

The Authoritative Power of Competition Agencies: A Comparative Analysis on U.S. and Indonesian Law

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Abstract

A good enforcement system is essential to the success of implementing the law. The competition serves a crucial role in the enforcement role in preventing unfair and anti-competitive business practices that will hinder the economic growth of many industries. However, the existing statute provides the Commission for the Supervision of Business Competition with lacking authoritative power in carrying out its mandate. In contrast, U.S. competition agencies are provided with greater authoritative power than KPPU and are successful in enforcing competition law. This paper seeks to find the extent to which the authority for Indonesia's competition agency is adequate in enforcing competition law compared to the competition agency in the U.S. This research analyzes ways for the current legislation to be improved to ensure better enforcement by Indonesia's competition agency.

Keywords: Competition Agency, Federal Trade Commission, Commission for the Supervision of Business Competition, competition law, antitrust law

Intisari

Penegakan hukum yang baik merupakan salah satu factor krusial dalam penerapan hukum. Lembaga pengawasan persaingan usaha memegang peran penting dalam penegakan hukum persaingan. Komisi Pengawas Persaingan Usaha sebagai Lembaga pengawas memegang peran penting untuk memberantas praktik bisnis yang anti-persaingan. Namun undang-undang yang sudah ada memberikan KPPU kewenangan yang terbatas dalam melakukan tugasnya. Sebaliknya, agen persaingan AS diberikan hak kewenangan yang lebih luas dari KPPU dan dapat dinilai berhasil dalam menegakan hukum persaingan usaha. Makalah ini mengkaji sejauh mana kewenangan Lembaga persaingan di Indonesia cukup memadai dibandingkan dengan Lembaga persaingan di AS dalam penegakan hukum persaingan. Penelitian makalah ini juga menganalisa kebutuhan perbaikan undang-undang hukum persaingan usaha untuk menjamin penegakan hukum yang lebih baik dari KPPU.

Kata Kunci: Lembaga Pengawas Persaingan Usaha, Komisi Perdagangan Federal, Komisi Pengawas Persaingan Usaha, Hukum Persaingan Usaha

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A. Introduction

Among the central issues to the development of a State is the growth of the country's economy. A fair and competitive market proves to be one of the main economic goals. However, a fair and competitive market may not be achieved through the free market alone. Hence, there exists government intervention in promoting a competitive market condition through regulatory control.

Competition law, also referred to as "antitrust law," holds a key role in preventing unfair business practices, leading to fair competition and enhancing economic growth and development. Governments typically grant enforcement power to what is known as a competition agency or an antitrust commission to guarantee compliance against competition law.¹ Their purpose is generally to monitor and investigate any unfair business practices and protect consumers from certain market activities.

As of the current state of competition law enforcement in Indonesia, the Commission for the Supervision of Business Competition or better known as the *Komisi Pengawas Persaingan Usaha* ("**KPPU**") is the competition agency provided with the duty to ensure compliance against Indonesia's competition law. The legislation is frequently criticized for having only provided the KPPU with little authority power to function effectively.² Kurnia Toha, Chairman of KPPU, stated that the lack of authority for KPPU to function has always been a hindrance in carrying the Commission's function. He noted that unlike countries such as Japan, Germany, and the United States ("**U.S.**"), Indonesia's competition agency lacks the authority to conduct searches and seizures, causing the gathering of evidence to be difficult.³

Evidently, as stated by the Chairman of KPPU, the competition agencies in the U.S. indeed have greater authority power than KPPU. In fact, the competition agencies in the U.S., the Federal Trade Commission and the Department of Justice, are arguably some of the leading examples of an effective enforcement of antitrust law.

Key issues have long been identified in KPPU's enforcement system in which other countries had already solved. Little has changed in the legislation and enforcement system of Indonesia's antitrust law since its inception over 20 years ago. This paper intends to identify some of the key enforcement problems of KPPU, and seek solutions by comparing the power of authority of the competition agencies in Indonesia and in the U.S. to identify the weaknesses in the KPPU's enforcement and the lack of authority in order to encourage reform in the current competition law and policy institutions. For the reasons above, this paper explores the following research questions:

¹ Federal Trade Commission. "Competition & Consumer Protection Authorities Worldwide," last modified 2021, accessed 6 July, 2021. <https://www.ftc.gov/policy/international/competition-consumer-protection-authorities-worldwide>.

