

## Regulation and Sanctions Against Unfair Business Competition: Challenges in Law Enforcement

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**Abstrak:** This study aims to examine the effectiveness of regulations and legal sanctions in overcoming unfair business competition practices and identify the main challenges in law enforcement in Indonesia. The method used is a normative legal research method, with a statute approach, a conceptual approach, and a case approach. The focus of the study is directed to the analysis of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and its implementing regulations, as well as its application in several decisions of the Business Competition Supervisory Commission (ICC). The results of the study show that in substance, the existing regulations are adequate to regulate and prohibit unfair business competition practices. However, implementation in the field still encounters a number of serious obstacles, such as the limited authority of ICC, difficulties in proving in practice, and weak legal awareness among business actors. Therefore, legal reforms are needed aimed at strengthening ICC's institutions, simplifying legal procedures, and imposing stricter sanctions to create a deterrent effect. In addition, sustainable political commitment and public education are also needed as part of a long-term strategy to create a healthy, fair, and competitive business competition climate in Indonesia.

**Keywords:** Business competition, regulations, sanctions, law enforcement, KPPU

### INTRODUCTION

Business competition is one of the important elements in a healthy and efficient market economy system because through an open and fair competition mechanism, business actors are encouraged to continue to improve product quality, reduce production costs, and innovate to meet consumer needs and satisfaction.<sup>1</sup> In a competitive business environment, no single actor can arbitrarily dominate the

market, as consumers have many options available.<sup>2</sup> This condition creates a market balance that encourages the efficiency of resource allocation and creates reasonable prices. Furthermore, healthy business competition also drives overall economic growth because it creates a dynamic business climate and attracts investment. However, if not properly regulated, competition can turn unfair—as in the case of monopolistic practices, cartels, or

<sup>1</sup>Putra, A. A. (2024). *Tinjauan Terhadap Penjualan Produk Dibawah Harga Standar (Predator Pricing) Berdasarkan Undang-Undang Nomor 5 Tahun 1999 Tentang Praktek Monopoli Dan Persaingan Usaha Tidak Sehat (Studi Kasus*

*Toko Ps Store Pekanbaru)* (Doctoral Dissertation, Universitas Islam Negeri Sultan Syarif Kasim Riau).

<sup>2</sup> Sinaga, O. P. (2022). *Perlindungan Hukum Terhadap Konsumen Yang Melakukan Transaksi Jual-Beli Melalui Media Sosial Facebook* (Doctoral Dissertation, Universitas Jambi).

unilateral pricing—which actually harms consumers, inhibits the entry of new players, and lowers the quality of services and products. Therefore, the existence of clear regulations and strong supervisory institutions such as ICC are indispensable to ensure that the principles of business competition are carried out in a fair, transparent manner, and support the creation of a sustainable economic system.<sup>3</sup>

Through healthy competition, business actors are encouraged to continue to improve the quality of products and services, reduce prices, and innovate for consumer satisfaction. However, in practice, not all business actors uphold the principle of fair competition. Various forms of unfair business competition such as cartels, monopolies, predatory pricing, and discriminatory practices still occur, which have an impact on consumers, other business actors, and the economy in general.<sup>4</sup>

To overcome this, the state is present through regulations and business competition laws. In Indonesia, regulations regarding business competition are regulated in Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. This law provides a legal basis for the Business Competition Supervisory Commission (ICC) to take action against various forms of violations. However, in its implementation, law enforcement against unfair business competition still faces various challenges, both from regulatory, institutional, and practical aspects.<sup>5</sup>

One of the main challenges is the weak deterrent effect of the sanctions imposed. The administrative sanctions

given are often considered disproportionate to the profits obtained by the perpetrators from the fraudulent practices. In addition, overlapping regulations, lack of coordination between institutions, and lack of public and business actors' understanding of the importance of healthy competition are also serious obstacles in law enforcement.

This research is important to examine in depth the effectiveness of existing regulations and sanctions and identify the obstacles faced in their implementation because regulations without optimal implementation will not be able to realize their main goal, which is to create fair and healthy business competition. Evaluation of regulations and sanctions is needed to find out the extent to which the regulations that have been made are able to answer the dynamics in the field, and whether the sanctions imposed really have a deterrent effect on violating business actors. In addition, the identification of various implementation constraints—both structural, administrative, and technical—can provide a more complete picture of the causes of low law enforcement effectiveness. For example, obstacles such as overlapping authority, lack of resources, resistance from business actors, or weak coordination between agencies can be significant factors that hinder the successful implementation of sanctions. By understanding the root of these problems, this research is expected to make a real contribution in formulating policy recommendations that are more responsive, implementive, and have a positive impact on improving the business competition legal system in Indonesia. By analyzing the

<sup>3</sup> Adnan, K. (2024). Fungsi Hukum Pembangunan Ekonomi Dalam Persaingan Usaha Yang Sehat. *Lex Renaissance*, 9(2), 478-505.

