duties cannot be carried out optimally. For example, such as: 1) In its investigative authority, when KPPU requires company data, it is often constrained by the nature of company confidentiality. So that the data in question cannot be accessed. Even if the business actor is indicated to have committed a violation, the KPPU cannot conduct a search against him. 2) Regarding the summoning of business actors and witnesses, the KPPU does not have the power to present them. 3) There is no cooperation with government agencies with KPPU. The data required by KPPU related to business competition violations are sometimes related to information from government agencies. When supporting data is missing or insufficient, the investigation process is not optimal to be carried out.<sup>27</sup>

The obstacles faced by KPPU seem to narrow the space for KPPU in its performance to handle business competition violations. The exercise of its authority is hampered and becomes less than optimal. This is of course a challenge for KPPU. Furthermore, regarding the institutional status of KPPU in the constitutional system is no less important to obtain a clear answer. Given that the existence of KPPU that is not expressly recognized will trigger debates that have consequences for its position as an institution and of course will have an adverse impact on the implementation of its duties and functions mandated by law.

## **B. The Power of KPPU Decisions and Legal Certainty**

The KPPU decision is the end of a long process of handling cases of business competition violations handled by the KPPU. Before the decision is handed down, KPPU must first fulfill the stages of the case handling flow as stipulated in Article 38 - Article 46 of the Business Competition Law. In addition, it is also regulated in the Business Competition Supervisory Commission Regulation Number 1 of 2019 concerning Procedures for Handling Cases of Monopoly Practices and Unfair Business Competition, Article 29 – Article 64. The KPPU decision must be implemented immediately when the business actor has obtained a copy of the decision and notified the decision. Article 44 Paragraph (1) of the Business Competition Law has given a deadline of 30 (thirty) days for business actors to be able to implement the KPPU decision and submit an

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*Sekretaris Jenderal & Kepaniteraan Mahkamah Konstitusi RI*. Jakarta: Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi RI.

<sup>26</sup> Achmad Sulchan. (2014). "Rekonstruksi Penegakan Hukum Terhadap Perkara Pidana Pemilihan Umum Berbasis Nilai Keadilan". *Jurnal Pembaharuan Hukum*, 3(3), 350–59.

<sup>27</sup> Eki Furqon & Helvan Subia Effendi. *Op. Cit.*



implementation report to the KPPU.<sup>28</sup>

The legal remedy for business actors who do not accept the KPPU decision is to file an objection to the commercial court. However, we can know that the existence of commercial courts in Indonesia is still limited and only stands in provincial capitals. Changes in the submission of objections from the district court to the commercial court will basically make it very difficult for business actors, because previously business actors could file legal remedies for objections in the district court according to the domicile of the business actor. Meanwhile, currently, business actors need access and longer time to make objections to the commercial court.

In its development, commercial courts continue to receive an expansion of absolute competence from special legislation (*lex specialis*), but on the other hand the number of commercial courts does not increase. The expansion of absolute competence should ideally be accompanied by an increase in the number of courts. This means that the addition of absolute competence will certainly have an impact on the relative competence of the commercial court itself. So, by looking at current and future needs, especially if there is an expansion of absolute competence, namely handling business competition cases, it is necessary to increase the number, so as to expand its relative competence.<sup>29</sup>

Although the KPPU is not a judicial institution that falls into the judicial branch of power, KPPU rulings have a strong position. If no objection is made against the decision, the decision will have permanent legal force as stipulated in Article 46 paragraph (1) of the Business Competition Law. However, the KPPU decision cannot be executed immediately before the court asks for an execution order. In this case, clarity regarding the strength of the KPPU decision becomes a discussion when many business actors do not implement the KPPU decision.

Based on official data released by the KPPU, the data entitled "KPPU and the Attorney General's Office Successfully Execute Sanctions on Business Actors Who Fail from the Verdict" contains information about business actors who have not implemented the KPPU decision and reported who have failed to implement the decision along with the total unpaid fines. Based on the data presented, there are still many business actors who have not implemented the KPPU decision.<sup>30</sup>

There are 109 KPPU rulings with permanent legal force that have not been implemented. Then, there were also 319 reported persons who failed to implement the decision, with a total unpaid fine of Rp341,000,000,000 (three hundred forty-one billion

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<sup>28</sup> *Ibid.*

<sup>29</sup> Rahmadi Indra Tektona, *Op. Cit.*

<sup>30</sup> Komisi Pengawas Persaingan Usaha. (2022). *KPPU dan Kejaksaan Agung Berhasil Mengeksekusi Sanksi Atas Pelaku Usaha Yang Mangkir dari Putusan*. <https://kppu.go.id/blog/2022/11/kppu-dan-kejaksaan-agung-berhasil-mengeksekusi-sanksi-atas-pelaku-usaha-yang-mangkir-dari-putusan/>.

rupiah).<sup>31</sup> Therefore, KPPU's cooperation with the Attorney General's Office of the Republic of Indonesia, one of which is intended to assist the execution process, both in litigation and non-litigation. So it is possible that the Attorney General's Office of the Republic of Indonesia will criminalize the reported persons who are absent from the implementation of the KPPU decision with permanent legal force.

