

# Realizing a Fair Investment Climate: The Role of KPPU's Extraterritorial Authority in Competition Law Enforcement

Satrio Firmansyah, Dharma Setiawan Negara, Rommy Hardyansah

Universitas Sunan Giri Surabaya, Indonesia

## ARTICLE INFO

### Article history:

Received 17 April 2023

Revised 23 June 2023

Accepted 29 June 2023

### Key words:

Extraterritorial Authority,  
KPPU,  
Competition Law,  
Foreign Companies,  
Domestic Market.

## ABSTRACT

*Enforcement of competition law in Indonesia faces major challenges with the increasing number of foreign companies operating in the domestic market. The application of extraterritorial authority by the Business Competition Supervisory Commission (KPPU) is crucial in dealing with violations committed by foreign companies. This article analyzes the application of KPPU's extraterritorial authority in enforcing competition law in the domestic market, which may involve foreign companies that affect the Indonesian market. Based on a juridical normative study, existing regulations provide a basis for KPPU to enforce the law against foreign companies even though they do not operate domestically. This study also identifies challenges in the implementation of extraterritorial authority, such as difficulties in accessing information and limited coordination between countries. It is recommended that KPPU strengthen international cooperation and update existing regulations, especially related to the development of digital markets. Effective law enforcement against foreign companies will increase market transparency and promote fairer competition in Indonesia.*

## INTRODUCTION

In recent years, the global economy has become increasingly connected, where many business actors across countries operate in one integrated market. One of the impacts of this development is the increasing need for regulations that are able to tackle unfair business competition practices, especially those involving large companies operating in various countries. In this case, the Business Competition Supervisory Commission (KPPU) as a state institution that has authority in Indonesia, plays an important role in regulating and supervising business practices that can lead to monopoly or unfair competition. However, along with economic globalization and cross-border transactions, KPPU's authority faces challenges related to the supervision of competitive practices involving foreign entities (Wahyudi & Prakoso, 2021).

KPPU has an authority that is limited to the national scope of Indonesia. However, in the digital era and international trade, many foreign companies operate in Indonesia without having a direct physical presence. This poses a major dilemma in terms of the application of competition law, especially in relation to the supervision of foreign companies that are not based in Indonesia, but have a direct impact on the

domestic market. Therefore, a deeper analysis is needed regarding the extraterritorial authority of the KPPU in enforcing competition law outside the territory of Indonesia (Ikhwansyah, 2010).

One aspect that needs to be considered is how existing regulations can accommodate these developments, by providing KPPU with sufficient authority to handle cross-border competition practices. In this case, the application of extraterritorial competition law will open up space for KPPU to take firm steps against foreign companies operating in the Indonesian market, without being hampered by narrow jurisdictional boundaries. This requires further study of the legal basis that gives legitimacy to the KPPU to act outside the territory of Indonesia (Longkutoy, 2020).

As a country that prioritizes the principle of fair competition, Indonesia is faced with great challenges in enforcing competition law in the global market (Hakim, 2022). One possible effort is to formulate policies that expand the scope of KPPU's authority, including extraterritorial authority that allows supervision of business competition practices that have an impact on Indonesia (Balqis, 2020). In this case, the international law approach can be one of the bases for KPPU to cooperate with antitrust

\* Corresponding author, email address: dr.dharmasetiawan.negara@gmail.com

institutions in other countries in handling competition cases that are cross-border in nature.

It is important to analyze how KPPU's extraterritorial authority can be effectively implemented, as well as the extent to which existing regulations can facilitate the implementation of supervision and enforcement against foreign companies. Taking into account global developments and international market dynamics, regulations that are more responsive to these issues are expected to create a fairer and more transparent competition climate in Indonesia.

The application of KPPU's extraterritorial authority in enforcing competition law faces a number of obstacles that are not easy to overcome. One of them is the lack of a legal framework that regulates the KPPU's authority in handling competitive practices committed by foreign companies operating in Indonesia. This creates difficulties for KPPU in carrying out supervision and prosecution of practices that harm local consumers and business actors, even though the impact is quite significant on the domestic market (Paparang, 2019). The existing regulations do not provide clear enough authority for KPPU to act against foreign companies, even though they are involved in practices that harm the Indonesian market.

The application of KPPU's extraterritorial authority is also hampered by limitations in terms of international cooperation. Although many countries have developed antitrust policies similar to Indonesia's, coordination between countries in handling cross-border cases is often problematic. This problem is closely related to the differences in legal systems between countries and the difficulty of law enforcement beyond national jurisdiction (Indarto et al., 2023). Therefore, a more comprehensive regulation on international cooperation in the field of business competition needs to be developed so that KPPU can be more effective in enforcing competition law against foreign companies.

Existing regulations in Indonesia, such as Law No. 5/1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, provide a strong legal basis for KPPU to take action against practices that harm the market. However, in terms of the application of extraterritorial authority, the law has not provided sufficient clarity regarding the scope of supervision of foreign companies. This indicates that there is a need for revision or additional articles in the law to provide legitimacy to KPPU's actions in dealing with foreign business actors that have a direct impact on the domestic market.

The rapid development of the global market involving many foreign companies affects the dynamics of business competition in Indonesia. Without a clear authority for KPPU to monitor and enforce the law against foreign business actors, Indonesia risks losing control over the domestic market which can harm local business actors. Therefore, it is necessary to consider how KPPU's extraterritorial authority can be strengthened to be more responsive to the demands of the times and the needs of an increasingly connected global market.

The effectiveness of law enforcement in the field of business competition is one of the important factors in creating a healthy and fair business climate. If KPPU can be authorized to handle business competition practices involving foreign companies, this will increase public confidence in the legal system in Indonesia. This trust will accelerate economic development and increase Indonesia's competitiveness in the international arena, which ultimately contributes to the welfare of society as a whole.