² Manaek SM Pasaribu, "Challenges of Indonesian Competition Law and Some Suggestions for Improvement." *Economic Research Institute for ASEAN and East Asia (ERIA)* (2016): 47.

³ Kompas. "KPPU Tidak Bisa Masuk ke Ruangan, Lalu Menyita," last modified 2020, accessed 27 September, 2021. <https://money.kompas.com/read/2020/07/15/210700126/-kppu-tidak-bisa-masuk-ke-ruangan-lalu-menyita--?page=all>

1. To what extent is the power of authority of Indonesia's competition agency adequate in enforcing the competition law compared to the competition agency in the U.S.?
2. How can the current legislation be improved to ensure better enforcement by Indonesia's competition agency?

B. Regulatory Framework: Indonesian and U.S. Competition Law and Agency

The influence of U.S. antitrust law was profound during the establishment of competition law in many countries worldwide. U.S. competition agencies appear to be far more effective given that they are provided the authority to conduct other powers for effective investigation. In fact, the U.S. enforcement of competition law is recognized to be one of the most effective in the world. The Global Competition Review (“GCR”) conducts annual research to rate several competition agencies worldwide, in which both U.S. competition agencies, the Federal Trade Commission and the Department of Justice Antitrust Division, were consistently rated as the best competition agencies in the world.⁴ Moreover, the U.S. was the first country to introduce competition policies and had hence undergone a longer process of development. The following part shall compare and contrast the law and enforcement systems in Indonesia and the U.S. to seek ways to improve Indonesia's outdated legislation.

a. Indonesia's Competition Law and Enforcement Body

The inception of competition law in Indonesia occurred after the 1997 Asian Financial Crisis that had also impacted the Indonesian economy. The lack of domestic competition in Indonesia's market resulted in a high concentration of power from firms. This in turn resulted in fewer choices of products and lower quality. In addition, large and powerful firms from well-connected family groups gather political power to influence government policies in their favor. The opportunity for smaller businesses to grow was limited to various barriers of entry.⁵ Law No.5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition (“**Anti-Monopoly Law**”) was one of the legislations formed during that era to solve the issue identified during the economic crises.

b. A Brief Overview of Indonesia's Competition Law

Since its enactment in 2000, the Anti-Monopoly Law has served as Indonesia's main legislation in competition law. The legislation is not intended to prevent or prohibit the existence of a monopoly, but it prohibits actions from firms that engage in anti-competitive activities. In 2019, there were discussions on amending the current legislation. However, much of the proposed revisions were rejected due to the consideration of its implementation and considerations from a corporate standpoint.⁶

⁴ Global Competition Review, “The Annual Ranking of The World's Leading Competition Authorities.” *Global Competition Review*, 18(6) (2015): 2.

⁵ Thee Kian Wie (2004). “Indonesia's Experience with Its First Anti-Monopoly Law.” *Economics and Finance Indonesia*, 52(2), (2004): 187-205.

⁶ Federal Trade Commission, “The Annual Ranking of The World's Leading Competition Authorities”, 2.

The Indonesian Competition Law divides restrictions into three categories: restricted agreements (Articles 4–16), restricted conducts (Articles 17–24), and abuse of dominant position (Articles 25–28). The remaining sections of the Indonesian Competition Law deal with the establishment of the KPPU law enforcement body of the Anti-Monopoly Law, case-handling procedures, sanctions and criminalization, general exemptions, and transitional and adjudicatory provisions.

The Omnibus Law on Job Creation as Supplemented by Government Regulation No. 44 of 2021 (“**Omnibus Law**”) had made changes to the current Anti-Monopoly Law that was supplemented through the Government Regulation No. 44 of 2021 (“**GR No. 44 of 2021**”). Firstly, any objection against a KPPU ruling is no longer appealed to the District Court and instead transferred to the Commercial Court.⁷ Secondly, there is a removal of the maximum fine limit that may be imposed (although this was later changed in which Article 12 of GR No.44 of 2021 sets the maximum fine).⁸ The provisions from the Anti-monopoly Law have not changed significantly other than the few changes or additions through the Omnibus Law. Other provisions governing competition law include government regulations and rules from KPPU.