Referring to the legal rules, within 30 (thirty) days from the receipt of notification of the decision by the KPPU to business actors, the decision must have been implemented. If it is not implemented, then the decision will be investigated based on applicable provisions after being submitted to the investigator by the KPPU (Article 44 paragraph (4) of the Business Competition Law). Furthermore, it is clarified through KPPU Regulation Number 1 of 2019 concerning Case Handling Procedures that cases will be processed criminally by the police if business actors do not implement the KPPU decision in at least 2 (two) cases (Article 67). Of course, after the case was handed over by the KPPU to the police.

Based on the description above, it can be said that the KPPU as the only state institution that has the authority to enforce the laws of the Business Competition Law has a decision whose level of strength can be said to be not strong. This can be seen in the Business Competition Law which states that the KPPU decision will take effect if determined in advance by the commercial court and will only have permanent legal force (*inkracht*) if no legal remedy is filed to object to it. This can be interpreted that the KPPU decision is not the same decision as the decision of the judiciary in general, because the KPPU decision cannot be directly executed.

The position of a judgment whose existence is recognized by law but whose execution cannot be guaranteed expressly indicates the absence of legal certainty. The constitution expressly states the right to obtain legal certainty in article 28D paragraph (1) of the 1945 Constitution and this is a right that is owned by everyone or in this case all Indonesian people.<sup>32</sup> The logical consequence of this is that the consensus of the state gives equal rights to obtain several things including protection and fair legal certainty.<sup>33</sup> The construction of inconsistencies in fair legal protection and certainty is at least still reflected in the implementation of handling business competition.<sup>34</sup>

The implications arising from uncertainty on business competition legal certainty will have an impact on hampering Indonesia's economic development. In line with the

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<sup>31</sup> *Ibid.*

<sup>32</sup> Indra Kusumawardhana. (2018). "Indonesia di Persimpangan: Urgensi "Undang-Undang Kesetaraan dan Keadilan Gender" di Indonesia Pasca Deklarasi Bersama Buenos Aires Pada Tahun 2017 (Indonesia at a Crossroads: The Urgency of "Gender Equality and Justice Act" in Indonesia After Buenos Aires)". *Jurnal HAM*, 9(2): 153–74.

<sup>33</sup> Ilham Aji Pangestu, *et al.* (2023). "Environmental Conservation Policy Model Based on the Protection of Indigenous Peoples in Indonesia". *Sasi*, 29(158), 96–111.

<sup>34</sup> Parida Angriani. (2016). "Indikasi Kartel Komunitas Strategis Dalam Perspektif Hukum Persaingan Usaha Tidak Sehat". *Jurnal Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi*, 7(2): 24–31.



opinion expressed by Sembiring regarding the Job Creation Law, which needs to be prepared to attract investors to invest in Indonesia, it is necessary to have clear and logical legal tools.<sup>35</sup> This is still a homework for policymakers to be able to clarify the status, especially for legal rules and existing legal instruments in handling business competition violations.

### **C. KPPU Strengthening: A Comparative Study**

The issue of strengthening the authority of the KPPU has become an interesting and controversial issue. Those who want the KPPU to be more powerful, then the celebration strengthens the authority of the KPPU as it exists today. The second group wants the KPPU's authority to be proportionate to the Indonesian judicial system. KPPU must be placed as an institution that has power in the executive field.<sup>36</sup>

In order to see the position of KPPU in the judicial system in Indonesia, a comparative study was conducted with business competition law enforcement agencies in several countries that have similar institutions. This comparative study is intended to find a reference to place the position of business competition law enforcement agencies in the constitutional system and judicial system. Researcher took several countries as comparison material, namely: Thailand, Malaysia, Singapore, Japan, the United States, and Germany.

#### **1. Thailand Competition Law Enforcement Agency**

Competition law in Thailand is regulated in the Trade Competition Act of 1999. The main mission of regulating business competition in the country of white elephants is to regulate relations between business actors in Thailand. Thailand's competition laws regulate all business sectors except those that are exempt from the law. In terms of substantiation, many trade competition regulations adopt the norms of competition law in the US and European Union competition law. Broadly speaking, competition laws regulate trade practices that create monopolies and reduce competition.