<sup>4</sup> Malidu, R. S. (2025). *Analisis Yuridis Persaingan Tidak Sehat Notaris Dalam Perspektif Kode Etik Ikatan Notaris Indonesia* (Doctoral

Dissertation, Universitas Islam Sultan Agung Semarang).

<sup>5</sup> Tulung, S. V., & Yusuf, H. (2024). Analisis Regulasi Hukum Dagang Atas Persaingan Usaha Dalam E-Commerce Di Era Digital. *Jurnal Intelek Dan Cendekiawan Nusantara*, 1(2), 1265-1278.

challenges in law enforcement against unfair business competition, it is hoped that normative and practical solutions can be found to strengthen the business competition legal system in Indonesia.

#### **METHODOLOGY**

This research uses a normative legal research method, which is an approach that focuses on the study of laws and regulations, legal principles, and legal doctrines relevant to the issue of unfair business competition. This normative approach is used to analyze in depth the regulations that regulate the prohibition of monopolistic practices and unfair business competition, especially as stipulated in Law Number 5 of 1999 and various other implementing regulations.<sup>6</sup> In addition, this research also uses a statute approach, a conceptual approach, and a case approach. The legislative approach is carried out by examining the applicable legal norms, while the conceptual approach is used to explore the meaning of legal concepts such as "fair competition", "monopoly practice", and "legal sanctions". The case approach is carried out by analyzing several decisions of the Business Competition Supervisory Commission (ICC) and court jurisprudence to find out how these regulations are applied in practice.

The data sources used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations as well as ICC and court decisions. Secondary legal materials are in the form of legal literature, scientific journals, and the opinions of legal experts who discuss business competition law. Meanwhile, tertiary legal materials are used as a support

and complement in understanding the legal terms used. The data collection technique is carried out through library research, by browsing legal documents, books, journals, and the official websites of related institutions such as ICC and the Supreme Court. All data obtained will be analyzed in a descriptive-qualitative manner, namely by describing and evaluating the content of legal regulations and their implementation in the field, to then draw conclusions about the effectiveness of regulations and sanctions in overcoming unfair business competition practices and challenges faced in the law enforcement process.

#### **RESULTS AND DISCUSSION**

##### **Theoretical Foundations and Conceptual Frameworks**

The concept of healthy and unfair business competition is the main foundation in the formation and enforcement of business competition laws. In the perspective of economic theory, competition is considered a market mechanism that encourages efficiency, innovation, and reasonable prices for consumers. Classical and neoclassical economics assume that in a perfectly competitive market, no one business owner has the dominant power to set prices or prevent other actors from entering the market.<sup>7</sup> Fair competition in this context is defined as a condition in which business actors operate independently, follow the laws of supply and demand, and do not carry out manipulative actions against the market. In contrast, unfair business competition occurs when businesses abuse their market power to inhibit competitors, collude with each other, or set prices

<sup>6</sup> Lumbanradja, K. (2024). *Asas Keadilan Dan Kepastian Hukum Dalam Praktik Perjanjian Tertutup Pasal 15 Ayat 3 Uu No 5 Tahun 1999 Tentang Eksklusif Dealing Distribution* (Doctoral Dissertation, Universitas Kristen Indonesia).

<sup>7</sup> Dirwansyah, D. (2024). Doktrin Single Economic Entity Dalam Perluasan Pengawasan Persaingan Usaha Secara Ekstrateritorial Di Indonesia. *Jurnal Interpretasi Hukum*, 5(3), 1326-1336.

unfairly—ultimately harming consumers and lowering market efficiency.<sup>8</sup>

Meanwhile, from a legal perspective, the concept of healthy and unfair business competition is normatively regulated through laws and regulations. Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition is the main instrument that establishes the boundaries between legitimate and prohibited business practices. Within this legal framework, healthy business competition is guaranteed through the principle of freedom to do business based on justice, openness, and equality. Practices such as cartels, monopolies, mergers that inhibit competition, and abuse of dominant position are explicitly categorized as forms of unfair competition. Therefore, the law functions not only as a normative tool, but also as an instrument to maintain a balance between the interests of business actors and consumer protection.<sup>9</sup>

Conceptually, this research is based on the integration between economic and legal theory in understanding business competition practices. Economic theory provides a framework for assessing the impact of a business behavior on market efficiency, while legal theory establishes legal parameters that limit or permit an act of business.<sup>10</sup> In this context, the conceptual

framework of the research is built by placing regulations as instruments to balance the dynamics of competition in the market, sanctions as an instrument of prevention and enforcement, and law enforcement challenges as variables that determine the effectiveness of the competition law system itself. This combination of economic and legal approaches is expected to provide a comprehensive understanding of the problem of unfair business competition and solutions to improve it in the legal system in Indonesia.<sup>11</sup>

One of the main bases in understanding business competition problems is competition law theory. This theory explains that competition law is a branch of economic law that aims to create an efficient, fair, and open market structure for all business actors. In this context, competition law not only serves as a tool to regulate relationships between business actors, but also as a mechanism to protect market structures from domination or abuse of economic power by certain entities.<sup>12</sup> The theory of competition law departs from the idea that the market is not always able to regulate itself fairly, especially when there is a large concentration of economic power, so legal intervention is needed to ensure that competition continues to be fair and profitable for consumers.<sup>13</sup>

<sup>8</sup> Kurlillah, A. (2024). Predatory Pricing Dalam Jual Beli Produk Impor Di E-Commerce Menurut Perspektif Hukum Persaingan Usaha Dan Kompilasi Hukum Ekonomi Syariah.