c. The Main Functioning of KPPU

Indonesia’s competition agency, KPPU, was also formed through the Anti-Monopoly Law. KPPU serves as an independent body to the national government with investigation power against violations and may impose administrative sanctions. Through its Commission Tribunal, the KPPU can also rule on a case and make a decision imposing administrative sanctions that include :⁹

- i. Declarations ruling an anti-competitive agreement to be null and void;
- ii. A declaration that mergers, consolidations, and acquisitions of commercial entities are null and void;
- iii. Injunctions prohibiting vertical integration, monopolistic tactics, unfair business competition, and the abuse of a dominating position;
- iv. Determination of remuneration payments.

KPPU is responsible for case handling for the alleged violations against Indonesia’s competition law. The procedure of case handling is governed mainly through the KPPU Regulations No. 1 of 2010 and KPPU Regulations No. 1 of 2019.

d. Procedure for Case Handling through the KPPU

An important aspect to understanding the strengths and weaknesses of the competition agency is through analyzing its mechanism or procedure in handling a case. The analysis of the Commission’s procedure will also aid in identifying similarities and differences against another competition agency.

A KPPU case begins either through a report from a party who filed a complaint alleging a breach of Indonesian competition law, an initiative directly from KPPU, or

⁷ Article 19 Government Regulation No. 44 of 2021

⁸ Noverius Leoli, “Respons KPPU terkait perubahan sejumlah pasal persaingan usaha di UU Cipta Kerja,” last modified 2020, accessed 1 July, 2021. <https://nasional.kontan.co.id/news/respons-kppu-terkait-perubahan-sejumlah-pasal-persaingan-usaha-di-uu-cipta-kerja>.

⁹ Article 47 Government Regulation No. 44 of 2021

a report from a reporting party (usually a competitor) seeking compensation. The case is then processed through obtaining clarification and inquiry or through research and investigation of the firm, followed by filing, commission council hearing, and commission decision.¹⁰

Before conducting an inquiry into a report, there must be sufficient information and evidence. The report will be followed up on by the work unit in the responsibility of report handling. The work unit and the reporting party must go through a clarification procedure to check for any information missing in the report for administrative purposes. Both the work unit and the reporting party should check and complete the requirements within 10 working days for each information transfer.¹¹

The investigation shall begin at the first stage, at the primary council hearing (*Laporan Pemeriksaan Pendahuluan*). The Commission may call upon the reported party to give a response to the claimed breach, as well as the names of the witness and expert, and any relevant documents at the primary council hearing.¹² This will last for no more than 30 working days.¹³

Assuming that there is sufficient evidence acquired at the primary council hearing, the next stage to investigating shall take place at the advanced council hearing (*Laporan Pemeriksaan Lanjutan*). The evidence from the investigator, the reporting party, and the reported party acquired at the primary council hearing will be examined during this stage. The witness, language expert, expert, and government will all be summoned to the advance council hearing by the Commission. The procedure takes a maximum of 60 working days to complete and can be prolonged for a maximum of 30 days. The procedure takes a maximum of 60 working days to complete and may only be extended for another 30 working days.¹⁴

Through the analysis of all the information and evidence acquired through the two stages of council hearing, the Commission must announce its decision. The decision may impose an administrative sanction against the firm and the hearing may even provide advice for the government to the market needs.¹⁵ The party sanctioned must fulfill the administrative penalty within 30 working days, or object through an appeal to the Commercial Court within 14 days. An appeal to the Commercial Court's ruling can be filed to the Supreme Court.

The following graph illustrates the procedure of case handling in brief:

¹⁰ Pasaribu, "Challenges of Indonesian Competition Law and Some Suggestions for Improvement".

¹¹ Article 14 KPPU Regulations No. 1 of 2010

¹² Article 48 KPPU Regulations No. 1 of 2010

¹³ Article 49 KPPU Regulations No. 1 of 2010

¹⁴ Article 57 KPPU Regulations No. 1 of 2010

¹⁵ Shidarta (n.d.), "Prosedur Beracara di KPPU (Komisi Pengawas Persaingan Usaha)," accessed 1 July, 2021. <https://business-law.binus.ac.id/2013/01/20/prosedur-beracara-di-kppu-komisi-pengawas-persaingan-usaha/>.

