

# Problematic on the Court Execution of the Decision of the Commission for the Supervisor of Business Competition in Indonesia

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**Abstract:** *The issue of the execution of the decision of the Business Competition Supervisory Commission, hereinafter referred to as KPPU, has long been debated because many KPPU's decisions regarding compensation and/or fines that already have permanent legal force cannot be executed by the court. This article discusses the implementation of the KPPU's decision which was requested for execution to the court by the KPPU, because the decision was not implemented voluntarily by the Reported Party. This study uses a normative scientific method to analyze legal norms and principles, with a legal approach, a comparative approach and a case approach. Regulations concerning the prohibition of monopolistic practices and unfair business competition which have not explicitly regulated the norms regarding the authority for confiscation in the proceedings at KPPU have resulted in the KPPU's case decisions not stipulating confiscation, including the confiscation of guarantees. The author is of the opinion that the law that regulates business competition law significantly needs to add a norm regarding confiscation so that KPPU has the authority to confiscate in the case examination process, to ensure certainty that the KPPU's decision on compensation and/or fines can be executed in the future.*

**Keywords:** Execution, Verdict KPPU, Business Competition Law

## 1. Introduction

In facing the business competition that occurs globally (*border less*), it is necessary to regulate business competition laws that can be used to protect business competition, for the public interest, both at national, regional and international levels. The legal protection is carried out in order to increase the enthusiasm for the growth of economic activity, bearing in mind that economic actors get guaranteed fair treatment and legal certainty in doing business, avoiding fraudulent business competition both domestically and internationally. For parties who harm other parties who are proven guilty are punished to pay compensation and or fines, and which punishment can be carried out or executed by the court if the Reported Party who is sentenced to pay does not carry out the decision voluntarily.

Each country has its own rules in terms of regulation of business competition law. For instance, Germany which adheres to a civil law legal system which has three main characters, *inter alia*, the existence of codification, judges are not bound by precedent, hence the law becomes the primary source of law, and the judicial system is inquisitorial, and the Australian which adheres to the common law legal system, which has three main characters, namely jurisprudence is seen as the primary source of law, adheres to the doctrine of *stare decisis*, and the existence of an *adversary system* in the judicial process.

These countries regulate the compensation and/or fines decided by the judiciary, not the institution that regulates business competition issues. The business competition agency only decides on administrative matters related to business competition. This is slightly different from Indonesia, where the institution that decides on business competition cases is in addition to being a supervisor of business competition which is administrative in nature as well as deciding cases of compensation and/or fines.

Business actors who are harmed by other business actors can report business actors who have been harmed due to fraudulent acts in business competition that violate the Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (*hereinafter* Business Competition Law). Therefore, those business actors who violate the law can be subject to administrative sanctions, competition and/or fines.

Countries that have entered the free market and regional economic integration under the ASEAN Economic Community (AEC) become challenges for the Indonesian government.<sup>1</sup> According to the Report of Fox in the World Bank Report, there is a strong interconnection between competition law and the trade liberalization process.<sup>2</sup>

The issuance of Law Number 5 of 1999 concerning the the Prohibition of Monopolistic Practices and Unfair Business Competition marked the birth of a new economic regime, which was different from the previous times. This law has become a bridge that guarantees that competition is carried out within the corridor of the prevailing norms or rules.<sup>3</sup> However, ever since its issuance, the Commission for the Supervisor of Business Competition in Indonesia (*hereinafter* KPPU) has not been able to provide guarantees of justice, especially for decisions on compensation and/or

<sup>1</sup>Sukarmi, S., Qaqaya, H., Listiyanto, F. and Kurniaty, R. 2021. *The Qualified Effects Doctrine In The Extraterritorial Of Competition Law Application: An Indonesia Perspective*, Jurnal Sriwijaya Law Review, Vol. 5 No. 2, p. 194.

<sup>2</sup>Udin Silalahi dan Dian Parluhutan, 2017, *The Necessity of ASEAN Competition Law: Rethinking*. Jurnal Hasanuddin Law Review, Vol. 3, No. 3, p.222.