<sup>9</sup> Agustina, E. S., Ariani, R. S., & Hasnadewi, N. (2023). Analisis Upaya Penegakan Hukum Terhadap Tindakan Kemitraan Dalam Perspektif Persaingan Usaha Tidak Sehat. *Jurnal Studia Legalia*, 4(01), 13-20.

<sup>10</sup> Gede, I. K., Hosea, E., Ratnaningsih, R., Hendriana, T. I., Hulu, D., Judijanto, L., ... & Wahyuni, N. N. T. (2024). *Metodologi Penelitian Manajemen Bisnis: Teori Dan Panduan Lengkap Untuk Karya Ilmiah Terbaik*. Pt. Sonpedia Publishing Indonesia.

<sup>11</sup> Priambodo, Z. K. (2024). *Barrier To Entry Dalam Hukum Persaingan Usaha Di Indonesia Perspektif Etika Bisnis Islam* (Doctoral Dissertation, lain Ponorogo).

<sup>12</sup> Rangkuti, A. H. (2022). *Analisis Yuridis Persekongkolan Tender Rehabilitasi Jalan Dalam Perspektif Hukum Persaingan Usaha (Studi Kasus Putusan Nomor 14/Kppu. 1/2018)* (Doctoral Dissertation, Universitas Medan Area).

<sup>13</sup> Nugraha, R. (2020). Rekonstruksi Hukum Terhadap Penyelenggaraan Usaha Telekomunikasi Di Indonesia. *Jurnal Ilmiah Hukum Dirgantara*, 11(1).

In practice, competition law theory is divided into two main approaches, namely the "per se illegal" approach and the "rule of reason" approach. The per se approach states that some forms of anti-competitive behavior such as cartels or shared pricing are automatically considered unlawful without the need for further proof of their impact on the market. Meanwhile, the rule of reason approach requires a more in-depth analysis to assess whether an action of a business actor is really detrimental to competition or actually provides a certain efficiency benefit. In this context, the rule of reason approach is more flexible but also more complex in its legal implementation.<sup>14</sup>

Furthermore, the theory of competition law is also closely related to the principle of balance between efficiency and fairness. Regulations are not only aimed at encouraging market efficiency, but also to prevent economic inequality that is too extreme due to the dominance of large business actors. Therefore, modern competition law is not solely oriented towards prices and outputs, but also includes aspects of economic power distribution, innovation, and protection of small business actors. In the Indonesian context, this theory is reflected in Law Number 5 of 1999 which emphasizes the importance of creating a healthy business climate, preventing monopoly practices, and ensuring equal legal protection for all market participants.<sup>15</sup>

By using the theory of competition law as a conceptual foundation, this study

aims to assess the extent to which existing regulations and sanctions are able to carry out their ideal functions, namely maintaining healthy competition, cracking down on anti-competitive behavior, and overcoming law enforcement challenges that arise both in terms of institutional, normative, and practical in the field.<sup>16</sup>

The principles of fairness and efficiency are the two main pillars in the theory and practice of the free market system, as well as being the normative basis in the development of business competition law. In the market economy system, efficiency is seen as the main goal to maximize social welfare. This efficiency is divided into two: allocative efficiency, which is the ability of the market to optimally distribute resources according to consumer demand; and productive efficiency, which is the ability of business actors to produce goods and services at the lowest possible cost. In this context, business competition law serves to create market conditions that allow the achievement of such efficiency, by encouraging innovation, lowering prices, and improving the quality of products or services.<sup>17</sup>

However, efficiency alone is not enough without being balanced with the principle of fairness. In a democratic legal system, justice is understood as equal access and opportunity for all business actors to compete in the market without discrimination or abuse of economic power. Justice also includes the protection of small and medium enterprises (MSMEs) from the

<sup>14</sup> Aryadiputra, D., Pribadi, D. S., & Subroto, A. (2022). Perbedaan Penerapan Pendekatan Per Se Illegal Dan Rule Of Reason Dalam Putusan Kppu Tentang Kartel Penetapan Harga. *Risalah Hukum*, 18(1), 1-19.

<sup>15</sup> Hanin, A. L., & Sh, M. (2025). Hukum Bisnis. *Hukum Bisnis: Prinsip Dan Penerapannya*, 44.

<sup>16</sup> Wijaya, M. A. (2021). *Kewenangan Lembaga Penegak Hukum Dalam Menangani Tindak Pidana Terorisme Tinjauan Yuridis (Undang-Undang Terorisme Nomor 5 Tahun 2018)* (Bachelor's Thesis, Fakultas Syariah Dan Hukum Uin Syarif Hidayatullah Jakarta).