This study aims to analyze the application of the extraterritorial authority of the Business Competition Supervisory Commission in enforcing business competition law against foreign companies operating in Indonesia. Through this study, it is expected to provide an understanding of the legal challenges faced by the KPPU and provide recommendations regarding policies that need to be developed to increase the effectiveness of cross-border business competition supervision. The contribution of this study is to enrich the discourse on competition law and provide a strong basis for the development of regulations that are more adaptive to the dynamics of the global economy.

## RESEARCH METHOD

The research method used in this study is a literature study approach using the normative juridical method. This study focuses on analyzing existing regulations and legal provisions, both national and international, related to the extraterritorial authority of the Business Competition Supervisory Commission (KPPU) in enforcing business competition law. This approach aims to explore, understand, and evaluate relevant legal sources to determine the extent to which KPPU's authority can be applied to foreign companies operating in the Indonesian market. Normative juridical research focuses on analyzing legal doctrines, laws and regulations, and applicable jurisprudence, and examining how these legal norms function in relation to regulating business competition in Indonesia (Soekanto, 2013).

In this study, the data sources used consist of laws and regulations, relevant legal documents, and legal literature relevant to the topic of KPPU's extraterritorial authority. The analysis is conducted using a qualitative approach, which focuses on systematic interpretation and review of legal norms, as well as in-depth juridical considerations regarding how such authority can be applied to foreign companies. In line with that, this study also refers to international legal studies related to competition law, as well as studies on the application of legal authority beyond the borders of a country. The main reference used is a book by Muladi and Danang Sunyoto (2011), which discusses legal research methods and normative juridical applications related to competition law. This book provides methodological guidelines that are very useful in preparing legal research based on existing legal theory and practice.

## **RESULT AND DISCUSSION**

In the rapid development of the global economy, the existence of multinational companies has an impact on the global economy, and has a significant influence on the domestic market in each country. In Indonesia, the presence of foreign companies operating in the local market requires strict supervision to maintain healthy business competition.

Unfair competition is an important issue in the business world that is regulated by Indonesian law. According to Article 1 point 6 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, unfair competition is defined as competition between business actors in the production and marketing of goods or services carried out in a way that is dishonest, unlawful, or hampers fair business competition. There are two main categories of unfair competition, namely anti-competitive actions and fraudulent competition actions (Hakim, 2022).

Anticompetitive conduct involves efforts to impede or prevent fair competition, often by businesses seeking to maintain a monopoly position by preventing or unreasonably excluding competitors (Hardyansah et al., 2021). Some businesses may see competition as negative and detrimental, as they must compete for market share, consumers, and favorable prices (Fariz & Issalillah, 2021). When many business actors are involved in competition, the profits that can be obtained by each business actor tend to decrease (Ikhwansyah, 2010).

To address this unfair competition issue, the Government of Indonesia feels the need to have a legal instrument that can provide legal certainty in dealing with these practices. Therefore, on March 5, 1999, the

government issued Law Number 5 Year 1999 which aims to prohibit monopolistic practices and unfair business competition. With this law, it is hoped that a fairer and healthier competition climate will be created, which in turn will support sustainable economic growth in Indonesia (Wahyudi & Prakoso, 2021).

The background to the issuance of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition is closely related to the agreement made between the International Monetary Fund (IMF) and the Government of Indonesia on January 15, 1998. In the agreement, the IMF agreed to provide US\$ 43 billion in financial assistance to Indonesia to overcome the economic crisis that hit the country. However, this assistance came with the condition that Indonesia must implement certain economic and legal reforms. One reform that was considered important was the regulation of monopolistic practices and unfair business competition, which was the main reason for the drafting of Law Number 5 Year 1999.

Although the agreement with the IMF was the main driver, it was not the only reason behind the birth of this law. Since 1989, Indonesia has experienced intense discussions on the need for competition-focused regulation. The extensive economic system reforms, especially the regulatory policies implemented since 1980, had created a situation that was considered very critical in the business world. During this period, large conglomerates controlled by certain families or parties emerged, which often used aggressive business practices to exclude small and medium-sized businesses. These practices are detrimental to small businesses, and have the potential to affect lawmaking and financial markets as a whole (Ramadhan, 2022).

With Law No.5/1999, it is hoped that a fairer and healthier competition climate can be created, which will protect small and medium-sized businesses from monopolistic practices and unfair competition. This law aims to encourage sustainable economic growth and create fairness in the business world, so that all business actors, both large and small, can compete in a healthy and fair manner (Hakim, 2022).

Unfair competition, as stipulated in Article 1 point 6 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, refers to practices carried out by business actors in the production and marketing of goods and services that are not in accordance with the principles of honesty and law. These practices can hamper fair business competition, which should be the foundation for fair and sustainable economic growth. Unfair competition can harm consumers,

ethically operating businesses, and ultimately, the economy as a whole (Elizabeth et al., 2021). Therefore, it is important to understand and identify the various forms of unfair competition so that appropriate measures can be taken to enforce the law and create a fairer business environment.

Unfair competition can be divided into two main categories: anticompetitive conduct and fraudulent competition conduct. Anticompetitive conduct includes practices that directly impede or restrict competition, such as collusion between businesses to fix prices or divide markets (Chen, 2022). Fraudulent competition acts include unethical practices, such as fraud, misleading advertising, or illegal use of confidential information to gain a competitive advantage. Both categories not only harm businesses that operate honestly, but can also reduce consumer confidence in the market (Chung, 2023). Therefore, strict supervision and enforcement of these practices is essential to maintain market integrity and protect the interests of all parties involved.

Unfair competition refers to actions taken by business actors to hinder or prevent fair competition in the market. These actions are often taken by businesses that seek to maintain or strengthen their monopoly position by unethical means, such as blocking potential competitors from entering the market or eliminating existing competitors through harmful practices (Haines, 2009). Competition is perceived as a threat to business actors who want to dominate market share, so they tend to use strategies that harm others for personal gain (Iamiceli, 2017). Not only does this create unfairness in the market, but it can also reduce innovation and product quality, as powerful businesses no longer feel compelled to improve their services or products.