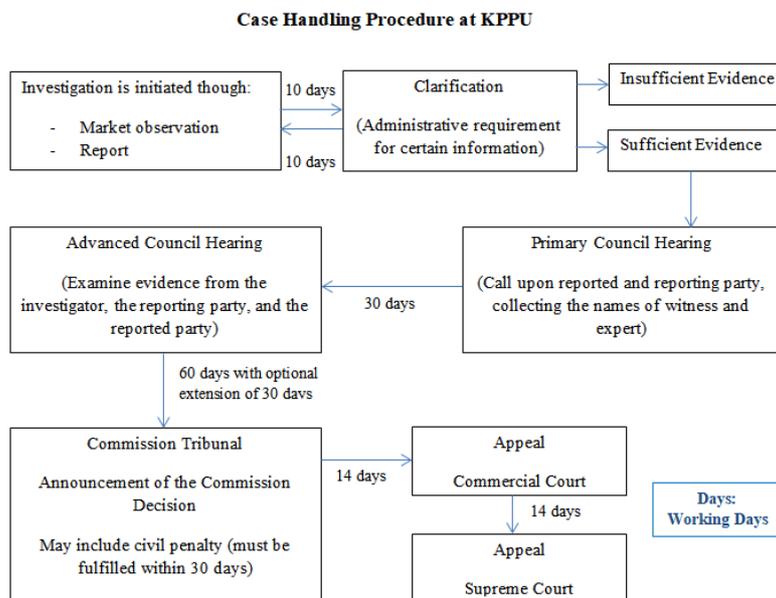


Figure 1. Case handling procedure through the KPPU

e. *U.S. Competition Law and Enforcement Body*

Competition law began much earlier in the U.S. than in Indonesia. In the 1800s, many large firms control both the supply and the pricing of their respective industries. As a result of the monopolies, there was no competition, and smaller businesses and individuals had no option about who they may buy from. This continued until President Theodore Roosevelt dismantled numerous trusts by pursuing what is now known as the “antitrust law”.¹⁶

There are two competition agencies in the U.S., that is the Federal Trade Commission (“**FTC**”) and the Antitrust Division of the Department of Justice (“**DoJ**”). The FTC is an independent administrative agency and focuses on administrative violations, whereas the DoJ is part of the executive government body responsible and holds exclusive authority for criminal investigation and sanctions.¹⁷

i) A brief overview of U.S. competition law

The antitrust law in the U.S. has undergone more stages of development. There are three main legislations enacted since the establishment of competition law:

1. The Sherman Antitrust Act (“**Sherman Act**”) was the first piece of legislation passed by the U.S. Congress in 1890 to prevent power concentrations. Two main provisions were enacted through this piece of legislation:

¹⁶ Federal Trade Commission, “Antitrust Laws: A Brief History - Consumer Information,” accessed 7 June, 2021. https://www.consumer.ftc.gov/sites/default/files/games/off-site/youarehere/pages/pdf/FTC-Competition_Antitrust-Laws.pdf.

¹⁷ Yasir Arifin Mochtar, “Kewenangan Ideal Lembaga Penegak Hukum Persaingan Usaha Di Indonesia.” (2019): 46. <https://dspace.uui.ac.id/handle/123456789/13977>.

- a. Firstly, the legislation prohibits any trade restraints between states or with foreign countries. This ban extends to any arrangement to control prices, limit industrial production, share markets, or eliminate competitors, not only formal cartels.
- b. Secondly, the legislation prohibits any effort to monopolize any aspect of U.S. trade or commerce.

The U.S. DoJ can enforce these two main provisions through federal court and litigation. Firms that are found to violate the Sherman Act can be compelled to dissolve by the courts, and injunctions can be granted to prevent illegal conduct. Corporate executives who operate their business in a way that violates antitrust laws may be fined or imprisoned. Furthermore, private parties who have been harmed by a violation are allowed to sue for even as much as three times the amount of damages they have suffered.¹⁸