<sup>17</sup> Adnan, K. (2024). Fungsi Hukum Pembangunan Ekonomi Dalam Persaingan Usaha Yang Sehat. *Lex Renaissance*, 9(2), 478-505.

dominance of large businesses, as well as the protection of consumers from exploitative practices. Therefore, competition law is not only oriented to economic outcomes, but also to ethical and social values in business transactions. In practice, violations of fairness—such as cartels, abuse of dominant positions, or exclusion of competitors—not only reduce market efficiency, but also create inequality that can disrupt overall economic stability.<sup>18</sup>

In Indonesia, this principle of fairness and efficiency is reflected in Law Number 5 of 1999 which emphasizes the importance of creating a healthy and fair business climate, as well as prohibiting practices that are detrimental to competition. The enforcement of this principle is important, especially in the face of various challenges of economic globalization, market digitalization, and the complexity of the increasingly growing industrial structure. By making fairness and efficiency as basic principles, the law of competition functions not only as a regulatory tool, but also as an instrument to maintain a balance between freedom of business and social responsibility in the free market.<sup>19</sup>

To comprehensively understand the dynamics of competition regulation and enforcement, it is important to review the approaches to antitrust law in different countries. Each country has a different legal system and philosophy in responding to anti-competitive practices, depending on

their respective economic, political, and social backgrounds. In this context, a comparison of antitrust law approaches can be an important reference for evaluating the effectiveness and weaknesses of the competition law system in Indonesia.<sup>20</sup>

In the United States, antitrust law is based on the Sherman Act of 1890, the Clayton Act of 1914, and the Federal Trade Commission Act of 1914. The U.S. approach tends to focus on economic analysis based on market efficiency, especially through the Rule of Reason doctrine which evaluates whether an action actually harms the market substantially. The main focus of this system is to protect consumers and promote economic efficiency, although sometimes this approach is considered too permissive towards market consolidation as long as it does not directly harm the welfare of consumers.<sup>21</sup>

In contrast, the European Union regulates business competition through Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), with a more structuralist and protective approach to the integrity of the internal market. The EU is more assertive in its handling of market dominance practices and tends to pay great attention to the protection of small businesses and the market mechanism itself, not just to its impact on consumers. For example, the prohibition against "abuse of dominant position" is more strictly enforced, even

<sup>18</sup> Widijantoro, J. (2025). *Ombudsman Sektor Swasta: Mewujudkan Akses Keadilan Dan Perlindungan Konsumen*. Deepublish.

<sup>19</sup> Vieri Iusteli Sola Kira, J. H., & Adam, R. C. (2024). Penerapan Asas Kebebasan Berkontrak Dalam Perjanjian Kemitraan Dan Pengaruhnya Terhadap Praktik Persaingan Usaha Tidak Sehat. *Jurnal Ilmu Hukum, Humaniora Dan Politik (Jihhp)*, 5(2).

<sup>20</sup> Wiranto, R. D. (2023). *Perlindungan Hukum Bagi Umkm Terhadap Praktik Monopoli Di Era Digital= Legal Protection For Micro, Small And Medium Enterprises Against Monopoly Practices In The Digital Era* (Doctoral Dissertation, Universitas Hasanuddin).

<sup>21</sup> Nugrahaningsih, S. N. M. (2018). *Pengambilalihan Aset Dalam Perspektif Hukum Persaingan Usaha* (Doctoral Dissertation, Universitas Airlangga).

when the direct impact on consumers is not very significant.

In the Asian region, such as Japan and South Korea, the approach to competition law has evolved by adopting Western practices, but still adapting to the national economic structure dominated by large conglomerates. Japan regulates competition through the Anti-Monopoly Act, with oversight from the Japan Fair Trade Commission (JFTC). Meanwhile, South Korea has the Monopoly Regulation and Fair Trade Act (MRFTA) enforced by the Korea Fair Trade Commission (KFTC), and is notoriously progressive in regulating conglomerates (chaebol) that are considered to have the potential to monopolize the market.

Indonesia itself through Law Number 5 of 1999 adopts many principles from the western competition legal system, but faces challenges in its implementation, both in terms of institutions, sanctions, and compliance of business actors. By comparing the systems in other countries, it can be identified that the success of competition law enforcement is determined not only by legal norms, but also by the capacity of supervisory institutions, political courage, and consistency in the application of the law in the field. Therefore, this comparison is important as part of the conceptual framework in evaluating the effectiveness of competition law in Indonesia and looking for relevant models or best practices to adopt.<sup>22</sup>

### **Regulations on Business Competition in Indonesia**

<sup>22</sup> Kalianda, H. K. (2020). *Problematika Pengaturan Persaingan Usaha Dalam Sistem Hukum Indonesia*. *Wasaka Hukum*, 8(1), 1-82.