For some businesses, competition is often seen as negative and unfavorable. In competition, there are various elements that must be contested and defended, such as market share, consumers, and prices. When many businesses are involved in competition, the pressure to maintain profits becomes greater, which may result in a decrease in profit margins (Thorbjørnsen, 2019). In this situation, businesses may feel compelled to take unethical measures to protect their position, such as predatory pricing, collusion, or misleading marketing practices. As a result, competition that should drive efficiency and innovation can transform into an arena where unfair practices dominate, harming consumers and hampering sustainable economic growth (Koguashvili & Otinashvili, 2022). Therefore, it is important to implement strict regulation and effective supervision to prevent unfair competitive practices and ensure that markets continue to function properly.

To overcome various problems that arise in business competition in Indonesia, the government established the Business Competition Supervisory Commission (KPPU). KPPU is a state institution established by Presidential Decree Number 75 of 1999. This institution has a mandate from Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, and functions as a law enforcer in charge of overseeing unfair business competition practices among business actors. With the increasing business activities in various sectors, KPPU is expected to monitor and prevent harmful practices, such as fraudulent competition carried out by competitors (Balqis, 2020).

The Business Competition Supervisory Commission (KPPU) is an independent institution that serves to maintain and oversee business competition in Indonesia, independent of the influence and power of the government and other parties. KPPU is directly responsible to the President as the head of state, which shows the importance of this institution's role in maintaining market integrity. KPPU's organizational structure consists of a Chairman who also doubles as a member, a Vice Chairman who also doubles as a member, and at least seven other members. The election of the Chairman and Vice Chairman is conducted by the commission members themselves, while KPPU members are appointed and dismissed by the President with the approval of the House of Representatives. The term of office of KPPU members is limited to two terms, each for five years, to ensure rotation and renewal in the leadership of this institution.

The duties and authorities of KPPU are regulated in Article 35 of Law Number 5 Year 1999, which covers various important aspects of monitoring monopolistic practices and unfair business competition. KPPU is responsible for assessing agreements and business activities that have the potential to result in monopolistic practices, as well as investigating the abuse of dominant positions by business actors (Amalya, 2020). KPPU has the authority to take necessary actions in accordance with applicable regulations, provide advice and considerations to the government regarding policies related to business competition, and prepare relevant guidelines and publications. KPPU is also required to provide periodic reports to the President and the House of Representatives regarding the results of their work (Hersusetiyati & Sudrajat, 2023). Thus, KPPU plays a very important role in creating a healthy and fair competition climate in Indonesia, which in turn supports sustainable economic growth and protects consumer interests.

The position of the Business Competition Supervisory Commission (KPPU) as a supervisor of monopolistic practices and unfair business competition is regulated in Law Number 5 Year 1999, specifically in Article 36. KPPU has the responsibility to receive reports from the public and business actors regarding alleged monopolistic practices or unfair business competition. This action is an important first step in the monitoring process, as it involves active participation from the public and business actors in reporting potential violations. After receiving the report, KPPU is authorized to conduct research and investigation into the allegations, including examining business activities that may result in monopolistic practices. This process includes examining business actors, witnesses, and expert witnesses, as well as requesting information from relevant government agencies to obtain a clearer picture of the reported situation.

KPPU has the authority to collect and examine various evidences, such as letters, documents, and other relevant evidence for investigation and examination. After conducting an investigation, KPPU is tasked with deciding whether there are losses suffered by other business actors or the public due to allegedly unfair practices. This decision is very important because it can affect the next steps taken by KPPU, including the imposition of sanctions or recommendations for improvement to the business actors involved. KPPU is also obliged to notify their decisions to business actors suspected of monopolistic practices or unfair business competition. Thus, KPPU acts as an institution that not only supervises, but also enforces the law and creates justice in business competition, which ultimately aims to protect consumer interests and encourage healthy economic growth.

The duties and powers of the Business Competition Supervisory Commission (KPPU) are set out in Articles 35 and 36 of Law Number 5 Year 1999, which provide the legal framework for the KPPU to enforce rules related to monopolistic practices and unfair business competition. When there is an alleged violation of this law, KPPU has the authority to conduct enforcement which includes a series of steps, ranging from initial examination to more in-depth investigation and investigation. This process is designed to ensure that any alleged violations are handled seriously and transparently. KPPU also has the right to hold a hearing open to the public, where a decision on the violation will be read out. This not only provides accountability to the KPPU, but also allows the public to oversee the ongoing enforcement process.

After KPPU issues a decision, the business actors involved are required to implement the decision and report the implementation to KPPU. This obligation emphasizes that the KPPU's decision is not merely a recommendation, but a legal order that must be obeyed. With this reporting mechanism, KPPU can monitor the compliance of business actors with the decisions that have been made, and take further steps if necessary. This process creates a more transparent and accountable system in enforcing competition law, and provides protection for consumers and business actors who operate ethically. Thus, KPPU plays an important role in creating a healthy and fair competition climate in the market, which ultimately supports sustainable economic growth.

Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition adopts a clear territorial principle in its regulation, which can be seen from the definition of "agreement" contained in Article 1 number 7. This definition states that an agreement includes the actions of one or more business actors, whether written or unwritten. This shows that this law focuses on interactions and agreements that occur within the jurisdiction of the Republic of Indonesia. Thus, all agreements made by business actors operating in Indonesia, both individuals and legal entities, will be under the supervision and regulation of KPPU. This territorial principle is important to ensure that all business practices that have the potential to harm business competition in the country can be effectively regulated and supervised.

Furthermore, Article 1 point 5 of the same law emphasizes that a business actor is any individual or business entity established and domiciled in the jurisdiction of Indonesia. By linking these two articles, it can be concluded that this law only applies to agreements made under Indonesian law. This creates clear boundaries regarding the scope of application of the law, so that KPPU can focus on monitoring monopolistic practices and unfair business competition that occur domestically. The application of this territorial principle also provides legal certainty for business actors, as they can understand that every action they take in business in Indonesia will be subject to the regulations stipulated by this law. Thus, this law serves as a tool to create a healthy and fair competition climate in the Indonesian market, protect consumer interests, and encourage sustainable economic growth.

