



THE OBJECTIVITY OF THE BUSINESS COMPETITION SUPERVISORY COMMISSION IN DECIDING BUSINESS COMPETITION CASES IN INDONESIA

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Abstract

This study discusses the commission board's objectivity in a trial while deciding a business court case. This study aims to identify the commission board and investigators' authority in a courthouse, and the fact that they are in the same institution as well as the concern. This study uses a type of normative research through a statutory approach and a conceptual approach. This research's document source is obtained by tracing statutory regulations, especially those related to business competition. The research shows a relationship that can affect The Indonesian Competition Commission (ICC) decision regarding the extent of authority that ICC has, as contained in the provisions of Article 36 of Law No. 5/1999. This obscurity can provide legal loopholes that have potentially offer a wide range of unlawful authority for ICC. Therefore, the Government has to amend the current regulation.

Keywords: *The Indonesian Competition Commission (ICC), Antitrust Law, Business Competition.*

A. Introduction

The development of the business world across the globe is an essential matter in the national economy's growth. Various sectors of business activities compete to get a place and become the choice of consumers. In essence, this development cannot be separated from competition between business actors to get the maximum profit. Thus, for this competition and considering the large role of business actors in economic growth, it is necessary to carry out balanced supervision and regulation. The Government as state administrator is obliged to maintain the business climate in order to remain conducive and run well so that business actors can compete fairly and do not use fraudulent methods, conspire with other business actors or other unjustified methods, which in turn will disrupt the business climate and destabilizing the market system. Therefore, the Government must be "involved" in making regulations or policies on business competition policies and taking action against unscrupulous business actors who commit fraud. Legislation in business competition is regulated in Law No. 5 of 1999 concerning the Anti-Monopoly Practice and Unfair Business Competition (Competition Law). As held in the Competition Law, the institution with authority to conduct supervision is The Indonesian Competition Commission (ICC).

The Indonesian Competition Commission is an independent institution that has the authority to supervise business competition and impose sanctions independent of the

Government and other parties' influence. ICC's authority as business competition and monopoly supervisory agency is contained in Article 36 of the Anti-Monopoly Law. Based on these provisions, the ICC can be considered to have great authority and tends to be excessive. As an independent institution, its authority counts from regulatory, administrative, and semi-judicial functions at the same time.¹ Based on that authority, ICC carries out its role to resolve and decide unfair business competition and monopoly. In its practice, ICC has decided not only administrative but even criminal sanctions. Also, ICC in Decision No. 06/KPPU-I/2005 in a tender case, ICC sentenced the reported P.T. Waskita Karya to pay a fine of Rp. 2,500,000,000.00 (two billion five hundred million rupiahs). Rooted from the extent of the ICC's authority in business competition cases, it is essential to carry out further research on the polemic of ICC's authority in resolving cases in the field of business competition. Whereas the provisions of article 36 can position ICC on an equal basis with a judicial body that has the authority to decide a case. Hence, it can potentially be abusive in handling future business competition cases.

B. Discussion

1. The Indonesian Competition Commission Authority on Business Competition Disputes

The institution with the authority to enforce business competition law and enforce Law No. 5 of 1999 in Indonesia is The Indonesian Competition Commission (ICC). The legal basis for the formation of ICC is contained in Article 30 paragraph (1), stated that: *To supervise the implementation of this Law a Business Competition Supervisory Commission is formed, hereinafter referred to as the Commission.* As an Independent institution, ICC has been designated by Law No. 5 of 1999 as the board responsible for overseeing and enforcing the Law's implementation. The current ICC was formed based on the Decree of the President of the Republic of Indonesia No. 75 of 1999. In principle, the enforcement of business competition law can carry out by the police, prosecutors, and the courts. In this case, a court is officially established by the state for the settlement of cases. However, for business competition law, the dispute resolution at the first level is not resolved by/in the Court, but ICC. The reason to put forward is that business competition law requires experts in business in order to maintain market mechanisms. Institutions that enforce business competition law must consist of experienced people with legal backgrounds and economics and business qualifications. These criteria are essential, considering that business competition is closely related to the economy and business.²