Thailand's trade competition law established a competition law enforcement agency, the Trade Competition Commission (TCC). Institutionally, TCC is a government agency under the Department of Internal Trade, a department under the minister of trade. TCC membership consists of representatives from a wide variety of government agencies and comes from 8 to 12 people who have expertise. Most of them are from business people. TCC has the authority of, among others:

1. make recommendations to the minister in terms of making regulations in the field of business competition as specified in the TCC.
2. determine market share and sales that can determine the dominant position in the business.

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<sup>35</sup> Sentosa Sembiring. (2010). *Hukum Investasi*. Bandung: CV. Nuansa Aulia.

<sup>36</sup> Normand Edwin Elnizar. (2017). *Chandra M. Hamzah: Dudukkan Kembali KPPU Pada Posisi yang Benar*. *Hukumonline.com*. <https://www.hukumonline.com/berita/a/chandra-m-hamzah--dudukkan-kembali-kppu-pada-posisi-yang-benar-lt59238d3e414c6>.

3. provide consideration related to the application for a merger application that may restrict trade practices.
4. receive reports from business actors related to actions in the field of criminal law that violate prohibitions in the trade competition law.

## 2. Malaysian Competition Law Enforcement Agency

Competition in Malaysia was initially governed by the energy and communications sectors. Provisions relating to competition regulations incorporated in their respective laws and regulations, indicate prohibitions relating to anti-competitive practices.<sup>37</sup> Henceforth, competition law arrangements in Malaysia are regulated in the Competition Commission Act 2010 (Competition Act). The Competition Act provides provisions relating to the establishment, authority and function of the Malaysia Competition Commission (MyCC) and other matters related thereto.<sup>38</sup>

MyCC as the supervisor and implementer of the 2010 Competition Law, is an independent body under the Ministry of Domestic Trade, Cooperatives, and Consumerism.<sup>39</sup> MyCC is a key institution chosen to focus on enforcement of business competition policies and laws.<sup>40</sup> MyCC's powers are fully regulated in the Competition Commission Act 2010, section 16(d). Likewise, the provisions for penalties for violations that occur in the field of business competition, including within the realm of MyCC's authority mentioned in (Section 17 (2) (b) of the Competition Commission Act 2010).<sup>41</sup>

MyCC is established and regulated by the provisions of the Competition Act and MyCC Act. Among other things, its statutory functions are to conduct market reviews, investigate alleged violations of competition law, receive and follow up complaints of violations, order provisional measures in urgent cases, conduct examinations, make findings of violations or otherwise and impose penalties for violations. Thus, the commission practically bears the entire responsibility for enforcing the competition regime. Therefore, it is very important for the members of the commission to be able and willing to carry out their duties as supervisors and main judges of competition policy in the country.<sup>42</sup>

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<sup>37</sup> Nazura Abdul Manap. (2016). "Regulating Anti-Competitive Business Conduct via Competition Law in Malaysia". *Journal Management and Muamalah*, 6(2): 11–21 <http://www.kuis.edu.my/icomm/2nd/download/IC002.pdf>.

<sup>38</sup> Michelle Nabilla Firdauzi. (2017). "Kelembagaan Competition Authority Dalam Asean Economic Community (AEC)". *Spirit Pro Patria*, IV(1): 17–29.

<sup>39</sup> Cassey Lee. (2014). "Competition Law Enforcement in Malaysia: Some Recent Developments". *Malaysian Journal of Economic Studies*, 51(Special Issue): 77–88.

<sup>40</sup> Retno Wiranti, Noor Aisyah Amini, & Deswin Nur. (2021). "Dampak Pandemi Covid-19 dan Pemulihan Ekonomi Terhadap Penegakan Hukum dan Kebijakan Persaingan Usaha di ASEAN". *Jurnal Persaingan Usaha*, 1(1), 54–69. DOI: <https://doi.org/10.55869/kppu.v1i1.12>

<sup>41</sup> Hasnah Haron, *et al.* (2013). "Competition Act and Roles and Authorities of Competition Commission: Perception of Academicians of Indonesia and Malaysia". *International Journal of Business and Society*, 14(3): 390–411.

<sup>42</sup> Wilson Tay Tze Vern. (2015). "Competition Law in Malaysia: Renaissance and The Road Ahead". *Malayan Law Journal*, 2(xxiii): 1–21.