In principle, the Competition Supervisory Commission functions as an institution that oversees the implementation of the law, not as a law enforcer in the criminal field such as the police, prosecutors, or

judges who have the authority to force the presence of suspects in court. Nevertheless, there is a growing understanding of Article 36 of Law Number 5 Year 1999, which gives the KPPU the authority as an investigator and prosecutor. This is often considered as part of the area of criminal law, so that KPPU can use this authority to seek and find the material truth regarding whether business actors have violated the law (Ramadhan, 2022).

Although the KPPU does not have the power to enforce criminal laws directly, it still has an important role in identifying and investigating practices that violate competition laws. KPPU is tasked with ensuring that businesses comply with existing rules, and if violations are found, KPPU may recommend appropriate action. Thus, KPPU contributes to creating a healthy and fair competition climate, although it does not have the same law enforcement powers as other law enforcement agencies (Paparang, 2019).

KPPU has the authority to conduct examinations and provide decisions related to violations that occur in business competition. Over time, the existence of KPPU began to be respected and respected by business actors, because this institution plays an important role in maintaining justice and integrity in the business world (Wahyudi & Prakoso, 2021). KPPU also functions as a public service provider, which aims to protect the interests of the public and create a healthy competition climate. As such, KPPU focuses on law enforcement, and seeks to educate and inform the public about the importance of fair and healthy business competition. Therefore, KPPU is authorized to enforce competition law, both against domestic and foreign companies operating in Indonesia. This authority becomes very important in ensuring that the Indonesian market remains open, fair, and can develop sustainably, without any business practices that harm other parties (Ikhwansyah, 2010).

The jurisdiction of the Business Competition Supervisory Commission (KPPU) in enforcing the provisions of Law Number 5 Year 1999 is limited to the territory of the Republic of Indonesia and is aimed at business actors operating within it. Article 1 point 5 of the law explains that the object of KPPU's supervision includes any individual or business entity established and domiciled in Indonesia, as well as those conducting business activities in the jurisdiction of this country. Although this provision provides a clear legal framework for KPPU, some argue that the scope of supervision is too narrow. This may hamper the enforcement of competition law, especially against

business actors that operate abroad but have a significant impact on the Indonesian economy. As more and more business practices become transnational in nature, this challenge becomes even more relevant.

In the ever-changing and dynamic business reality, business activities in Indonesia are now increasingly integrated with the global market. Free trade and advances in digital technology allow businesses from other countries to easily enter the Indonesian market and influence competition within it (Wahyuningtyas, 2016). Therefore, it is important for existing laws and regulations to adapt to these developments. KPPU needs to consider expanding its jurisdiction to cover anticompetitive practices committed by foreign business actors that impact the domestic market. Thus, competition law enforcement can be more effective and responsive to the challenges faced in the era of globalization and digitalization (Fitra, 2013). This will not only protect the interests of local businesses, but also consumers in Indonesia, and ensure that the market continues to function in a fair and competitive manner.

Every state has the full power to exercise its jurisdiction in its own territory, which includes all individuals, objects, and legal events that occur within its geographical boundaries. According to John O'Brien, jurisdiction can be understood as the state's authority to formulate laws, implement national legal provisions, and enforce these laws through the existing judicial system (Medvedieva, 2022). This reflects the basic principle of state sovereignty, where every state has the right to regulate and supervise all activities that take place within its territory. Thus, jurisdiction becomes an important tool for the state to maintain order, justice and public interest in its society (Simma & Müller, 2012).

There are exceptions to this principle, namely extraterritorial jurisdiction, which allows a state to exercise its jurisdiction outside of its territory. This extraterritorial jurisdiction is often applied in international law, where states can enforce their laws against individuals or entities operating outside their geographical boundaries, especially if such actions impact the national interest or security of the state (Voetelink, 2022). Examples of the application of extraterritorial jurisdiction can be seen in cases related to human rights violations, drug trafficking, or business practices that harm consumers in other countries. Thus, although jurisdiction is generally territorial, the development of globalization and interdependence between countries has encouraged the need for more flexible legal mechanisms to deal with issues that cross national borders, so that law enforcement can be carried out more effectively and fairly (Borgne, 2022).

Law enforcement is a process that aims to realize the legal principles contained in regulations or laws, with the main function of protecting human interests (Jainah, 2012). Law enforcement must fulfill three main elements: legal certainty, expediency, and justice. Legal certainty ensures that every individual and entity understands their rights and obligations, while expediency emphasizes positive outcomes for society (Evariani & Soponyono, 2013). Justice ensures that the law is applied fairly and equitably without discrimination. In economics, effective law enforcement is essential to create a healthy and sustainable business climate, where businesses can operate fairly and consumers are protected from harmful business practices (Le, 2022).

In the era of globalization and the development of digital technology, the application of extraterritorial jurisdiction is becoming increasingly relevant and necessary. This is mainly due to national interests related to cross-border business and trade (Khodakivska, 2022). With the convenience offered by digital technology and e-commerce, businesses can easily enter other countries' markets, including Indonesia (Pramesti & Afriansyah, 2020). However, the presence of this digital economy also brings new challenges, such as the potential for anti-competitive practices and unfair business competition that can be carried out by foreign business actors (Dewi & Anisah, 2022). The application of the extraterritorial principle in law enforcement is important to overcome potential violations committed by foreign business actors that can affect the domestic market. Thus, law enforcement that is responsive and adaptive to these global dynamics will help maintain market integrity and protect national economic interests.

The application of the principle of extraterritoriality in the formation of law in Indonesia has been recognized and regulated in various laws and regulations, one of which is Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Article 2 of this law clearly states that the regulated legal provisions apply to every individual who performs legal acts, both inside and outside the jurisdiction of Indonesia, provided that the act has legal consequences that harm the interests of Indonesia. Thus, this law provides legitimacy for the application of the extraterritorial principle, which is particularly relevant in business and information transactions that now often cross national borders. This shows that Indonesia is committed to protecting its national interests, even when businesses operate abroad.