In carrying out its duties, ICC can be represented as the authoritative ruler in business competition law, on the ground that ICC has the power to impose sanctions on violators of legal rules. Such a statement also expressed by Sudikno Mertokusumo in his book "*Mengenal Hukum*", that the authorities have the power to impose sanctions on violations of legal principles.³ In supporting the achievement of fair competition among business actors, the role of ICC is substantial. ICC's duties stipulated in the formulation of Article 35 of the Competition Law, which includes:

The duties of the Commission shall include the following:

¹ Jimly Assidhiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi* (Gramedia : Jakarta, 2007), 23.

² Ayudha D. Prayoga, *Persaingan Usaha dan Hukum yang Mengaturnya di Indonesia* (Jakarta: Proyek Elips, 2000), 16.

³ D. Mulyadi, & Rusydi, "Efektivitas Peran Komisi Pengawas Persaingan Usaha (KPPU) Dalam Penanganan Kasus Persaingan Usaha Tidak Sehat", *Jurnal Ilmiah Galuh Justisi* 5, no. 1 (2017): 1-20, 7, DOI: 10.25157/jigj.v5i1.235.

- a. Assess agreements that may result in monopolistic practices and or unfair business competition as set forth in Article 4 up to and including Article 16;
- b. Assess business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition as stipulated in Article 17 up to and including Article 24;
- c. Assess the existence or absence of the abuse of dominant position which may cause monopolistic practices and or unfair business competition as set forth in Article 25 up to and including Article 28;
- d. Undertake actions in accordance with the Commission's authority as set forth in Article 36;
- e. Provide advice and opinion concerning Government policies related to monopolistic practices and or unfair business competition;
- f. Prepare guidelines and or publications related to this Law;
- g. Submit periodic reports on the results of the Commission's work to the President and the People's Legislative Assembly.

ICC is an independent institution that is free of the influence and power of the Indonesian government and other parties.⁴ In deciding or investigating a case, ICC cannot be influenced by any party, either the government or other parties having a Conflict of Interest, even though its authority and duties are responsible to the President in its implementation. ICC is also a Quasi-Judicial institution that has executive authority related to business competition cases.⁵ Furthermore, in carrying out these tasks, based on the provisions of Article 36 Law No. 5 of 1999 ICC provided by the following authorities:

- a. Receive reports from the public and or business actors regarding allegations of the existence of monopolistic practices and or unfair business competition;
- b. Conduct research concerning allegations of the existence of business activities and or actions of business actors which may cause monopolistic practices and or unfair business competition;
- c. Conduct investigation and or examination of allegations of cases of monopolistic practices and or unfair business competition reported by the public or by business actors or discovered by the Commission as a result of its research;
- d. Make conclusions regarding the results of its investigation and or examination as to whether or not there are any monopolistic practices and or unfair business competition;
- e. Summon business actors alleged of having violated the provisions of this Law;
- f. Summon and present witnesses, expert witnesses, and any persons deemed to have knowledge about the violation of the provisions of this Law;
- g. Seek the assistance of investigators to present business actors, witnesses, expert witnesses, or any persons as intended in sub-articles e and f, who are not prepared to appear in response to the Commission's summons;
- h. Request the statement of Government institutions related to the investigation and or examination of business actors who have violated the provisions of this Law;
- i. Obtain, examine and or assess letters, documents or other instruments of evidence for the purpose of investigation and or examination;
- j. Determine and stipulate the existence or non-existence of losses suffered by other business actors or society;
- k. Notify the business actors alleged of having engaged in monopolistic practices and or unfair business competition about the Commission's decisions;

⁴ Meitia Fadhilah, "Penegakan Hukum Persaingan Usaha Tidak Sehat Oleh Komisi Pengawas Persaingan Usaha (KPPU) Dalam Kerangka Ekstrateritorial", *Jurnal Wawasan Yuridika* 3, no. 1 (2019): 55-72, 64, DOI: 10.25072/jwy.v3i1.217.