The approach used in competition law enforcement in Malaysia is a soft approach and a hard approach. The soft approach taken by MyCC is enforced for violators by not providing penalties, fines or damages. Instead, MyCC imposes financial sanctions on violators in the use of a harsh approach. In cases handled by MyCC, if there is evidence that shows an element of violation, MyCC will continue the investigation process. MyCC will issue a final decision to determine whether there has been a breach under the Competition Act 2010. In case of violations, MyCC will impose financial penalties for several cases mentioned in its laws and regulations.<sup>43</sup>

### 3. Singapore Competition Law Enforcement Agency

Business competition in Singapore is regulated through the Competition Act 2004, complementary legislation to reform market liberalization and achieve compliance with its free trade agreements.<sup>44</sup> The ban on anti-competitive behaviour came into effect under the supervision of the Competition Commission of Singapore (CCS) following the passage of the Competition Act 2004. The CCS, which is under the Ministry of Trade and Industry (Chapter 50B),<sup>45</sup> has the authority of the judiciary, and therefore has a crucial role in policy and legal development in Singapore.<sup>46</sup> CCS has the authority to supervise the implementation of the Competition Act

In April 2018, CCS became the Competition and Consumer Commission of Singapore (CCCS).<sup>47</sup> The Competition Act 2004 empowers CCS to investigate suspected anti-competitive activity, determine whether such activity violates the law and enact appropriate financial remedies, directives and sanctions. The CCCS also has an obligation to advise governments with respect to competition issues<sup>48</sup> including collective agreements or practices that prevent, limit, or distort competition, abuse of dominant position, and mergers that substantially reduce competition. In addition, CCCS is responsible for additional functions of administering the Consumer Protection Act.<sup>49</sup>

Competition law enforcement should consider the context and objectives of the regulation, and regulations should be developed with the competitive impact of the competition in mind.<sup>50</sup> If competition enforcement is carried out by sectoral regulators, there is a need to harmonize approaches because the activities of private companies may extend beyond regulated sectors and fall under the purview of competition law. Cross-

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<sup>43</sup> Nazura Abdul Manap. *Op. Cit.*

<sup>44</sup> Burton Ong. (2006). "The "Competition Act 2004": A Legislative Landmark on Singapore's Legal Landscape". *Singapore Journal of Legal Studies*, 7: 172–90.

<sup>45</sup> Charmaine Tan & Ng Ming Jie. (2016). *The Role of Competition in Singapore's Economic Growth and Public Policies*. Singapore.

<sup>46</sup> Burton Ong. (2015). "Competition Law and Policy in Singapore". *ERIA Discussion Paper Series*, 53(8): 1–20. <https://doi.org/10.1787/clp-v6-art9-en>.

<sup>47</sup> Claire Jeffs. (2016). *E-Commerce Competition Enforcement Guide*, in *GCR Insight*. United Kingdom: Law Business Research Ltd, p. 1–245.

<sup>48</sup> Charmaine Tan & Ng Ming Jie. *Op. Cit.*

<sup>49</sup> The Law Revision Commission, *Consumer Protection (Fair Trading) Act 2003*, 2022.

<sup>50</sup> Ankit Srivastava & Aditi Richa Tiwary. (2021). "Competition Law in Asia: The Interplay of Power Dynamics in the Digital Market". *Lentera Hukum*, 8(2), 295. DOI: <https://doi.org/10.19184/ejlh.v8i2.23849>

sector competition issues are addressed by CCCS in consultation with sectoral regulators. CCCS and sectoral regulators also meet regularly as part of the Community of Practice for Competition and Economic Regulations (COPCOMER) to share best practices and experiences on competition and regulatory issues within their scope.<sup>51</sup>

#### **4. Japan Competition Law Enforcement Agency**

The regulation of competition law in Japan is regulated in the Antimonopoly Law (AML), 1947. Article 27 paragraph (1) of AML stipulates that the business competition enforcement agency in Japan is the Japan Fair Trade Commission (JFTC). The JFTC is an independent administrative institution. Administratively, the JFTC is responsible to the prime minister. The filling of the post of commissioner of the JFTC is based on the appointment of the prime minister with the approval of parliament. The appointment and dismissal of JFTC commissioners was confirmed to the Japanese emperor. The requirement to become a JFTC commissioner is to have expertise in law and economics. Although appointed by the prime minister and with the approval of parliament does not eliminate the independence of the JFTC. The independence of the JFTC causes this institution to be evidenced in any decision-making that cannot be influenced by other state institutions including the prime minister and parliament.<sup>52</sup>

As a competition law enforcement agency, AML gives authority to the JFTC including administrative authority, quasi-legislative and quasi-judicial authority. In the administrative field, the JFTC has the authority to receive and examine reports from companies on violations of AML, conduct general surveys related to business activities, economic conditions and monopolistic conditions, perform consultative functions with companies and associations of business actors, discuss competition issues with international organizations and competition law authorities. In the quasi-legislative field, the JFTC has the authority to make regulations on the actions of business actors that are considered unfair competition, regulations on the determination of selling prices and purchase prices of certain commodities, procedural law before the JFTC. In the quasi-judicial field, the JFTC has the authority to examine and prosecute cases of AML violations.