Furthermore, the explanation of Article 2 of Law No. 19/2016 emphasizes that the reach of the law is not limited to acts committed domestically or by Indonesian citizens only, but also includes acts committed by foreign citizens or foreign legal entities outside the jurisdiction of Indonesia, as long as the act has an impact on Indonesian law. This reflects an awareness of the dynamics of globalization and the development of information technology that allows cross-border interactions. With this provision, Indonesia can more effectively enforce the law against harmful practices, such as online fraud, data breaches, and unethical business activities committed by foreign businesses. The application of the extraterritoriality principle in this law not only strengthens Indonesia's legal position in the international arena, but also protects the economic and social interests of the Indonesian people in an increasingly complex digital era.

The application of the extraterritorial principle in relation to business interests does not only occur in Indonesia, but also in other countries, including the United States. One of the most significant examples is the United States Antitrust Law, namely the Sherman Act passed in 1890. This law stipulates that all forms of conspiracies, agreements, and conspiracies aimed at restricting business in the field of trade, whether they occur domestically or abroad, are considered violations. Thus, the Sherman Act provides a legal basis for the United States government to enforce antitrust laws against practices that harm competition, regardless of the geographic location of the business actor. This demonstrates the US's commitment to maintaining the integrity of its domestic market from the negative effects that may arise from the actions of foreign businesses (Knebel, 2017).

The United States also applies the effects doctrine in its antitrust legislation, which allows enforcement against foreign businesses that impact the US market. This doctrine has been applied in several cases, including a case involving a Canadian company in 1945 (Mezias, 2000). In that case, Canadian companies were held accountable for their pricing policies in the US market, which were deemed to harm competition. The US court ruled that extraterritorial jurisdiction was applicable because the company's actions had a direct effect on the US market. The application of the effects doctrine confirms that states can take legal action against foreign businesses operating outside of their territory, provided that such actions have an impact on national interests (Bright, 2015). Thus, the application of the extraterritorial principle in antitrust law in the United States is an important example for other countries in regulating and protecting their domestic markets from unfair business practices.

Based on the previous explanation, there is an urgent need to revise Law No. 5/1999 so that the definition of business actors can be expanded to include foreign business actors involved in anti-competitive practices that impact the Indonesian market. By expanding this definition, KPPU will have greater authority to enforce the law against business actors that operate abroad but have a significant influence on the domestic economy. This is very important given the dynamics of globalization and technological developments that allow foreign business actors to operate in the Indonesian market without clear boundaries. Thus, the revision of this law will not only strengthen the protection of consumers and local businesses, but also create a fairer and healthier competition climate.

The application of the extraterritorial principle in anti-competitive law enforcement will be more effective if supported by international cooperation, both bilaterally and multilaterally. This cooperation is very important, especially within ASEAN, where member countries can share information, experiences, and best practices in anticompetitive law enforcement. With this cooperation, countries in the region can more easily identify and handle anticompetitive practices involving cross-border business actors. The rapid development of the business world requires adjustments in legal arrangements to accommodate new needs and challenges, as well as to safeguard national interests. Thus, the revision of laws and international cooperation will be a strategic step in creating a fairer and more sustainable business environment in Indonesia.

The main challenge faced by KPPU in enforcing competition law is the presence of foreign companies operating in the Indonesian market. Multinational companies often have great financial power and operational capacity, which can influence the market in an unbalanced way (Balqis, 2020). Although they do not operate in Indonesia, their actions can still have far-reaching impacts on domestic market competition. Therefore, it is important for KPPU to have extraterritorial authority that allows it to oversee and crack down on anticompetitive practices committed by foreign companies, even if they do not directly operate in the country (Hakim, 2022).

The regulation that serves as the legal basis for the application of KPPU's extraterritorial authority is contained in Law No. 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. In this law, although it does not explicitly mention extraterritorial authority, it refers to an arrangement that allows KPPU to handle cases related to business competition that occur in

Indonesia, both by domestic and foreign business actors. This provision provides KPPU with the basis to investigate competitive practices committed by foreign companies that have influence or impact on markets in Indonesia, even though they are not physically located within the jurisdiction of Indonesia. Thus, KPPU can enforce fair competition law without being hampered by national boundaries (Paparang, 2019).

In its implementation, this extraterritorial authority is also regulated by various other regulations related to international cooperation in the field of antitrust. One of them is the regulation governing bilateral or multilateral agreements on competition that require the countries involved to respect each other's antitrust provisions. For example, Indonesia is a party to several international agreements that have relevance to the application of competition law, including in the ASEAN forum and the World Trade Organization (WTO). The application of KPPU's extraterritorial authority must also be in line with Indonesia's commitment to international laws governing competition and consumer protection.

The challenge in the application of KPPU's extraterritorial authority lies in the aspect of supervision and law enforcement against foreign companies. Most foreign companies operating in Indonesia often have more complex structures and are not always transparent in conducting their business. Therefore, KPPU is faced with difficulties in accessing information and proving that their practices have a negative impact on the Indonesian market (Karmono et al., 2023). For example, cartel practices carried out by multinational companies abroad can easily influence the prices of products circulating in the Indonesian market without any direct transactions in the country. This makes KPPU's application of competition law against foreign companies more challenging, as it requires stronger evidence and more efficient monitoring mechanisms.

The application of this extraterritorial authority requires close cooperation between the KPPU and the antitrust agency in the country of origin of the foreign company. Without international cooperation, law enforcement against foreign business actors who violate competition law in Indonesia may be very limited. Therefore, it is expected that there will be more intensive coordination between KPPU and similar institutions in major countries such as the United States, the European Union, and Japan, where large companies with potentially significant impacts on the Indonesian market originate.