⁵ Hermansyah, *Pokok-Pokok Hukum Persaingan Usaha* (Jakarta: Kencana Pranada Group, 2008), 33.

l. impose administrative sanctions on business actors violating the provisions of this Law.

In further meaning that the Commission is a body that has a very broad authority in dealing with unfair competition matters as stated in the Law.⁶ The ICC's authority is a special license given by law to ICC to impose sanctions in the form of administrative actions to business actors violating the business competition law's provisions.⁷ Since the enactment of Law No. 5 of 1999, ICC has numerous powers as any other judicial institution. This authority includes investigating, enforcing, and litigating authority.⁸ In carrying out the duties and powers granted by Law No.5 of 1999, and following the provisions of Article 36 above, ICC could take several legal actions, such as receiving reports from the public or business actors regarding allegations of unfair business practices. Even without notice or report, ICC can still carry out investigations by first investigating the allegations of unfair business activities. Furthermore, with Article 36 Paragraph (l) provisions, ICC may impose sanctions as administrative measures against business actors proven to have committed unfair business activities.

The Competition Law did not mention ICC as a court institution at all. The duties and authorities are also not related to the task of official judicial bodies. Nevertheless, theoretically, ICC remains a semi-judicial or quasi-judicial institution. ICC is different from civil courts, which handle subjective individual rights. Therefore, the ICC must prioritize the public interest rather than the individual interest in handling allegations of violation of the antitrust law.⁹ Suppose it is related to Montesquieu's '*trias politica*' theory. In that case, the ICC can more accurately be seen as an institution with mixed functions, not only the executive but also the judiciary. As a quasi-judicial institution, the types of cases handled by the ICC concern civil business matters and relate to state administrative law and even criminal Law. Each of these is regulated according to different law fields, but practical interests need to be integrated into a single case handling system through the Indonesian Competition Commission (ICC).¹⁰

As a semi-judicial or quasi-judicial institution, in the form of administrative measures and legal sanctions, can impose sanctions on parties who violate Law No. 5 of 1999 as stipulated in Chapter VIII Article 47, Article 48, and Article 49. Administrative sanctions are: (a) the annulment of agreements, (b) order to stop vertical integration, (c) order to cease activities, (d) order to cease abuse of dominant position, (e) annulment of mergers or consolidations of business entities and acquisition of shares, (f) determination of compensation payments, and (g) imposition of penalties. Meanwhile, the criminal provisions are determined to consist of the main criminal as stipulated in Article 48 and additional penalties as stipulated in Article 49 in the form of (a) revocation of business licenses, (b) prohibition of holding positions of directors or commissioners within a certain time limit, and (c) termination of activities or actions causing losses to other parties.

By these ICC authorities, it can be said that ICC has excessive jurisdiction. It can be seen from the functions of the three different law enforcement agencies. ICC, based on Article 36,

⁶ Ridel Jhonatan Toar Rombot, "Peranan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Menyelesaikan Sengketa Usaha Perdagangan Menurut Undang-Undang No. 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat", *Lex Privatum* 7, no. 1 (2020): 56-73, 69.

⁷ Joshua Anggelito Paparang, "Tugas Dan Wewenang Komisi Pengawas Persaingan Usaha (KPPU) Dalam Penanganan Pelanggaran Hukum Persaingan Usaha Menurut Undang-Undang Nomor 5 Tahun 1999", *Lex Privatum* 7, no. 7 (2019): 32-41, 37.

⁸ Rai Mantili, "Problematika Penegakan Hkum Persaingan Usaha Di Indonesia Dalam Rangka Menciptakan Kepastian Hukum", *Padjajaran Jurnal Ilmu Hukum* 3, no. 1 (2016): 116-132, 118, DOI: 10.22304/pjih.v3n1.a7 .