#### **5. United States Competition Law Enforcement Agency**

Competition law regulations in the US have developed in accordance with the development of US business and economy. The first law regulating business competition was the Sherman Antitrust Act (1914), followed by several laws, namely the Clayton Act (1914), the Federal Trade Commission Act (1914), the Robinson-Patman Act (1934), the Celler-kefauver Anti Merger Act (1976), and the International Antitrust Enforcement Act (1994).<sup>53</sup>

The institution of competition law enforcement in the US is carried out by two agencies, namely the Antitrust Division of the Department of Justice (DOJ-AD) and the

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<sup>51</sup> Charmaine Tan & Ng Ming Jie. *Op. Cit.*

<sup>52</sup> Muh. Risnain. *Op. Cit.*

<sup>53</sup> Muh. Risnain. *Op. Cit.*

Federal Trade Commission (FTC). The DOJ-AD is an agency under the Department of Justice that is part of the executive formed through the Sherman Act. The FTC was formed through the Federal Trade Commission Act (1914). The presence of the FTC in the enforcement of competition laws in the US to strengthen the enforcement of business competition laws.

The two competition law enforcement agencies in the US have different divisions of authority. DOJ-AD has the authority to determine whether what a business actor has committed constitutes a criminal offense or a civil offense. If the offense is a criminal offense, it is the authority of the DOJ-AD to file charges through the federal district court. If no criminal violations are found in the investigation, then the investigation is conducted by the FTC. So the working relationship between DOJ-AD and FTC occurs when DOJ-AD does not take action in enforcing competition law, then FTC can take enforcement action.

The FTC, established under the FTC Act, is an independent agency with broad powers. The FTC has the authority to issue cease-and-desist orders against businesses suspected of violating competition laws, supervise and take legal measures. The FTC also has the authority to enforce laws against violations of competition laws under the Clayton Act, the Robinson-Patman Act and the Celler-Keefe Antimerger Act.<sup>54</sup>

## 6. German Competition Law Enforcement Agency

Competition regulation in Germany is regulated in the Competition Protection Act (*Gesetz gegen Wettbewerbs Beschränkungen-GWB*) of 1957. The law comprehensively regulates aspects of business competition. This law regulates the establishment of a business competition monitoring agency, namely the Federal Cartel Office (FCO) or *Bundeskartellamt*. The Federal Cartel Office is administratively responsible to the Federal Minister of the Economy. In carrying out its duties and responsibilities, FCO is independent. FCOs are located in every state. The FCO has the task of investigating and collecting data from companies suspected of fraudulent business activities.

From the institutional side, FCO has almost the same institutional and authority as the judiciary which has the authority to make decisions. Against the FCO ruling, the dissenting party may appeal to the court. In competition law enforcement, Germany has another organ, the *monopolkommission* (Monopolies Commission). The authority of *monopolkommission* is the authority to report, review and recommend, not to decide.<sup>55</sup> The commissioners of *monopolkommission* consist of jurists and economists.

Basically, the form, order, and structure of business competition law enforcement agencies will return to the needs and patterns that occur in a country. In the Indonesian legal system, the position of KPPU is as a public body that gives rise to judicial administrative act authority. This position can be seen from the provisions of Business Competition Law which juridically lists the duties of KPPU in the field of competition law enforcement. With this duty

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<sup>54</sup> Johnny Ibrahim. (2009). *Hukum Persaingan Usaha: Filosofi, Teori dan Implikasi Penerapannya di Indonesia*, ed. by Setiyono Wahyudi, Yuyut Setyorini, and Indro Basuki. Malang: Bayumedia Publishing.

<sup>55</sup> Arie Siswanto. (2002). *Hukum Persaingan Usaha*. Jakarta: Ghalia Indonesia.

and authority, KPPU is authorized to apply business competition law through the process of investigation, investigation, and decision making.<sup>56</sup>

If we want to formulate how exactly the ideal authority that must be possessed by business competition law enforcement agencies, at least we need to compare and learn from similar institutions in developed countries that have previously succeeded in implementing business competition law enforcement in the country concerned. If you look at the practice of business competition law enforcement in the United States, there are two agencies that handle business competition cases, namely DOJ-AD and FTC. Both have different scopes in the implementation of investigations. The FTC conducts investigations into the retail, pharmaceutical, and defense industry sectors. While DOJ-AD on mergers in telecommunications, agricultural industry, and financial services.<sup>57</sup>

Although the possible solutions from the DOJ-AD and FTC will be the same, the methods for obtaining damages between the two are very likely to differ. The DOJ-AD, which initiates enforcement actions in federal district courts, has no administrative alternative, so in this case the FTC can initiate internal administrative proceedings.<sup>58</sup> In practice, although they seem to overlap in some respects of authority, the DOJ-AD and FTC are complementary agencies.<sup>59</sup> Before opening an investigation, the FTC and DOJ-AD consulted each other to avoid attempts at duplication.<sup>60</sup>