2. The Clayton Act was later passed in 1914. After decades of enacting the Sherman Act, the government found that it was unsuccessful in handling anti-competition behavior by firms. The Act was used infrequently and unsuccessfully against industrial monopolies, owing to limited court interpretations of what constitutes interstate trade or commerce. The Clayton Act protects U.S. consumers by prohibiting mergers and acquisitions that are likely to impede competition. The Clayton Act serves as an extension of the Sherman Act's broad principles, and it defined several prohibited activities that either led to or ended in monopolization.¹⁹
3. Along with the Clayton Act, the FTC Act of 1914 was also passed. Congress established a new government agency, the FTC, to monitor unfair commercial practices. It empowered the FTC to investigate and prosecute unfair competition and deceptive conduct.²⁰

There were a few more laws implemented during the evolution of competition law in the U.S., in addition to the three primary legislations mentioned above. The Robinson-Patman Act (1934), the Celler Kefauver Anti-Merger Act (1950), the Hart Scott Rodino Antitrust Improvement Act (1976), and the International Antitrust Enforcement Assistance Act are examples of these laws (1994).²¹

ii) The main functioning of the FTC and DoJ

As mentioned previously, unlike most countries that have only one body of enforcement for competition law, the US has two: the FTC and the DOJ Antitrust Division. Although the two agencies have overlapping jurisdictions, the agencies are separated by the Act specified only to them; the FTC holds exclusive jurisdiction of

¹⁸ Encyclopedia Britannica, "Sherman Antitrust Act," last modified 2020, accessed 6 July, 2021. <https://www.britannica.com/event/Sherman-Antitrust-Act>.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Mochtar. 'Kewenangan Ideal Lembaga Penegak Hukum Persaingan Usaha Di Indonesia'. 47.

cases under the FTC Act, and the DoJ holds exclusive jurisdiction of cases under the Sherman Act.²²

The FTC is an independent agency within the executive branch of the U.S. federal government.²³ The legal basis for the FTC's authority is provided through the Federal Trade Commission Act ("**FTC Act**"). The FTC's authority includes investigative, legislative, and enforcement powers. The investigative powers of the Commission refer to the Commission's ability to conduct a search and acquire information and evidence. Within its investigative rights, if the Commission has reason to suspect that the law is being or has been broken, the Commission may take enforcement action through an administrative or judicial process. Fines may be imposed for violations of certain laws, which are increased yearly for inflation. Besides investigative and enforcement power, the Commission also has legislative powers against unfair business practices under Section 18 of the FTC Act.²⁴ Besides competition law, FTC also has consumer protection authorities, however that aspect will not be discussed as it falls outside the scope of this paper.

The DoJ Antitrust Division is also entrusted with the duty to monitor business activities and prevent anti-competitive behavior. The agency was established long before the FTC, through the enactment of the Sherman Act. The DoJ itself acts as an extension of the Attorney General in the enforcement of federal law. Unlike the FTC who may only seek civil remedies, the DoJ may seek civil and criminal remedies.²⁵

It may be deduced that Indonesia's KPPU is more comparable to the FTC in terms of its principal role and authority. Both the KPPU and the FTC are autonomous federal authorities of the executive branch that may only seek civil remedies. While presence of the DoJ cannot be ignored, the FTC provides to be a better comparison to the KPPU in terms of their function, authority, and case processing procedure. Comparing the procedure of KPPU and FTC in conjunction with one another may direct the focus to better, realistic objectives.

iii) Procedure for case handling by the FTC

As explained previously, the investigative authority of the FTC is provided under the FTC Act. Following is the mechanism in which FTC processes its cases. The process of investigating a firm is initiated upon receiving a report or through market observation. When the Commission receives a report, it may be forwarded to the Legal Investigation Division, which is overseen by the Chief Examiner and where it is reviewed by a staff attorney. The Commission will then conduct a preliminary inquiry. The purpose of the preliminary inquiry is to gather enough evidence to assess if the

²² Robert Roulusonis. "Understanding How And Why The U.S. Competition law system is decentralized" *Enero-Junio*, Vol. 63/1(2015) 2-3.

²³ Federal Trade Commission. "About the FTC," accessed 6 July, 2021. https://www.consumer.ftc.gov/sites/default/files/games/off-site/youarehere/pages/about_the_ftc.html

²⁴ Federal Trade Commission. "A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority," last modified 2021, accessed 6 July, 2021. <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>.