The implementation of KPPU's extraterritorial authority also requires adjustments from the aspect of domestic regulations that pay more attention to the

characteristics of the business world that are increasingly developing in the digital era. Currently, many foreign companies operate in Indonesia through digital platforms or marketplaces, which allow them to reach a wider market without having to have a physical office in Indonesia. In this case, supervision of business competition practices by foreign companies in cyberspace needs to be further considered by KPPU. Regulations on business competition in cyberspace are not yet fully regulated in the law, which makes it an additional challenge in ensuring fair competition practices for all business actors (Ikhwansyah, 2010).

Thus, it is important for KPPU to continue to update and adapt existing policies and regulations to be more flexible in facing the changing dynamics of an increasingly open and integrated global market. This is necessary so that KPPU can remain relevant in enforcing business competition law, against domestic business actors, and foreign companies operating in the Indonesian market (Ramadhan, 2022). Public participation is also needed to raise awareness of the importance of fair business competition and its impact on economic welfare.

At a broader scope, the application of KPPU's extraterritorial authority must also be based on basic legal principles that uphold justice and balance between protection of domestic market interests and openness to foreign investment (Helnaz, 2021). Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition has an orientation that focuses on the territorial principle. This can be seen from the definition of "agreement" contained in Article 1 point 7, which states that an agreement is an action taken by one or more business actors, either in writing or unwritten. This territorial principle is also the basis and purpose of the law in competition law, which is rooted in domestic conditions and interests.

This principle is particularly important for business actors, as the subject of the business actor determines whether a law can be applied and the extent to which the Business Competition Supervisory Commission (KPPU) has the authority to handle cases of unfair business competition practices. The understanding of who is considered a business actor greatly affects the application of this law (Balqis, 2020). Therefore, this law is designed to protect the interests of the domestic market and ensure that business competition practices take place fairly and fairly in the country. This extraterritorial authority should be seen as part of Indonesia's efforts to optimize global economic integration, where every business actor, both domestic and foreign, is treated fairly in accordance with existing regulations. As a developing

country, Indonesia needs to ensure that the application of competition law can provide greater benefits to the economy, without compromising market stability (Hutapea, 2018).

Understanding how competition is regulated in other countries can provide useful lessons for Indonesia in formulating more appropriate policies. Some countries have successfully implemented this extraterritorial authority in a way that can be used as an example, especially in countries with globally integrated economies. These lessons are important so that Indonesia can avoid the same mistakes and create more effective regulations to tackle competition problems caused by foreign companies.

More appropriate regulations can also strengthen investors' confidence in the Indonesian legal system, which in turn can boost domestic economic growth. Without a clear regulation on KPPU's extraterritorial authority, the potential for market injustice will be greater, given the increasing number of foreign companies entering the Indonesian market. Therefore, strengthening this regulation is necessary so that Indonesia can maintain a healthy competition climate and prevent harmful anti-competitive practices.

As an institution that has great responsibility in regulating business competition, KPPU needs to continue to adapt to the increasingly complex dynamics of the global market. In the midst of the rapid development of the digital economy and globalization, the challenges faced by KPPU are limited to the supervision of domestic companies, and to business practices involving foreign companies. Firmer policies and strengthened regulations are needed that can provide legal certainty for all business actors. More intensive efforts are also needed to build coordination networks with competition supervisory institutions in other countries, given the number of multinational companies operating in various markets simultaneously.

Strengthening the role of KPPU will also have an impact on the creation of a more open and fair market, which favors certain parties, and provides equal opportunities for all business actors. If this can be realized, a healthy investment climate can develop, attracting more investment that will provide long-term benefits to the Indonesian economy. Businesses that have complied with the principles of fair competition will benefit in the long run in the form of market stability and clear legal protection. The public as consumers will also benefit from quality products and fair prices.

The importance of active participation from the public and business actors in supporting the creation of a healthy market cannot be ignored (Wizemann, 2015). Going forward, strengthening awareness of the

importance of fair competition principles must continue to be promoted, both through education and broader public campaigns (Scully et al., 2017). With a joint commitment between the government, regulatory agencies, and business actors, Indonesia can create a more transparent, equitable market that can compete at the global level without worrying about harmful practices.

To increase the effectiveness of the Competition Supervisory Commission in enforcing competition law in Indonesia, several strategic steps can be taken. First, strengthening international cooperation is very important. KPPU can establish cooperation agreements with antitrust agencies in other countries, especially those with multinational companies operating in Indonesia. Through this agreement, information exchange and coordination of investigations can be carried out, so that KPPU can be more effective in handling anti-competitive practices involving foreign business actors. KPPU's active participation in international forums such as ASEAN, WTO, and OECD will enable the agency to share best practices and gain support in competition law enforcement.

Furthermore, the utilization of information technology can also be a significant solution. KPPU can develop a market monitoring system that utilizes big data and analytics to monitor market activity in real-time. With this system, KPPU can detect suspicious patterns and potential violations earlier. Building a digital platform that allows the public and business actors to report suspected violations anonymously and easily will increase public participation in business competition supervision.

In terms of law enforcement, KPPU needs to formulate more efficient and transparent investigation procedures, including setting time limits for each stage of the investigation. This will increase public confidence in KPPU. Strengthening sanctions for competition law violators is also an important step to provide a deterrent effect. KPPU can recommend revisions to the law to clarify and strengthen sanctions for serious violations.

In today's digital era, regulatory adjustments are very important. KPPU needs to develop regulations specifically governing competition practices in digital platforms and marketplaces, given that many foreign companies operate through these channels. Adaptive policies to changing market dynamics, including technological developments and new business models, will ensure that regulations remain relevant and effective.

Finally, periodic monitoring and evaluation should also be conducted. KPPU needs to set clear performance indicators to measure the effectiveness of

law enforcement and the impact of the policies implemented. Issuing a transparent annual report on KPPU's activities, achievements, and challenges will increase accountability and provide feedback for improvement.