In Germany there are five institutions that play a role in the process of competition law enforcement, the five institutions consist of the Anticartel Agency (*Bundeskartellamt* or Federal Cartel Office), the Federal Ministry of Economics, the Regional Cartel Office (Supreme Land Authorities), the Monopolies Commission and the courts.<sup>61</sup> The division of authority between competition agencies in Germany has been going well, starting from the Regional Cartel Office which is authorized to handle competition cases in the regions, the Anti-Cartel Agency has almost the same authority as the Regional Cartel Office but its authority is greater because it can examine competition cases that have a greater impact.<sup>62</sup>

Another institution authorized to handle business competition cases is the Federal Ministry of Economy, the role of this agency is only to give approval for the concentration of a market that is felt to benefit the national economy as a whole which was previously banned by the anti-cartel agency. Less authority belongs to the Monopoly Commission. The main task of this institution is to provide consideration to the German Federal Government

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<sup>56</sup> I Made Sarjana and Budi Kagramanto. (2012). 'Prinsip Pembuktian Dalam Hukum Acara Persaingan Usaha' (Uvinersitas Airlangga, 2012).

<sup>57</sup> Federal Trade Commision, 'Merger Review', 2023 <<https://www.ftc.gov/enforcement/merger-review>>.

<sup>58</sup> *Ibid.*

<sup>59</sup> Federal Trade Commision, 'The Antitrust Laws', 2023 <<https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws>>.

<sup>60</sup> *Ibid.*

<sup>61</sup> Susanti Adi Nugraha. *Op. Cit.*

<sup>62</sup> Hikmahanto Juwana, *et al.* (2003). *Peran Lembaga Peradilan Dalam Menangani Perkara Persaingan Usaha*. Jakarta: Idayu Press.



regarding the conditions or conditions contained in a business or industrial sector.<sup>63</sup>

The anti-cartel agency in Germany is authorized to make seizures (Article 58 paragraph (1) GWB).<sup>64</sup> Germany's anti-cartel agency is also authorized to examine and search documents owned by a company. To legalize these measures, the anti-cartel agency requires a court order.<sup>65</sup> The authority to make such confiscation is not without the control of the judiciary, because within 3 (three) days no later than the seizure of the object of investigation, the German Anti-Cartel Agency must request a determination from the court where the seized object is located. A court order against such confiscation is subject to appeal under the German Penal Code.<sup>66</sup>

Based on the description above, it can be seen that Germany, which has five business competition law enforcement agencies, can carry out the implementation of business competition law enforcement well, indeed as if there is an overlap of authority but there is a kind of jurisdictional division that has been neatly arranged so that business competition law enforcement can run optimally.

Furthermore, the competition agency in Japan, JFTC, also has the authority to make confiscations (Article 102 Antimonopoly Act). Armed with a warrant issued by a trial judge, FTC staff members can conduct searches, inspections, and seizures in criminal investigations that fall within their jurisdiction. The Antimonopoly Act regulates details regarding the authority of searches and seizures up to the inventory of seized goods and the return of these goods, such arrangements and authorities are not owned by the KPPU, because this authority is the authority possessed by police investigators.

Enforcement of business competition law does require great authority, especially the authority that has been the authority of police investigators, namely the authority to search and confiscate. This has been accommodated in several countries so that this authority becomes part of the business competition agency's ability. With the aim of maximizing the performance of competitive institutions. KPPU should have search and seizure authority, because without this authority it will make it difficult for KPPU to disclose business competition cases. Related issues that will arise if the KPPU is given additional authority such as seizures and searches have also been answered from the practice of enforcement of business competition laws in several countries.

In summary, the comparison of business competition law enforcement can be seen in the following table.

**Table 1. Comparison of Law Enforcement Agencies in Several Countries**

<b>Country</b>	<b>Institution Name and Legal Basis</b>	<b>Substance</b>	<b>Procedure</b>
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<sup>63</sup> *Ibid.*

<sup>64</sup> *Gesetz Gegen Wettbewerbsbeschränkungen (GWB)*, 1998 <<https://doi.org/10.9785/9783504385781-020>>.

<sup>65</sup> Hikmahanto Juwana, *et al. Op. Cit.*

<sup>66</sup> *Act on Prohibition of Private Monopolization and Maintenance of Fair Trade*, 1947.