⁹ Dewi Oktana Ustien, "Kewenangan KPPU Terhadap Persekongkolan Tender", *Jurnal Ilmu Sosial dan Humaniora* 2, no. 2 (2019): 319-327, 319.

¹⁰ Jimly Assidhiqqie, *Fungsi Campuran KPPU Sebagai Lembaga Quasi Peradilan, Seminar Penegakan Ketentuan Hukum Persaingan Perihal Tender* (Jakarta: Djokosoetono Research Center, 2009), 22.

can receive reports, conducts research, investigations, and examinations. Also, ICC is capable of imposing sanctions in the form of administrative actions against business actors. Hence, ICC's authority has the potential to be misused; abuse of power is vulnerable to being carried out by stakeholders in this business competition institution. Especially in Court, as commissions and investigators are one in the same institution, they share a similar interest in suing business competition actors. Thus, the potential for new problems to arise is possible given the absence of balance and excessive exercise of authority by ICC.

2. Competition Law in the U.S. Antitrust Law

The United States is one of the countries that has initiated regulations related to Business Competition in the first place. The United States itself has two Institutions that specifically oversee all matters on Business Competition, namely the United States Department of Justice (USDOJ-AD) and The Federal Trade Commission (FTC). Both are subject to the Competition Law consisting of The Sherman Act (1890) and The Clayton Act (1914). One of the first calls to introduce privacy into a particular competition analysis came in 2007 in conjunction with the FTC's investigation of the proposed Google-DoubleClick acquisition. Arguing that the "right of privacy is personal and fundamental in the United States."¹¹

Lamaj Jonida argues that: The Sherman Act is famous for its conciseness and completeness of its rules, which can regulate "public interest" or "public choice". This means that the public interest is more emphasis on controlling monopolies, introducing more competition into the economy, and reaffirming the value of individual consumers compared to large conglomerate firms. Related to the view of "public choice" shows that legislators use The Sherman Act to defend themselves in the office.¹² The Sherman Act regulates monopoly issues, monopoly trials, unreasonable contract agreements, and price-fixing.¹³ The Clayton Antitrust Act is an amendment passed by the U.S. Congress in 1914 that provides further classification and substance in complementing the Sherman Act 1890 on price discrimination, pricing, and unfair business practices.¹⁴

Both laws authorize the Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice (DOJ) as a board that resolves business competition matters. It is fair to say that today FTC privacy jurisprudence is the broadest and most influential regulating force on information privacy in the United States—more so than nearly any privacy statute or common law tort. The statutory law regulating privacy is diffuse and discordant, and common law torts fail to regulate the majority of activities concerning privacy.¹⁵

In the United States, the USDOJ-AD is led by an Assistant Attorney General (AAG) elected by the President and confirmed by the Senate. Any prosecution carried out by each department is a severe one because price-fixing and related offences such as bid-rigging are serious crimes, and full constitutional protection applies. Criminal enforcement tools, such as search warrants and electronic surveillance, are frequently used.

The U.S. The Department of Justice has the authority to carry out investigations under the Sherman Act with a prior report or take direct action without prior notification. However, if we look at the Clayton Act provisions, USDOJ in conducting an investigation first gets a report. In addition, the FTC also has the same authority as the USDOJ in conducting

¹¹ Maureen K. Ohlhausen, "Competition, Consumer Protection, and the Right [Approach] To Privacy", *Antitrust Law Journal* 80, no. 1 (2015): 121-156, 138.

¹² Lamaj Jonida, "The Evolution of Antitrust Law in USA", *European Scientific Journal* 13, no. 4 (2017): 154-166, 160, DOI: 10.19044/esj.2017.v13n4p154.

¹³ John H. Shenefield, Irwin M. Stelzer, *The Antitrust Laws A Primer Fourth Edition* (Washington DC: The AEI Press, 2017), 17.

¹⁴ *Ibid.*, 17.