<sup>23</sup> Putri, V. L. (2019). *Penyediaan Fasilitas Terminal Untuk Pelayanan Kargo Dan Pos Di Bandar Udara Kualanamu Medan Ditinjau Dari Undang-Undang Nomor 5 Tahun 1999 Tentang Praktek Monopoli Dan Persaingan Usaha Tidak Sehat (Studi*

In substance, this Law consists of 14 Chapters and 53 Articles that regulate various aspects of business competition, including prohibited forms of practices, such as agreements that inhibit competition (Articles 4–16), dominant market dominance (Articles 17–24), and abuse of dominant positions (Articles 25–28). This law also establishes an independent institution called the Business Competition Supervisory Commission (ICC), which has the authority to investigate, inspect, and impose administrative sanctions on business actors who are proven to have committed violations. The existence of ICC reflects the spirit of supervision that is not only repressive, but also preventive against potential violations of competition law.<sup>23</sup>

Despite having a fairly progressive normative foundation, Law No. 5 of 1999 still faces various challenges in its implementation. Among them are weaknesses in the enforcement of administrative sanctions without direct executive power, limited authority of ICC in accessing confidential information of business actors, and weak synergy between ICC and judicial institutions in following up on business competition cases. In addition, some provisions in this law are considered not yet fully relevant to the development of modern business models, especially in the digital era, such as the dominance of digital platforms or algorithm-based competition. This has prompted the urgency of revising Law No. 5 of 1999 to be more adaptive to the dynamics of the digital economy and global market integration.<sup>24</sup>

*Kasus Putusan Nomor: 03/Kppu-I/2017*) (Doctoral Dissertation, Universitas Yarsi).

<sup>24</sup> Kiswoyo, T. (2024). *Kebijakan Hukum Pidana Dalam Upaya Menanggulangi Tindak Pidana Kecelakaan Lalu-Lintas Dalam Kuhp Baru* (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).

One of the important elements in the business competition regulatory system in Indonesia is the existence of the Business Competition Supervisory Commission (ICC) which was formed based on Law Number 5 of 1999. As an independent institution, ICC has a strategic role in upholding the principles of fair business competition, preventing monopoly practices, and protecting the public interest from harmful business behavior. ICC not only functions as a supervisory body, but also as a quasi-judicial institution that has the authority to receive reports, conduct investigations and examinations, and impose administrative sanctions on business actors who are proven to have violated the provisions of competition law.<sup>25</sup>

The role of ICC includes three main functions, namely the functions of supervision, law enforcement, and advocacy of competition policies. In its supervisory function, ICC is tasked with monitoring market dynamics and analyzing market structure and behavior to detect potential violations of competition laws. In its law enforcement function, ICC is authorized to investigate alleged violations, hold examination hearings, and impose administrative decisions and sanctions, such as fines or orders to stop certain practices. Meanwhile, in its advocacy function, ICC actively provides recommendations to the government in the formulation of economic policies to be in

line with the principles of business competition, as well as providing education to business actors and the wider community.<sup>26</sup>

Despite having an important role, ICC faces various challenges in carrying out its functions optimally. Some of these obstacles include limited enforcement authority for the decision, lack of strong coordination with judicial institutions in the appeal process, and obstacles in accessing important data or information from business actors. In addition, in the face of the complexity of competitive practices in the digital economy era—such as the abuse of algorithms, the dominance of digital platforms, and cross-border integration—ICC's institutional capacity is also required to continue to be improved, both in terms of human resources, technology, and a supporting legal framework.<sup>27</sup>

One of the most important prohibitions is against cartel practices, which are agreements between two or more business actors to set prices, limit production, divide marketing areas, or regulate tenders. This provision is regulated in Articles 5 to 11 of Law No. 5 of 1999, which states that this kind of agreement is prohibited because it can eliminate competition and harm consumers. Cartels often operate in a covert manner and are difficult to prove, so their handling requires in-depth investigations and strong evidence.<sup>28</sup>

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<sup>25</sup> Sirait, R. M. (2022). Eksistensi Komisi Pengawas Persaingan Usaha Dalam Pencegahan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Di Indonesia Dalam Perspektif Undang Undang Nomor 5 Tahun 1999. *Jurnal Konseling Pendidikan Islam*, 3(1), 343-358.

<sup>26</sup> Arbiantara, E. G. (2018). Kewenangan Penyadapan Praktik Kartel Sebagai Upaya Penguatan Lembaga Komisi Pengawas Persaingan Usaha Dalam Menegakkan Hukum Persaingan Usaha Di Indonesia.

<sup>27</sup> Ardianas, A. (2023). *Kebijakan Hukum Pidana Terhadap Pelaku Penimbunan Bahan Pangan Pokok Dalam Perspektif Peraturan Perundang-Undangan Di Indonesia* (Doctoral Dissertation, Magister Ilmu Hukum).

<sup>28</sup> Fahriza, M. G. (2024). *Potensi Pengaturan Leniency Program Sebagai Penegakkan Hukum Terhadap Kartel Di Indonesia (Perbandingan Leniency Program Di Jepang)* (Doctoral Dissertation, Universitas Islam Indonesia).