By implementing these strategic steps, KPPU can increase its effectiveness in enforcing competition law, protecting the domestic market, and creating a healthy and fair business climate. These measures will not only strengthen KPPU's position as a watchdog institution, but will also provide long-term benefits to the Indonesian economy as a whole.

## CONCLUSION

The application of the extraterritorial authority of the Business Competition Supervisory Commission (KPPU) in enforcing competition law against foreign companies operating in the domestic market is an important step to maintain fair competition in Indonesia. While existing regulations already provide a foundation for KPPU to oversee competitive practices by foreign business actors, the main challenge lies in consistent implementation and effective coordination with international institutions. The success of competition law enforcement depends on KPPU's ability to access the necessary information, as well as to establish more intensive cross-border cooperation, especially in dealing with anti-competitive practices committed by multinational companies.

The implication of the application of extraterritorial authority concerns the protection of the domestic market and supports a more transparent and fair investment climate. The existence of regulations that strengthen KPPU's authority to enforce competition law against foreign companies can increase investor confidence and strengthen Indonesia's position in the global economy. However, to realize this, it is necessary to adjust regulations that are more responsive to the development of digital markets and the opening of the global economy, as well as stricter and more effective supervision.

It is suggested that KPPU continue to increase international cooperation, both with antitrust agencies in major countries and through clearer international agreements. In addition, it is important for Indonesia to update and strengthen its competition regulations, especially in light of the growing dynamics of the digital market. The KPPU must also strengthen its capacity to carry out supervisory and law enforcement duties, as well as increase education to the public and business actors on the importance of fair business competition. A

public that is aware of their rights can contribute to reporting harmful practices, thus creating an environment that is more conducive to fair competition. Finally, regular evaluation and monitoring of the effectiveness of the regulations and policies implemented will ensure that KPPU can adapt quickly to changing market dynamics and new challenges that arise, so that Indonesia can continue to strengthen its position in the international arena.

## REFERENCES

Amalya, A. R. (2020). *Prinsip Ekstrateritorial Dalam Penegakan Hukum Persaingan Usaha*. <https://doi.org/10.36312/JIME.V6I1.1125>

Balqis, W. G. (2020). Penanganan Perkara Pre-Notification oleh KPPU dalam Kerangka Hukum Persaingan Usaha di Indonesia. *Jurnal Yustisiabel*, 4(2), 140-154.

Borgne, F. (2022). Extraterritorial, Universal, or Transnational Human Rights Law? *Israel Law Review*. <https://doi.org/10.1017/s0021223722000139>

Bright, C. (2015). The Implications of the Kiobel v. Royal Dutch Petroleum Case for the Exercise of Extraterritorial Jurisdiction. *Social Science Research Network*. <https://doi.org/10.2139/SSRN.2364707>

Chen, F. (2022). Market Supervision Department – Unfair Competition. *Essential Knowledge and Legal Practices for Establishing and Operating Companies in China*. [https://doi.org/10.1007/978-981-19-2239-8\\_135](https://doi.org/10.1007/978-981-19-2239-8_135)

Chung, Y. (2023). Criminal law measures to protect trade secrets: focusing on the Unfair Competition Prevention and Trade Secret Protection Act. *Institute for Legal Studies Chonnam National University*, 43(2):119-146. <https://doi.org/10.38133/cnulawreview.2023.43.2.119>

Dewi, S. M., & Anisah, S. A. (2022). Comparative Study Application Of Extraterritorial Jurisdiction In Competition Law Between Indonesia And Us Antitrust Law. *International Journal of Law, Environment and Natural Resources*. <https://doi.org/10.51749/injurlens.v2i1.11>

Elizabeth, Y. N., Yu, L. M., Palmer, D. P., & Anyomi, B. (2021). Unfair competition in the field of intellectual property rights: analyzing concepts, acts of unfair competition and laws. *J. Pol. & L.*, 14, 44.

Evariani, D. P., & Eko Soponyono, S. (2013). Kebijakan pertanggungjawaban pidana oleh pelaku kejahatan terhadap harta benda ( studi kasus terhadap recidivis). *Diponegoro Law Journal*, 2(2), 1-14.

Fariz, F. A. B. M., & F. Issalillah. (2021). Narrowing the Economic Gap: The Impact of Technological Innovation on Access and Welfare of the Poor. *Journal of Social Science Studies*, 1(1), 111 - 116.

Fitra, S. (2013). Law Enforcement by the Commission for the Supervisory of Business Competition in Evidence of Article 17: Law of the Republic of Indonesia Number 5 Year 1999 Concerning Prohibition Monopolistic Practices and Unfair Business Competition. *Social Science Research Network*. <https://doi.org/10.2139/SSRN.2226770>

Haines, C. G. (2009). *Efforts to define unfair competition*. New Haven : Yale Law Journal Co.

Hakim, L. (2022). Efektivitas Undang-Undang Antimonopoli dalam Mewujudkan Iklim Persaingan Usaha yang Sehat: Studi Kasus Putusan Nomor 13/KPPU-I/2019. *Lex Renaissance*, 7(4), 910-926.

Hardyansah, R., N. H. Pakpahan, A. S. Wibowo. (2021). The Ramifications of Banking Monopoly on Consumer Trust, Customer Satisfaction, and Industry Competition Dynamics, *Journal of Social Science Studies*, 1(2), 105 - 110.

Helnaz, M. (2021). *Yurisdiksi Ekstrateritorial Sebagai Perluasan Kewenangan Komisi Pengawas Persaingan Usaha dalam Menangani Sengketa Persaingan Usaha era Globalisasi di Indonesia*, *Bachelor's thesis*, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta.

Hersusetyati, H., & Sudrajat, T. (2023). KPPU, Prohibition of Monopoly and Unfair Business Competition: Policy and Organizational Perspective. *Jurnal Administrasi Bisnis*. <https://doi.org/10.14710/jab.v12i1.42899>

Hutapea, K. (2018). Penerapan Prinsip Ekstrateritorialitas dalam Penegakan Hukum Persaingan Usaha (Studi Putusan KPPU Nomor: 7/KPPU-L/2007 tentang Kasus Temasek), *Skripsi*, Fakultas Hukum, Universitas Sumatra Utara.