¹⁵ Daniel J. Solove, "The FTC and the New Common Law of Privacy", *Columbia Law Review* 114, no. 3 (2014): 583-676, 597, DOI: 10.2139/ssrn.2312913.

investigations, as stipulated in Article 5 of the FTC Act.¹⁶ In contrast to ICC in Indonesia, the FTC has several bureaus: the Bureau of Consumer Protection, the Bureau of Competition, and the Economic Bureau.

The Bureau of Competition strives to prevent anti-competitive mergers and other anti-competitive business practices in the market. By enforcing antitrust laws, the Bureau promotes competition and protects consumers' freedom to choose goods and services on the open market at prices and quality suited to their needs; *The Bureau of Consumer Protection* protects consumers from unfair practices, fraudulent acts, or fraud. The Bureau enforces various consumer protection laws enforced by Congress and trade regulation issued by the Commission. Its actions include company-wide and industry-wide investigations, federal and administrative court litigation, regulatory processes, and consumer and business education. The Bureau contributes to the Commission's ongoing efforts to inform Congress and other government entities of the impact action can have on consumers; *The Bureau of Economics* helps the FTC evaluate its actions on economic impact. To do so, the Bureau provides financial analysis and support for the investigation and creation of antitrust and consumer protection regulations. It also analyzes the effects of government regulation on competition and consumers. It provides Congress, the Executive Branch, and the public with an economic analysis of market processes related to antitrust, consumer protection, and regulation.

The FTC often has sought to address a competitive concern in the marketplace via its many non-enforcement tools, such as conducting research, issuing reports and studies, and engaging in competition advocacy. For example, the agency has done extensive non-enforcement work on ways to improve the patent system, including offering suggestions for particular changes in the law.¹⁷ The FTC stated the authority to interpret and enforce competition law provisions, including the Clayton Act, Robinson-Patman Act, Unfair Trade Practices Act. But not the Sherman Act, whose implementation remains the exclusive authority of federal courts. Where in the Sherman Act also regulates the provision of criminal sanctions in the form of fines and imprisonment.

In-depth views, there are similarities between Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition with the Antitrust Law in the United States. In general, Law No. 5 of 1999 contains six parts of the regulation: Prohibited Agreements, Prohibited Activities, Dominant Position, the Commission for the Supervision of Business Competition, Law Enforcement, and other provisions. The goal to make laws regarding the prohibition of monopolistic practices and unfair business competition, as done by developed countries with highly developed corporate societies, such as the United States, as stated above, is to maintain the continuity of competition.

In initiating every investigation, both the DOJ and the FTC are equally on the same level. Before filing a lawsuit. When deciding whether to sue or not, the two institutions can first summon and ask for an explanation from the business actor regarding the case in which the agency can dispute this explanation. On this occasion, the business actor and his attorney can also explain that most relieve them. The next phase is the prosecution stage. Both legal institutions have the option of implementing the Sherman Act criminal code according to the per se system. Not infrequently, they also apply criminal rules beyond what is contained in the Sherman Act.

Suppose in the end, the case contains a serious criminal element. Law enforcement agencies can involve enforcement agencies outside of business competition, such as the FBI or other institutions that have expertise in the field of investigation. Hence, it can initiate the

¹⁶ Douglas H. Ginsburg, "Comparing Antitrust Enforcement in the United States and Europe", *Journal of Competition Law and Economics* 1, no. 3 (2005): 427-439, 429, DOI: 10.1093/joclec/nhi017.

¹⁷ Maureen K. Ohlhausen, "Section 5 of the FTC Act: Principles of Navigation", *Journal of Antitrust Enforcement* 2, no. 1 (2013): 1-24, 19, DOI: 10.1093/jaenfo/jnt013 .

arrest process. The next stage is the District Court trial, where law enforcement agencies try to convince the judge and jury. During a trial, a series of witnesses, expert witnesses, important documents, and business actors accompanied by their legal counsel are presented.¹⁸ Thus, the main focus of differentiating ICC and FTC's authority is the scope of their authorities. ICC only has the authority to enforce business competition law, while FTC has other powers, namely protecting consumer rights. Another difference between the FTC and ICC in Indonesia is that the FTC in carrying out investigations related to organization, business, practice, and management of companies can conduct searches, while in Indonesia, ICC does not have independent authority to conduct searches. Court decisions are final unless the Supreme Court will review the same matter.¹⁹