In addition, the law also prohibits the practice of monopoly and dominant market domination, as stipulated in Article 17 and Article 25. Monopoly refers to a situation in which one business actor controls the entire market share of a particular good or service, while dominant control is defined as controlling a market share of more than 50% by one business actor, or more than 75% by two business actors. While monopolies are not necessarily illegal, abuse of a dominant position—for example, by blocking the entry of new competitors or arbitrarily setting prices—can be considered unlawful.<sup>29</sup>

Meanwhile, predatory pricing or pricing below the cost of production with the aim of getting rid of competitors is also prohibited, as this strategy undermines the market structure in the long run. This practice not only harms small businesses, but can also create consumer dependence on just one supplier, which can then drastically raise prices once competitors exit the market. Article 20 of Law No. 5 of 1999 explicitly prohibits business actors from selling goods or services at very low prices unreasonably which can result in unfair business competition.<sup>30</sup>

In addition to these forms of prohibition, this law also regulates tender conspiracies, discriminatory pricing, and mergers or acquisitions that have the potential to create excessive market

concentration. To support law enforcement, ICC is given the authority to investigate and examine alleged violations of this provision and impose administrative sanctions on business actors who are proven to be in violation. With these provisions, it is hoped that a market system that is competitive, fair, and in favor of consumer interests and sustainable national economic development will be created.<sup>31</sup>

In addition to Law Number 5 of 1999 as the main regulation, the business competition law system in Indonesia is also supported by various derivative regulations that aim to regulate the technical and operational aspects of competition law enforcement. These derivative regulations include Government Regulations (PP), Presidential Regulations (Perpres), and Business Competition Supervisory Commission Regulations (PerKPPU), which as a whole serve to further describe the general norms contained in the parent law.<sup>32</sup>

One of the important regulations is Government Regulation Number 57 of 2010 concerning Mergers and Acquisitions, which regulates the obligation to notify ICC for business actors who merge, merge, or take over company shares and/or assets. The goal is to prevent the formation of an overly concentrated market structure as a result of such corporate actions, which has the potential to reduce or eliminate competition. In addition, ICC also issued a

<sup>29</sup> Kaumbur, A. (2022). Monopoli Dalam Persaingan Usaha Tidak Sehat (Studi Kasus Praktik Monopoli Yang Menghalangi Pelaku Usaha Tertentu Untuk Melakukan Kegiatan Usaha Yang Sama Pada Pasar Yang Bersangkutan). *Lex Crimen*, 11(3).

<sup>30</sup> Puruhito, M. A. S. (2023). *Dampak Negatif Praktik Predatory Pricing Terhadap Persaingan Usaha (Studi Putusan Kppu No. 03/Kppu-L/2020)* (Doctoral Dissertation, Universitas Islam Indonesia).

<sup>31</sup> Putri, V. L. (2019). *Penyediaan Fasilitas Terminal Untuk Pelayanan Kargo Dan Pos Di Bandar*

*Udara Kualanamu Medan Ditinjau Dari Undang-Undang Nomor 5 Tahun 1999 Tentang Praktek Monopoli Dan Persaingan Usaha Tidak Sehat (Studi Kasus Putusan Nomor: 03/Kppu-I/2017)* (Doctoral Dissertation, Universitas Yarsi).

<sup>32</sup>Nasution, L. R. J. (2025). *Pengawasan Dan Penegakan Hukum Terhadap Bisnis Digital (E-Commerce) Oleh Komisi Pengawas Persaingan Usaha (Kppu) Berdasarkan Undang-Undang Nomor 5 Tahun 1999 Larangan Praktek Monopoli Dan Persingan Usaha Tidak Sehat* (Doctoral Dissertation, Fakultas Hukum, Universitas Islam Sumatera Utara).

number of Commission Regulations, such as ICC Regulation No. 4 of 2020 concerning Guidelines for Handling Allegations of Monopoly Practices and Unfair Business Competition, and ICC Regulation No. 3 of 2023 concerning Guidelines for the Determination of Fine Sanctions, which provide clarity on the procedures for examination, proof, and the mechanism for imposing administrative sanctions.<sup>33</sup>

In practice, the implementation of this derivative regulation still faces various challenges, such as the lack of understanding of business actors of legal obligations, the lack of optimal socialization and education by ICC, and limited resources in the monitoring and enforcement process. On the other hand, there are still legal loopholes and overlapping regulations between institutions, especially in strategic sectors such as energy, telecommunications, or digital trade, which raises doubts in the consistent application of the principle of business competition.<sup>34</sup>

Nevertheless, the development of derivative regulations continues to improve and adjust to economic and technological dynamics. Measures such as digitizing reporting services, increasing transparency in the trial process, and cooperation with law enforcement agencies and technical ministries are part of efforts to strengthen the implementation of competition law. In the future, harmonization between derivative regulations, Law No. 5 of 1999, and other regulatory frameworks will be an important key in creating legal certainty and the effectiveness of business competition enforcement in Indonesia.