Iamiceli, P. (2017). Unfair Practices In Business-Toconsumer and Business-to-Business Contracts: A Private Enforcement Perspective. *Conferência Brasil-Itália*. <https://doi.org/10.12818/P.0304-2340.2017VBIP335>

Ikhwansyah, I. (2010). *Hukum Persaingan Usaha dalam Implementasi Teori dan Praktik*. Bandung: Unpad Press.

Indarto, T., D. S. Negara, & D. Darmawan. (2023). Legal Frameworks For Mitigating Monopoly Practices Adverse To MSMEs In Indonesia, *Journal of Social Science Studies*, 3(1).

Jainah, Z. O. (2012). Penegakan hukum dalam masyarakat. *Journal of Rural and Development*, 3(2).

Karmono, K., Y. Vitrianingsih, M. E. Safira, E. C. Gautama, & H. Udjari. (2023). Competition Law Implementation in the Herbal Industry to Prevent Adverse Practices for Businesses and Consumers, *Journal of Social Science Studies*, 3(1).

Khodakivska, D. (2022). Extraterritoriality in the application of economic sanctions. *Naukovij Visnik Užgorods'kogo Naciional'nogo Universitetu*. <https://doi.org/10.24144/2307-3322.2022.70.75>

Knebel, D. E. (2017). Extraterritorial application of US antitrust laws: principles and responses. *Jindal Global Law Review*, 8, 181-202.

Koguashvili, P., & Otinashvili, R. (2022). Peculiarities of Competitiveness Strategies in Business. *Economics and Business*. <https://doi.org/10.56079/20221/6>

Le, T. N. (2022). Law Enforcement for Guaranteeing the Rights, Interests, and Central Role of the People Under the Viewpoint of the Communist Party's XIII Congress. *VNU Journal of Science: Legal Studies*. <https://doi.org/10.25073/2588-1167/vnuls.4455>

Longkutoy, B. E. D. (2020). Tugas dan Wewenang KPPU dalam Penanganan Pelanggaran Hukum Persaingan Usaha Menurut Undang-Undang Nomor 5 Tahun 1999. *Lex Administratum*, 8(4).

Medvedieva, M. O. (2022). The concept of jurisdiction in international law. *Актуальнi Проблеми Мiжнародних Вiдносин*. <https://doi.org/10.17721/apmv.2022.152.1.26-34>

Mezias, J. M. (2000). Do labor lawsuits represent a liability of foreignness for foreign subsidiaries operating in the united states. *Academy of Management Proceedings*, 2000(1):K1-K6. <https://doi.org/10.5465/APBPP.2000.5535072>

Muladi, & D. Sunyoto. (2011). *Metode Penelitian Hukum*, Jakarta: Rajawali Press, 2011.

Paparang, J. A. (2019). Tugas dan Wewenang Komisi Pengawas Persaingan Usaha (KPPU) Dalam Penanganan Pelanggaran Hukum Persaingan Usaha Menurut Undang-Undang Nomor 5 Tahun 1999. *Lex Privatum*, 7(7).

Pramesti, I., & Afriansyah, A. (2020, March). Extraterritoriality of data protection: GDPR and its possible enforcement in Indonesia. In *3rd International Conference on Law and Governance (ICLAVE 2019)* (pp. 83-94). Atlantis Press.

Pratama, R. A. (2018). Pengaturan Monopoli Kartel Oleh Pelaku Usaha Dalam Persaingan Usaha Garam: Suatu Kajian Putusan KPPU NO. 10/KPPU-L/2005. *Jurnal Ius Constituendum*, 3(2), 212-228.

Ramadhan, V. J. O. (2022). Konflik Pasar Monopoli terhadap Pelaku Usaha. *Jurnal Pendidikan Dan Konseling (JPDK)*, 4(6), 4925-4933.

Scully, M., Brennan, E., Durkin, S., Dixon, H., Wakefield, M., Barry, C. L., & Niederdeppe, J. (2017). Competing with big business: a randomised experiment testing the effects of messages to promote alcohol and sugary drink control policy. *BMC Public Health*. <https://doi.org/10.1186/S12889-017-4972-6>

Simma, B., & Müller, A. Th. (2012). *The Cambridge Companion to International Law: Exercise and limits of jurisdiction*. <https://doi.org/10.1017/CCO9781139035651.010>

Soekanto, S. (2013). *Pengantar Penelitian Hukum*, Jakarta: Universitas Indonesia Press.

Thorbjørnsen, S. O. (2019). *A Humane Competition*. [https://doi.org/10.1007/978-3-030-22133-1\\_9](https://doi.org/10.1007/978-3-030-22133-1_9)

Undang-Undang Republik Indonesia Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat

Voetelink, J. (2022). *Limits on the Extraterritoriality of United States Export Control and Sanctions Legislation*. [https://doi.org/10.1007/978-94-6265-471-6\\_11](https://doi.org/10.1007/978-94-6265-471-6_11)

Wahyudi, E., & Prakoso, W. (2021). Urgensi Penerapan Prinsip Ekstrateritorial Bagi Penegakkan Hukum Persaingan Usaha Di Indonesia. *Lex Jurnalica*, 18, 258-63.

Wahyuningtyas, S. Y. (2016). The Online Transportation Network in Indonesia: A Pendulum between the Sharing Economy and Ex Ante Regulation. *Competition and Regulation in Network Industries*. <https://doi.org/10.1177/178359171601700304>

Wizemann, T. (Ed.). (2015). *Business engagement in building healthy communities: workshop summary*. National Academies Press.

\*Firmansyah, S., D. S. Negara, & R. Hardyansah. (2023). Realizing a Fair Investment Climate: The Role of KPPU's Extraterritorial Authority in Competition Law Enforcement, *Journal of Social Science Studies*, 3(2), 11 - 22.