3. The objectivity of the ICC Commission Council in Business Competition Cases

The Business Competition Supervisory Commission is an institution that carries out a semi-judicial or quasi-judicial function. Hence, its members or commissioners have a position as semi-judges or quasi-judges. Thus, the ICC commissioners must act under general/universal principles applicable to judges, including those concerning ethical standards (*code of ethics*) and code of conduct. Judges today apply the principles known as "The Bangalore Principles of Judicial Conduct", which are recognized worldwide. In Judicial Conduct, some principles must be adopted by every judge around the world, namely the principles of (i) independence, (ii) impartiality, (iii) integrity, (iv) propriety, (v) equality, (vi) competence, and (vii) diligence. So, these principles above for each judge must also be reflected in every ICC Commissioner's behaviour. The Chairperson, Deputy Chairperson, and ICC Members do not violate and must try to prevent themselves from intentionally or unintentionally violating the seven principles of ideal behaviour.²⁰

The implementation of the Business Competition Law is submitted to the ICC, an independent institution out of the influence of the government and other parties that have the authority to supervise business competition and impose sanctions.²¹ Law No. 5 of 1999 does not specify how the business competition supervisory commission decision-making process. The elucidation of Article 43 paragraph 3 of Law No. 5 of 1999 states that the Commission's decision-making is carried out in a panel meeting consisting of at least three members. Commission, in line with this, Article 7 of Presidential Decree No. 75 of 1999 states that to settle a case, the business competition supervisory commission can hold a panel meeting consisting of at least three business competition supervisory committee members where the decision is signed. Accountability to the President is intended to be orderly administrative because ICC uses State Budget and carries out government functions by all assembly members. Thus, the settlement or examination of competition law enforcement cases must be carried out in a trial in the form of an assembly, with a minimum of 3 members.²²

Article 30 paragraph (2) Law No. 5 of 1999 determines ICC's institutional status as an independent institution is independent of the influence and power of the Government and

¹⁸ John H. Shenefield, *The Antitrust Laws A Primer Fourth Edition* (Washington DC: The AEI Press, 2017), 28.

¹⁹ Baiq Ervinna Sapitri, "Kewenangan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Penanganan Perkara Persaingan Usaha (Studi Perbandingan Di Indonesia Dengan Negara-Negara Common Law System)", *Jurnal IUS 3*, no. 7 (2015): 139-158, 146, DOI: 10.12345/ius.v3i7.204.

²⁰ Jimly Assidhiqqie, *Fungsi Campuran KPPU Sebagai Lembaga Quasi Peradilan, Seminar Penegakan Ketentuan Hukum Persaingan Perihal Tender* (Jakarta: Djokosoetono Research Center, 2009), 32.

²¹ Wisny, "Penerapan Sanksi Administratif Oleh Komisi Pengawas Persaingan Usaha (KPPU) Terhadap Pelaku Usaha yang Melakukan Persekongkolan Dalam Tender", *Pakuan Law Review 1*, no. 2 (2015): 359-381, 361, DOI: 10.33751/palar.v2i2.941.

²² I Ketut Karmi Nurjaya, "Peranan KPPU Dalam Menegakkan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat", *Jurnal Dinamika Hukum 9*, no. 1 (2009): 53-90, 87, DOI: 10.20884/1.jdh.2009.9.1.69.

other parties. Based on Article 31 paragraph (2) of Law No.5 of 1999, the mechanism for filling the positions of ICC Commissioners is carried out through the President's appointment with the House of Representatives' approval. Such a mechanism allows checks and balances between the Government and the Representatives in appointing ICC Commissioners. The provisions of Article 30 paragraph (3) of Law Number 5 of 1999 determine that ICC is responsible to the President. The President's appointment as the institution for which ICC is responsible does not mean that ICC is a government institution or subordinated to the President. Institutionally KPPU remains an independent and impartial institution in carrying out its duties and authorities.²³