### **Challenges in Law Enforcement**

One of the main challenges in law enforcement faced by the Business Competition Supervisory Commission (ICC) is its limited authority in executing decisions that have been issued. Although ICC has the authority to investigate, examine, and decide cases of competition violations, the implementation of sanctions decisions often depends on other institutions, such as courts or authorized law enforcement officials. This causes the process of executing ICC's decisions to be indirect and sometimes slow, thus reducing the effectiveness of law enforcement. This limitation also opens a gap for business actors to buy time or file legal remedies, which can ultimately weaken the deterrent effect that should arise from the sanctions. In addition, coordination between law enforcement agencies that is not optimal also complicates the execution process, so ICC does not have full control over the implementation of its decisions. This condition poses a serious challenge in ensuring that the decisions that have been taken can be effectively implemented and have a positive impact on the business competition climate in Indonesia. Therefore, to overcome this obstacle, it is necessary to strengthen the authority of ICC, increase synergy between institutions, and simplify the mechanism for the execution of decisions so that the law enforcement process can run faster, more transparently, and more accountably. Intervention or political/economic pressure in handling cases.<sup>35</sup>

One of the main challenges in law enforcement, especially in the context of

<sup>33</sup> Nasrulloh, M. D. (2021). Dampak Keterlambatan Pemberitahuan Pengambilalihan Saham Perusahaan Terhadap Larangan Praktik Monopoli Dan Persaingan Usaha Tidak Sehat. *Jurnal Suara Hukum*, 3(1), 143-173.

<sup>34</sup> Agustino, L., & Sylviana, M. (2022). Perbandingan Penanganan Covid-19 Di Indonesia Dan Vietnam.

<sup>35</sup> Fitriansyah, R. (2024). Kekuatan Hukum Putusan Kppu Dalam Menjamin Persaingan Usaha

business competition, is the lack of understanding of business actors of applicable regulations. Many business actors, especially small and medium business actors, have not fully understood or deeply understood the various rules and regulations that govern healthy business competition. This condition is often caused by the lack of socialization and education carried out by the authorities, as well as the complexity of regulations that are difficult to understand without adequate assistance or legal assistance. As a result, business actors can inadvertently commit violations such as monopolistic practices, cartels, or discriminatory actions without being aware of the legal impact. In addition, this lack of knowledge also makes it difficult for business actors to adjust their business strategies to remain competitive but still comply with applicable regulations. This ignorance is one of the causes of the low level of compliance with the law, thus complicating the enforcement and supervision process by institutions such as ICC. Therefore, increasing the understanding of business actors through training, workshops, and regulatory education campaigns is very important to build a better culture of legal compliance and support the creation of healthy and fair business competition.<sup>36</sup>

One of the significant challenges in law enforcement against unfair business competition practices is the difficulty in proof. Many cases of antitrust violations, such as cartels, price fixing, or abuse of dominant positions, often take place behind closed doors and involve deals that are not clearly documented. This makes it difficult for supervisory institutions such as ICC to

gather strong enough evidence to support lawsuits. The business actors involved usually use complicated and systematic methods to hide their illegal activities, making the investigation process more complex and requires large resources, both in terms of time and expertise. In addition, the difficulty of proving can also be caused by limited access to internal company documents or transaction data that are confidential and protected by law. This condition often results in a long process of investigation and case handling, even leading to weak or inadequate decisions.<sup>37</sup> Furthermore, without convincing evidence, the deterrent effect of law enforcement is reduced, so other business actors may not feel afraid to commit similar offenses. Therefore, this evidentiary challenge demands increased ICC investigative capacity, the use of digital forensic technology, and closer cooperation with various relevant institutions and parties to strengthen evidence collection and accelerate the law enforcement process.

### **Analysis of Actual Cases**

In recent years, the Business Competition Supervisory Commission (ICC) has handled various cases of unfair business competition that have become in the public spotlight and provided important lessons in the enforcement of business competition laws in Indonesia. Some of ICC's decisions reflect the institution's resolute efforts to crack down on monopolistic practices, cartels, and abuse of dominant positions. For example, in the case of a price-fixing cartel in the building materials industry, ICC imposed significant fines on several companies that were

Yang Sehat Di Indonesia. *Jurnal Komunitas Yustisia*, 7(2), 56-65.

<sup>36</sup> Sengge, A., & Umar, W. (2024). Pengawasan Dan Penegakan Hukum E-Commerce Oleh Kppu Dalam Mengatasi Persaingan Usaha Tidak Sehat. *Jurnal Hukum Lex Generalis*, 5(4).

<sup>37</sup> Sengge, A., & Umar, W. (2024). Pengawasan Dan Penegakan Hukum E-Commerce Oleh Kppu Dalam Mengatasi Persaingan Usaha Tidak Sehat. *Jurnal Hukum Lex Generalis*, 5(4).

proven to conspire to set the selling price of products together, thereby harming consumers and hampering healthy competition. This decision affirms ICC's commitment to maintaining a competitive and fair market. However, in several other cases, ICC's decisions have faced criticism regarding the length of the settlement process and difficulties in proving that the sanctions imposed are considered less effective as a deterrent for business actors. In addition, the analysis of these decisions shows that although ICC has a fairly broad authority in adjudicating business competition cases, the implementation of decisions often faces execution obstacles caused by limited authority and legal mechanisms that still have to coordinate with other institutions. Overall, this review of ICC's decisions provides an overview of the dynamics of business competition law enforcement in Indonesia, while emphasizing the need for institutional strengthening, enforcement capacity building, and regulatory reform so that these decisions can have a more significant impact in creating a healthy and competitive business climate.