<sup>3</sup>Dyah Hapsari Prananingrum, Tri Budiyo, dan Arie Siswanto, 2016, *Karakteristik Imperatif Dan Rekomendatif Putusan-Putusan Komisi Pengawas Persaingan Usaha. Refleksi Hukum: Jurnal Ilmu Hukum*, Vol. 1, No. 1, p. 98.

finest yet. A lot of its decisions cannot be executed even though they already have permanent legal force (*incracht*).

According to Satjipto Raharjo, the Law enforcement in Indonesia is full of complexity and difficulty. One of these complexities and difficulties can be stated as “law enforcement in the slow lane”. The law which implements the method of “generalization” which aiming to be impartial, objective and “indiscriminate” in facing the legal problems in the society. However, in the daily practice, this method is contradict with the doctrine of “whose doctrine”, which always questions the the person is. Hence, the principle of not being “indiscriminate” becomes the principle of “indiscriminateness”, and it is not impossible for the legal process to be pushed into the slow lane.<sup>4</sup>

Given the situation, the business actors become worried as stated by Antonius Joenoes Supit, Chairman of the Indonesian Employers Association (*hereinafter* APINDO) stated that there is no problem with the strengthening of KPPU.<sup>5</sup> Another weakness is the existence of the KPPU's discourse to regulate penalties for unpaid fines, become state debts, and regulate provisions for imprisonment.

Another legal fact that also reinforces the limitations of the KPPU's authority is the decision of the Constitutional Court, namely the Decision No.85/PUU-XIV/2016. The decision of the Constitutional Court is final, which means that it directly obtains permanent legal force and applies to all parties who are obliged to comply with and implement the Constitutional Court's Decision (*erga omnes*).<sup>6</sup> The decision of the Constitutional Court which was decided in the Consultative Meeting of the Constitutional Court Justices, namely Anwar Usman as chairman and concurrently member on Monday dated 18<sup>th</sup> of September 2017, which stated in the plenary session of the Constitutional Court, which is open to the public on Wednesday dated 20<sup>th</sup> of Septembt 2017, which mainly decided that KPPU did not have the authority to confiscate letters, documents or other equipment, including security confiscations.

Indonesia must be able to overcome this weakness of the KPPU, particularly regarding the implementation of the decision on compensation and/or fines therefore, they can be executed by the court. For instance, one of KPPU decisions related to the music industry (EMI case), which has been signed, which also been acknowledged by the Supreme

<sup>4</sup>Amad Sudiro dan Deni Bram, 2013, *Hukum dan Keadilan Aspek Nasional dan Internasional*, Grafindo Persada, Depok, p. 278.

<sup>5</sup>Noverius Laoli, 2016, *Entrepreneurs are worried about the strengthening of the KPPU, the Chairperson of the Indonesian Employers' Association (APINDO) stated that “there is no problem with the strengthening of KPPU's authority if this institution has carried out its functions properly. However, based on experience so far, KPPU has become the party that accuses the industry or company of being guilty before examining it. The role of the KPPU, which also acts as an investigator and judge, has the potential to create a conflict of interest.”*  
<https://nasional.kontan.co.id/news/pengusaha-resah-wacana-penguatan-kppu>, accessed on 15 September 2021.

<sup>6</sup>Fadzlan Budi Sulistyono, 2019, *Sifat Keberlakuan Asas Erga Omnes Dan Implementasi Putusan Mahkamah Konstitusi*, Jurnal Gorontalo Law Review, Vol. 2 No.2, p. 98.

Court of Indonesia that denied the request for judicial review by the Appellant since 4<sup>th</sup> of November 2010, however it still not executed. The KPPU's decision is the KPPU's Decision No: 19/KPPU-L/2007, which was decided in the deliberative meeting of the commission assembly on Thursday 24 April 2008 and read out before the court and declared open to the public on Friday 25 April 2008.<sup>7</sup>

Such condition is actually a loss for KPPU in the form of delayed payment of fines which should have been deposited into the state treasury. In addition, it has also harmed the rights of other business actors who were given the right by the decision to obtain compensation for violations committed by the Reported business actors. Moreover, based on 46 paragraphs (2) of the Business Competition Law, only KPPU has the obligation to request an execution.