²⁵ Robert Roulusonis. "Understanding How And Why The U.S. Competition law system is decentralized" *Enero-Junio*, Vol. 63/1(2015) 2-3.

Commission has jurisdiction and whether the problem is significant enough to merit further examination.²⁶

If the matter analyzed is deemed important and that it falls within the jurisdiction of the Commission, an attorney-examiner will then be appointed to analyze the case further. Attorney-examiners produce detailed reports regarding the case, as well as whatever documents relevant to the reports. When the attorney-examiner believes he has gathered all of the required information, he writes a report outlining the facts and presenting his opinions and suggestions. The attorney-examiner may either determine that there has been a violation of the antitrust law or conclude that there were no violations of the Commission's statutes and recommend that the case be closed. The Chief Examiner will take a final check of the attorney-examiners' reports.²⁷

Next is the administrative procedure in which the Commission decides whether a conduct is illegal through an adjudicative process. The Commission may challenge unfair business practices in breach of the antitrust laws. If the Commission has reason to suspect that a law violation has occurred, it may file a complaint detailing its allegations. If the respondent chooses to settle the allegations, it can sign a consent agreement, which consents to the entry of a final order, and forgo its right to judicial review.²⁸

On the other hand, if the respondent chooses to challenge the accusations, the complaint is heard shall be adjudicated by the Administrative Law Judge (“ALJ”). The ALJ is a tribunal that operates under the Rules of Practice of the Commission. The investigation will be carried out by the FTC's “complaint counsel”, who is personnel of the relevant bureau or regional office. The ALJ will make a “first ruling” based on the conclusions of the complaint's legal analysis. The respondent has the right to appeal the initial judgment to the Commission as a whole. The Commission will conduct the trial and render a final judgment following an appeal of an initial decision. The respondent has the right to appeal the final decision to the U.S. Court of Appeals. Further appeal after this stage shall be brought to the Supreme Court.

The following graph illustrates the procedure of case handling in brief:

²⁶ Robert Elliot Freere, “FTC Practice and Procedures.” *The Federal Bar Journal*, VI(4) (1945) 3-5.

²⁷ *Ibid.*

²⁸ Federal Trade Commission. ‘A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority’.

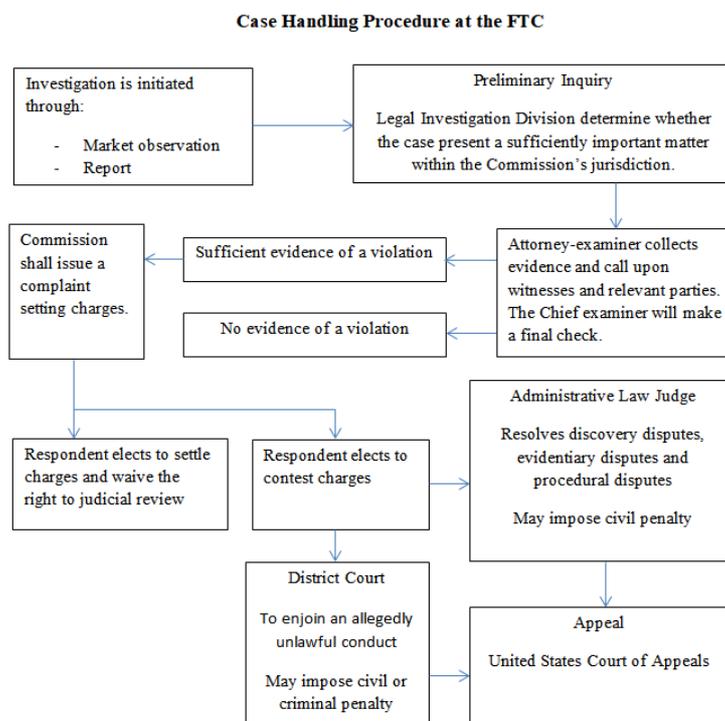


Figure 2. Case handling procedure through the FTC

C. The Authoritative Power of Competition Agencies in Indonesia and the U.S.

Through examining the case handling procedure, and the investigation authority for the competition agencies in both the U.S. and in Indonesia, we may infer several points regarding the authority power of the competition agencies in each respective country.