Evaluation of the investigation, proof, and final verdict process in business competition cases handled by the Business Competition Supervisory Commission (ICC) shows that there are various challenges as well as progress in the enforcement of business competition laws in Indonesia. At the investigation stage, ICC has improved its investigative capabilities by utilizing more sophisticated technology and data analysis methods, but there are still obstacles related to access to evidence that are sometimes difficult to obtain from the business actors concerned. The evidentiary process becomes one of the

most complex aspects because unfair competition practices are often carried out covertly and involve documents or communications that are difficult to access. This causes the proofing process to take a relatively long time and considerable resources. In terms of the final decision, ICC has tried to impose proportionate and strict sanctions as a form of law enforcement that provides a deterrent effect. However, in some cases, the decisions issued still face challenges in terms of execution on the ground, given the limited authority of ICC in implementing the decision directly. This evaluation emphasizes that although the process of handling business competition cases has shown positive developments, there is still a need to strengthen coordination between law enforcement agencies, increase the capacity of human resources, and reform legal procedures so that the process of investigation, proof, and verdict can run more efficiently, effectively, and provide maximum results in creating a healthy and fair business competition climate.<sup>38</sup>

Analysis of the impact of the decisions of the Business Competition Supervisory Commission (ICC) on the national business competition climate shows that strict law enforcement actions have an important role in creating a healthier and more competitive market. Every time ICC succeeds in exposing and imposing sanctions on monopolistic practices, cartels, or abuse of dominant positions, it sends a strong signal to business actors that violations of business competition rules will not be tolerated. This positive impact encourages business actors to operate more transparently and fairly, thereby spurring innovation, increasing efficiency, and lowering the price of goods

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<sup>38</sup> Fauzan, A. (2023). Relevansi Kedudukan Dan Kewenangan Hukum Tim Pengawas Mekanisme Perubahan Perilaku Terlapor Pada Pemeriksaan

Perkara Di Kppu Dengan Asas *Nemo Judex In Causa Sua*.

and services for the benefit of consumers. However, on the other hand, the evaluation also shows that there are still significant challenges that hinder the optimization of the business competition climate, such as the slow enforcement process and limitations in the execution of decisions that can give the impression of weak supervision. This has the potential to reduce public and business people's trust in the business competition law enforcement system in Indonesia. In addition, the lack of understanding and compliance of business actors with regulations also results in many unhealthy practices that have not been effectively handled. Therefore, to maximize the positive impact on the national business competition climate, it is necessary to strengthen regulations, increase the capacity of ICC, and intensify education programs for all business actors so that awareness and compliance with the rules can be realized comprehensively<sup>39</sup>.

### **Improvement Efforts and Policy Recommendations**

In the face of the challenges of business competition law enforcement that continues to grow along with rapidly changing market dynamics, regulatory revision is a very important strategic step. Current regulations are often not fully able to accommodate new business practices, especially those that have emerged due to technological advances and economic digitalization. Therefore, regulatory revisions need to be carried out so that the rules applied are more responsive and adaptive to dynamic market conditions, so that they are able to handle various modes of business competition violations that are increasingly complex and sophisticated. In

addition, the revision must clarify the authority and more efficient law enforcement mechanisms, including strengthening the role of supervisory institutions such as ICC in conducting investigations and execution of decisions. Responsive regulations must also be able to encourage business actors to innovate while maintaining the principle of healthy competition for the welfare of consumers and the sustainability of a fair market. This revision process should involve various stakeholders, ranging from business actors, academics, to civil society, so that the results of the regulation can be more comprehensive and applicable. Thus, regulatory revisions that continue to be updated regularly will be an important foundation in creating a conducive, transparent, and fair business competition climate in the modern economic era.<sup>40</sup>

### **CONCLUSION**

Regulations related to unfair business competition in Indonesia are quite adequate in terms of substance, but their implementation still faces major challenges, especially in terms of law enforcement. Weaknesses in the authority of supervisory agencies, complexity of the evidentiary process, and permissive legal culture towards unfair competition practices are the main obstacles. Therefore, legal reform needs to be directed at strengthening ICC, simplifying legal processes, and strengthening sanctions that provide a deterrent effect. Furthermore, a sustained political commitment and public education are needed to create a healthy and competitive business climate.

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<sup>40</sup> Adam, A. K. (2024). Evaluasi Kepatuhan Google Llc Terhadap Komitmen Anti-Persaingan Dalam Proses Penyelidikan Kppu. *Journal Of Innovation Research And Knowledge*, 4(6), 3831-3844.

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