<b>Thailand</b>	Trade Competition Commission (TCC); Trade Competition Act of 1999	Includes administrative and regulatory authority	Make recommendations, determine market share, provide consideration related to reports and requests for violations of business competition, and receive reports related to actions in the field of criminal law that violate prohibitions in the trade competition law. In order to conduct an examination under this act and gather documents, accounts, registrations, or other evidence for the purpose of examining and moving forward with a case, TCC may enter locations where it is logically believed that there is a violation of the act's provisions. <sup>67</sup>
<b>Malaysia</b>	Malaysia Competition Commission (MyCC); Competition Commission Act 2010	Includes administrative, regulatory authority, and includes imposing penalties for violations	Conduct market reviews, investigate suspected violations of competition law, receive and follow up complaints of violations, order provisional measures in urgent cases, conduct examinations, make findings of violations or otherwise and impose penalties for violations. MyCC has the right to enter a location at any time that is reasonable, day or night, with or without assistance, and may use force if necessary to search for items. <sup>68</sup>
<b>Singapore</b>	Competition and Consumer Commission of Singapore (CCCS); Competition Act 2004	Includes administrative, regulatory authority, and includes imposing penalties for violations	Investigate suspected anti-competitive activities, determine whether such activities violate laws and enact appropriate financial remedies, directives and sanctions. CCCS has powers to inspect or search premises as part of its investigations. <sup>69</sup>
<b>Japan</b>	Japan Fair Trade Commission (JFTC); Antimonopoly Law (AML) 1947	Includes authority in the administrative field, quasi-legislative and quasi-judicial authority	Administrative: receives and examines reports on violations of AML, conducts general surveys related to business activities, economic conditions and monopolistic conditions, performs consultative functions. Quasi-legislative: making regulations related to business competition. Quasi-judicial: examining and adjudicating

<sup>67</sup> Trade Competition and Commission, *Trade Competition Act*, 2017.

<sup>68</sup> Iskandar Ismail. (2014). Malaysia Competition Commission: Investigation and Enforcement Procedures Under the Competition Act, in *ILKAP*.

<sup>69</sup> Competition & Consumer Commission Singapore. (2019). Entry With or Without Warrant. Accessed from <https://www.cccs.gov.sg/approach-cccs/cooperating-with-cccs-investigation/entry-with-or-without-warrant>.

			cases of AML violations. JFTC has the right to perform a site visit, search, or seizure. <sup>70</sup>
<b>United States</b>	Antitrust Division of Department of Justice (DOJ-AD) and Federal Trade Commission (FTC); Sherman Act 1914 Federal Trade Commission Act 1914, Clayton Act 1914, Robinson Patman Act 1934, Celler-kefauver Anti Merger Act 1976	The DOJ-AD imposes criminal sanctions and has no administrative alternative. Administrative powers exercised by the FTC include consumer or civil damages	The DOJ-AD focuses on the financial services sector, while the FTC focuses more on the defense, pharmaceutical, and retail industries.
<b>Germany</b>	Federal Cartel Office (FCO), The Federal Ministry of Economics, Supreme Land Authorities, Monopolies Commission and court; Competition Protection Act 1957	In accordance with the authority of each institution	FCO: investigating and collecting data from companies suspected of fraudulent business activities. The FCO has the authority to conduct seizures and searches with the control of the courts. The Federal Ministry of Economics: gives an approval to the concentration of a market. Supreme Land Authorities: handle competition matters in the district. Monopolies Commission: reporting, review and recommendations Court: make orders, determinations, and decide.

*Source: processing data by researchers*

#### **D. The Urgency of Establishing a Special Court for Business Competition**

The legal position of a state institution largely determines its role and function in carrying out the mandate given to it.<sup>71</sup> State institutions whose position and authority are not yet legally strong, will certainly experience more obstacles in carrying out their duties. Conversely, state institutions with a strong and clear position and authority, will

<sup>70</sup> Japan Fair Trade Commission. (2023). Chapter XII Investigation of Criminal Cases, Etc. Accessed from [https://www.jftc.go.jp/en/legislation\\_gls/amended\\_ama09/amended\\_ama15\\_12.html](https://www.jftc.go.jp/en/legislation_gls/amended_ama09/amended_ama15_12.html).

<sup>71</sup> Palmawati Taher, Dwi Andayani Bs, & Muhammad Rizqi Fadhlillah. (2022). Audit Board of Indonesia's Supervision Duty Reviewed From Islamic Law Perspective for Acceleration of Sustainable Development. *Fiat Justisia: Jurnal Ilmu Hukum*, 16(2), 129–40. DOI: <https://doi.org/10.25041/fiatjustisia.v16no2.2645>

tend to be more effective in achieving the goals of their formation.<sup>72</sup>

Regarding the institutional status of KPPU, the Business Competition Law states that KPPU is an independent institution that is not affected by the power of any party. This is emphasized in Article 30 paragraph (2) of the Business Competition Law. In addition, the appointment of KPPU commissioners still allows checks and balances because they are carried out by the President through the approval of the House of Representatives in accordance with the mandate of the Business Competition Law in Article 31 paragraph (2).<sup>73</sup> KPPU's accountability to the president does not eliminate the KPPU's impartiality. This is done because KPPU uses the APBN budget so that it is for administrative purposes.<sup>74</sup>