The fundamental problem in ICC Cases' settlement is that the ICC Commission Board and Investigators are in the same trial. This can create an imbalance of interests for business actors who are suspected of having violated business competition. It should, however, be the balance is strictly regulated in the laws and regulations. At least being supervised by a special supervisory to ICC institution. In addition to the special institutional supervision of ICC, ICC Commissioners can also carry out surveillance. Based on the provisions in Law No. 5 of 1999, ICC Commissioners have the authority to impose sanctions in the form of ICC decisions. In order to ensure that in making decisions, ICC Commissioners do not commit legal mafia practices and acts of abuse of authority, a supervisory procedure needed to maintain the dignity of the commissioners in carrying out the functions of judicial power. Therefore, according to the author, considering that ICC has been recognized as one of the executors' judicial authority in Indonesia, it is better if the ICC Commissioners' supervision is included in judges' supervision regime, as is the case with judges. Therefore, the Judicial Commission and the Supreme Court have the right to supervise ICC Commissioners' behavior.

With the current Law, ICC tends to be a super body. ICC has various powers ranging from investigating to deciding a case. The debate regarding the ICC's authority, which is deemed too large, has made the public question ICC's position. ICC can also ask investigators for help if they face any obstacles in searching or carrying out forced actions (efforts) against companies related to suspected violations of Law Number 5 of 1999.²⁴ Furthermore, compared to the settlement of competition cases in the United States, the legal basis that guides competition law enforcement is based on the Sherman Act, Clayton Act, and the Federal Trade Commission Act. Procedure for proceedings in the United States, is first to determine what type of case it is. Handling of cases could be either through the FTC or the DOJ. Whereas in Indonesia, all anti-competition cases are the ICC's authority, then the authority is transferred to the Court if there is an objection. This mechanism shows how the ICC's authority can take over several functions of other law enforcement agencies, leading to the failure to resolve business competition cases in Indonesia fairly.

Indeed, even though ICC has broad powers in the end, it is still limited, namely in terms of execution of decisions. ICC can examine, investigate, summon parties, and make a decision, but ICC has no authority to execute it. Execution of the decisions requires *fiat court execution*. From a criminal perspective, even though the ICC has broad authority to conduct investigations, the ICC examination results are only sufficient as *initial evidence* for investigators.

²³ Bagir Manan, *Hukum Positif Indonesia: Suatu Kajian Teoritik* (Yogyakarta: FH UII Press, 2004), 50.

²⁴ Alya Anindita Maheswari, "Batasan, Wewenang, Dan Keterlibatan KPPU Dalam Kasus Persekongkolan Tender Menurut Hukum Persaingan Usaha", *Jurnal Jurist-Diction* 3, no. 5 (2020): 1581-1596, 1588, DOI: 10.20473/jd.v3i5.21967.

C. Conclusion

The wide range of authorities possessed by ICC makes it an institution with enormous powers. Looking at several provisions in Law No. 5 of 1999 which give such broad powers to ICC, range from investigation to decision making. Compared with the regulations that apply in the United States, this authority has substantial differences leading to fair business competition trial. The legal basis that guides the enforcement of competition law in America is the Sherman Act, Clayton Act, and the Federal Trade Commission Act. In procedural, in the United States, the types of cases are to be first determined.

Furthermore, case handling is carried out either through the FTC or the DOJ. Meanwhile, in Indonesia, all antitrust cases are the ICC's authority, then if there is an objection, the authority is transferred to the Court. Based on these powers, it is necessary to supervise the ICC Commissioners to avoid judicial mafia and avoid abuse of power. Including supervision through the ICC special supervisory institution and under the control of judges through the Judicial Commission and the Supreme Court is an alternative solution to maintaining ICC Commissioners' dignity.

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