The FTC and the KPPU are similar in their structure, decision, and execution power. As previously described, both the FTC and KPPU are independent administrative agencies under the executive branch of the government. Both Commissions also have the authority to make decisions against a case within the Commissions' tribunals. However, the FTC and KPPU do not have execution power against their courts' decision (the Commission's decision shall be requested through the District Court/Commercial Court).²⁹ In addition, both Commissions may not impose or seek a criminal penalty against any violation of the antitrust law. For instance, although both agencies have the right to access documents and persons to collect evidence,³⁰ both Commissions must request the Court to impose a penalty if the party refuses to obey the order.

While similar in their structure and execution power, the two Commissions have different investigation authority power. Through comparing the authority power of both competition agencies, we find three important aspects in which the KPPU and

²⁹ Law No. 5 of 1999, Article 46 paragraph (2); FTC Act, Section 5(c), 15 U.S.C. Sec. 45(c)

³⁰ Law No. 5 of 1999, Article 41; FTC Act, Section 9, 15 U.S.C. Sec. 49

the FTC differ: (1) Authority to search; (2) Authority to seize; and (3) Investigation Assistance;

Firstly, the FTC has the investigative authority to search (*pengeledahan*), in which the KPPU does not. In contrast, the FTC is fully authorized to conduct a search. Section 3 of the FTC Act stipulates, “*The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the [U.S.]*.” This section implies that the FTC has the authority to make searches on private premises for the reasons and duties imposed through the FTC Act. In contrast, KPPU can not conduct a search and may only investigate a firm through an investigator (*penyidik*) such as the police.³¹ The lack of investigative power to make searches is one of the main issues identified by KPPU members across time that prevents them from acquiring evidence.³²

Secondly, KPPU has no authority to conduct a seizure (*penyitaan*), whereas the FTC has already done so in many cases. The FTC is granted the authority to seize property for investigation under Section 13(b) when the FTC has reason to believe that there is currently a violation or to prevent a potential violation.³³ The FTC may request the seizure directly to the District Court and take action upon permission. The KPPU, on the other hand, has no such authority, which also acts as a hurdle to the investigation of suspected firms.

Thirdly, and perhaps most importantly, the FTC is provided with better investigation assistance, and that they share jurisdiction with the DoJ that may seek criminal sanction. Not only does the FTC receive investigation assistance from the police, but the Commission may also receive assistance from the FBI under some cases.³⁴ KPPU, in contrast, is the sole competition agency in Indonesia and may conduct investigations through the police force upon request.³⁵ As both the FTC and KPPU are not mandated with judicial power, both competition agencies may not impose a criminal sanction. However, this has no bearing on the enforcement of competition law in the U.S. because any violation of competition law that carries a criminal penalty immediately falls under the jurisdiction of the DoJ. Hence, the structure of the competition law enforcement system in the U.S. simply allows a wider scope of authority power to prevent anti-competitive behavior from firms.

Through this comparative analysis, it may be deduced that the competition agencies in Indonesia (KPPU) and in the U.S. (FTC) are largely similar in structure and execution process, but are rather different in the scope of investigation power. The competition agencies in both countries are classified as independent administrative agencies, and hence the authorities that may be granted are limited to their position.

³¹ Law No. 5 of 1999, Article 41 paragraph (3)

³² Kompas. “KPPU Tidak Bisa Masuk ke Ruang, Lalu Menyita,” last modified 2020, accessed 27 September, 2021. <https://money.kompas.com/read/2020/07/15/210700126/-kppu-tidak-bisa-masuk-ke-ruangan-lalu-menyita--?page=all>

³³ John Vecchione, “An Insidious Consequence of the FTC's Use of Section 13(b) Injunctions: Denial of Counsel,” last modified 2021, accessed 8 July, 2021. <https://nclalegal.org/2020/10/ftcs-use-of-section-13b/>.

³⁴ Rifqon Khairazi, “The Objectivity Of The Business Competition Supervisory Commission In Deciding Business Competition Cases In Indonesia. *Indonesia Private Law Review*.” 2(1) (2021): 1-10. doi:10.25041/iplr.v2i1.2146

³⁵ Global Compliance News, “Antitrust and Competition in Indonesia”, accessed July 3, 2021. <https://www.globalcompliancencnews.com/antitrust-and-competition/antitrust-and-competition-in-indonesia/>.