In practice, the implementation of KPPU's Decisions often encounters obstacles, especially in the form of the uncertainty of execution. KPPU tends to expect the implementation of the decision by the business actors of the Reported Party to be voluntary. It is in accordance with Article 68 paragraph (2) of the Commission Regulation No.1 of 2010 which stipulated that KPPU may take actions other than submitting a request for an execution determination, one of which is a persuasive approach through communication with business actors. Even if we look closely, Article 46 of the Business Competition Law does not give the KPPU any authority other than requesting an execution order from the district court.

Based on the KPPU's 2020 Annual Report, the number of decisions that have not been executed as of 31 December 2020 is 100 decisions from the total inkrah decisions as of 31 December 2020 as many as 168 decisions. Accounts receivable balance as of December 31, 2020 was Rp.419.908.986.146.<sup>8</sup> The execution of the District Court also cannot be carried out, which since 2021 the execution of decisions has been carried out by the Commercial Court based on Law no.11 of 2020 concerning the Job Creation Law, hence KPPU also takes an unusual step or breakthrough, namely by announcing to the public the reported party who is not cooperative in carrying out the decision that has been committed with the hope that the reported party, namely the defeated party, can fulfill the contents of the replacement decision loss from KPPU.

The arrangement of compensation cases and or fines in business competition law decided by KPPU, where the decision cannot be implemented by the court, therefore the execution to the district court will be in vain, hence the

<sup>7</sup>Decision of KPPU No: 19/KPPU-L/2007 Friday 25 April 2008 which decided that: “To punish EMI Music South Asia (the Reported Party I), PT EMI Indonesia (the Reported Party II) to pay a fine of Rp. 1,000,000,000 (One Billion Rupiah) which must be deposited to the State Treasury as a payment for fines for violations in the field of business competition, the Ministry of Trade, the Secretariat General of the KPPU's Work Unit, through a state bank through the acceptance code 423755 (revenue of fines for violations in the field of business competition)...”.

<sup>8</sup>Komisi Pengawas Persaingan Usaha (KPPU), 2021, *Laporan Tahunan 2020: Cerdas & Lincah Menghadapi Perubahan*, <https://kppu.go.id/wp-content/uploads/2021/04/Laporan-Tahunan-KPPU-2020.pdf> accessed on 17 September 2021.

KPPU's decision is not beneficial for the winning party or the protected party. by the KPPU's decision, hence the sense of justice of business actors and the public cannot be enforced, therefore the law of business competition is deemed necessary to be examined.

The juridical problem arises due to a legal vacuum and coupled with the Constitutional Court Decision Number: 85/PUU-XIV/2016 hereinafter referred to as the Constitutional Court Decision, which confirms that KPPU is not an investigator. The vacuum of norms referred to is related to the authority that exists within the KPPU to confiscate goods or assets from the reported party which is indicated to have violated the business competition law. Juridical problems arise with the existence of empty norms due to incomplete norms that strengthen the existence of Article 47 of the Business Competition Law which regulates compensation cases, resulting in the execution of the KPPU's decision on compensation and/or fines, because there is nothing in the KPPU's decision regarding the confiscated goods. The KPPU's authority in its function as an investigator is not in the sense of collecting evidence or making confiscations, as emphasized in the Decision of the Constitutional Court.

Whereas the problem with the absence of norms in cases of compensation and/or fines so that the KPPU's case decisions cannot be fully implemented creates distrust of business actors towards KPPU, making it difficult for business actors and law enforcers to implement the law itself; KPPU is accused of acting arbitrarily, which in the end resulted in an atmosphere of disharmony between KPPU and business actors, distrust of business actors with existing business competition laws, which resulted in decreased enthusiasm for doing business.

This paper analyzed and examined the execution of the KPPU's decision on compensation and/or fines that already have legal force, but the decision cannot be executed by the Commercial Court previously by the District Court as mandated in Law No.5 of 1999.