Zainal Arifin Mochtar, stated that to know whether or not the position of a state institution is independent, it must be seen in the legal basis for the establishment of the institution. Independent positions must be expressly provided for in the relevant regulations. If based on this criterion, KPPU is clearly an independent institution, because in Business Competition Law this independent position is expressly stated. Although many state institutions are declared independent by laws and regulations in Indonesia, almost all of these institutions do not fully have independent institutional characteristics. For example, for the leadership change model carried out with staggered terms. None of Indonesia's independent state institutions has a staggered leadership shift.<sup>75</sup>

In the context of KPPU, this is natural, considering that, in addition to the KPPU's position which is independent from the intervention of other institutions, its authority and power also combine several properties of branches of power. The authority of this commission combines the functions of the executive agency, because it is the executor of rules related to business competition, then the legislature, because it has the authority to make laws and regulations, namely commission regulations, and the judiciary, so it is called quasi-judicial, because it has the authority to decide business competition cases.

In addition to KPPU, the settlement of business competition violations is currently still scattered to different institutions and separated from their authority. This is because the authority of the KPPU is considered not optimal. This is of course less effective in its implementation. So that if there are efforts to connect and implement integration in one body, the KPPU Judiciary, for example, will certainly be more effective and can guarantee a more transparent process, have legal certainty and can achieve business competition fairness.

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<sup>72</sup> Tim Publikasi Hukumonline. 'Kedudukan KPPU Dalam Sistem Ketatanegaraan di Indonesia', *Hukumonline.com*, 2021: <https://www.hukumonline.com/berita/a/kedudukan-kppu-dalam-sistem-ketatanegaraan-di-indonesia-lt6131a43c8858c?page=all>.

<sup>73</sup> Jimly Asshiddiqie. (2021). *Konstitusi & Konstitusionalisme Indonesia*. Jakarta: Sinar Grafika.

<sup>74</sup> Bagir Manan. (2004). *Hukum Positif Indonesia (Suatu Kajian Teoritik)*. Yogyakarta: FH UII Press.

<sup>75</sup> Zainal Arifin Mochtar. (2016). *Lembaga Negara Independen: Dinamika Perkembangan dan Urgensi Penataannya Kembali Pasca-Amandemen Konstitusi*. Jakarta: Raja Grafindo Persada.

If the KPPU's function will be focused on judicial functions only, then the revision of the law on business competition is a necessity. The struggle is not limited to revising the law, but it requires readjustment between regulations and other relevant legal and law enforcement agencies. Therefore, it will require role, cooperation, and commitment from all relevant parties and have an interest in the implementation of resolving violations of business competition in accordance with the principles and principles contained in the Business Competition Law and other related regulations.

KPPU in carrying out judicial functions must be able to show quality and professional quality by eliminating multifunction and focusing on judicial functions only. Given that what has happened so far is that KPPU carries out mixed functions, both administrative, regulatory, and semi-judicial functions. The implementation of these three functions simultaneously, of course, allows for non-optimization in the process. Moreover, the legal basis or granting authority to the KPPU seems to be half-hearted and in certain authorities is considered contrary to the judicial system in Indonesia.

The structure of the special competition court that will be established must be adapted to the legal context and competition system in Indonesia. It is important to know that the special court of business competition is projected as the estuary of every violation and dispute process that occurs in the field of business competition. These courts are beyond the conventional judicial power. So that in the future the authority to resolve cases of violations of business competition will be taken over by this special business competition court according to its level.

## **CONCLUSION**

The authority of KPPU which is considered large enough has implications in its implementation. Because the KPPU has the authority to investigate, prosecute, and decide. This causes KPPU to be considered a super body institution because it exercises the authority of other institutions. However, there are KPPU finances that cannot be implemented optimally. As with the investigative authority, the KPPU does not have the authority to conduct searches and seizures. In the prosecution authority, KPPU does not have the authority to confiscate documents related to prosecution. Likewise, in the authority to decide, the KPPU cannot immediately implement its decision, but must first be asked to the court.

Researchers argue that it is necessary to be able to assess the level of effectiveness of handling business competition violations by KPPU with its current position. In this case, it is also possible to change the direction of the KPPU's authority as a special judicial body in the field of business competition with all possible legal consequences. Promoting a consistent attitude which is an important character of a court is the main and important thing to do. Because this will have an important role as a guardian of trust as well as the reputation of the institution concerned to be able to provide legal certainty for all parties concerned.

Based on the results of the study, the researchers suggested; *first*, revise laws related

to KPPU's authority in handling business competition violations; *second*, strengthening the authority of the KPPU and providing focus of authority. Thus, KPPU has a strong authority base and can carry out its authority optimally. *Third*, or as a follow-up to the previous two steps, is to synchronize each related rule. This is certainly a great hope for all of us to achieve a healthy business climate and a developed and strong country economy.

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