Due to this, both the Commissions may only impose a civil sanction and that the execution process still falls within the authority of the judicial body. The main difference between the two competition agencies in terms of enforcement power is that the FCC has far greater investigation authority and assistance than KPPU. However, the fact that the DoJ and the FTC share authority in enforcing antitrust law and can pursue criminal penalties for specific violations has a significant influence on the overall enforcement structure of competition law in the U.S.

D. The Way Forward for Indonesian Competition Law

The very aim of comparing Indonesian and U.S. competition agencies is to seek ways in which Indonesia's competition law enforcement may be improved. The next challenge after identifying the strengths and weaknesses of the two competition agencies is to find out the applicability of adopting the enforcement system from one jurisdiction to another despite very different legal structures and market conditions.

KPPU's lack of investigation power has already been discussed by legislators. In fact, within the revision of the Anti-Monopoly Law (RUU 5/1999), few legislators intend to give the Commission authority to conduct searching and seizure with the assistance of the police. This suggestion in the revised Anti-Monopoly Law was heavily criticized by business organizations such as the Indonesian Employer's Association (*Asosiasi Pengusaha Indonesia*) and the Indonesian Chamber of Commerce and Industry (*Kamar Dagang dan Industri Indonesia*).³⁶ The criticism stems from the fear that the Commission would obstruct business activities and investment, resulting in increased uncertainty for firms. Another argument was that the authority to conduct searching and seizure, especially without prior evidence, is simply excessive. The notion would constitute as an infringement to the presumption of innocence despite the nature of the crime that is not an "extraordinary crime".³⁷

In addition, the FTC's right to seize has also been criticized in the U.S. as obstructive and abusive to companies. In particular, the freezing of assets had obstructed the running of business activities.³⁸ Responding to the concerns of employer's associations, the right to seize may indeed be too excessive and intrusive. Hence, granting the authority to seize for the KPPU may only lead to power abuse.

A right to search, on the other hand, is crucial to the competition agency's ability to identify market abuses. In addition, the application of such investigative powers in another jurisdiction proves that there are ways to give the Commission the right to searching without infringing the principle of presumption of innocence. To solve the issue, the Commission should only be permitted to conduct searching only after acquiring sufficient preliminary evidence, including economic evidence, and with the approval of the Commercial Court. The revision for the Anti-Monopoly Law was rejected due to the concerns described above. However, considering that these investigative activities had instead aided in better enforcement, the Commission should consider revising the current law as such.

³⁶ Rio Christiawan. "Menakar Revisi UU Persaingan Usaha," last modified 2019, accessed 27 September, 2021. <https://investor.id/national/menakar-revisi-uu-persaingan-usaha>

³⁷ *Ibid.*

³⁸ Cause of Action Institute. "Court to FTC: Effort to freeze assets goes too far," last modified 2018, accessed 27 September, 2021. <https://causeofaction.org/court-to-ftc-effort-to-freeze-assets-goes-too-far/>

E. Conclusion

Competition agencies hold a crucial role to ensure compliance against the competition law and protect the market. The creation of Law No. 5 of 1999 and the establishment of KPPU as a result of that legislation has had a significant impact on the Indonesian economy. The research of this paper identifies that KPPU lacks the enforcement capacity to function effectively as a competition agency. Unfortunately, despite this issue and the criticisms that follow, there have been little modifications in the statute and the authority power of the Commission for over 20 years.

The FTC in the U.S., which shares a similar enforcement system to the KPPU, has greater authority power in conducting their investigation. This is concluded through examining the procedure for case handling, the investigation authority, and assistance, as well as the decision and execution power of the two competition agencies. The FTC differs from KPPU through having the investigation power to conduct search and seizure.

The result of this research concludes that legislators should consider granting KPPU the authority to conduct searches. While there will certainly be opposition from business owners and investors, the ability for the Commission to investigate a firm is crucial to optimally prevent private market abuse. At the same time, it must be noted that the Commission should only be able to acquire this right only after obtaining sufficient preliminary evidence of a violation.

The enforcement of competition law, like any other branch of law, requires proper attention. The impact of weak competition law enforcement will not be as obvious as the consequences will follow long after. Nonetheless, competition agencies, businesses, and legislators should work together to achieve healthy market conditions.

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