## 2. Research Methods

A legal research is concerned with how to understand the law (what is the law), and how to find out the source of the law (*source of law*).<sup>9</sup> In connection with the understanding of legal research as mentioned above, this research uses normative legal research methods which can also be called doctrinal legal research. In this research, law is often conceptualized as what is *law in book* or law is conceptualized as a rule or norm that is a benchmark for community behavior towards what can be considered appropriate.<sup>10</sup> The object of research is the norm that has been, is, and will be a positive law.<sup>11</sup>

<sup>9</sup>Attorn Stephen Elias, 2009, *Legal Research How to Find & Understand the Law*, Nolo, California, p. 4-5.

<sup>10</sup>Junaedi Efendi dan Johnny Ibrahim, 2020, *Metode Penelitian Hukum Normatif dan Empiris*, Kencana, Jakarta, p. 124.

<sup>11</sup>I Made Pasek Diantha, 2016, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* kencana, Jakarta, p. 393.

In legal study, the study of the application of legal science, the rule of law, which is supported by theories and concepts in the field of law, is faced with legal facts that lead to a discrepancy between theoretical studies and the application of positive law. The discrepancy between the expected situation (*das sollen*) and the reality (*das sein*) raises a question mark about what the legal problem is from a normative point of view. Thus, what is expected to happen as a result of the application of the law does not function as expected, instead it only creates conflicts that cause injustice, disorder and legal uncertainty in society which actually contradicts the ideals of the law itself.<sup>12</sup> The norms studied included the Business Competition Law, the Constitutional Court Decision 85/PUU-XIV/2016, as well as the Civil Procedure Code, the Civil Code, the Criminal Procedure Code, and other related norms.

## 3. Research Result and Discussion

### a) Understanding the KPPU's Decision on Compensation and/or Fines

The Business Competition Law regulates formal matters in the settlement of cases at KPPU. KPPU is tasked with conducting examinations, prosecutions, consultations, adjudicating and deciding cases. In this legal process, KPPU has tribunal authority, namely KPPU has the role of investigator (investigative function), examiner, prosecutor (prosecuting function), and adjudication function.<sup>13</sup>

According to Article 35 of Business Competition Law, it has been stipulated that the duties of the Commission shall include assessing agreements that may result in monopolistic practices and/or unfair business competition, assessing the existence or absence of the abuse of dominant position which may cause monopolistic practices and/or unfair business competition, undertaking actions in accordance with the Commission's authority, providing advice and opinion concerning Government policies related to monopolistic practices and/or unfair business competition, preparing guidelines and/or publications related to Business Competition Law, and submitting periodic reports on the results of the Commission's work to the President and the People's Legislative Assembly (*hereinafter* DPR).

Moreover, the Commission also has authorities which shall include several things, *inter alia*: receive reports from the public and or business actors regarding allegations of the existence of monopolistic practices and or unfair business competition; conduct research concerning allegations of the existence of business activities and/or actions of business actors which may cause monopolistic practices and/of unfair business competition; 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; 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

<sup>12</sup>Joni Ibrahim, 2008, *Teori & Metodologi Hukum Normatif*, Bayumedia Publishing, Malang, p. 279.

<sup>13</sup>Susanti Adi Nugroho, 2010, *Hukum Acara Pemeriksaan Perkara Persaingan Usaha, dalam Litigasi Persaingan Usaha*, CFISEL, Tangerang, p. 178.



competition; summon business actors alleged of having violated the provisions of the Business Competition Law; seek the assistance of investigators to present business actors, witnesses, experts witnesses; request the statement of Government institution related to the investigation and/or examination of business actors who have violated the provisions of the Business Competition Law; obtain, examine and/or assess letters, documents, or other instruments of evidence for the purpose of investigation and/or examination; determine and stipulate the existence or non-existence of losses suffered by other business actors or society; notify the business actors alleged of having engaged in monopolistic practices and/or unfair business competition about the Commission's decision; impose administrative sanctions on business actors violating the provisions of the Business Competition Law.

The procedure for handling cases at KPPU is starting from how a case can be categorized as a business competition case and investigated by KPPU until the KPPU's decision is regulated by procedural law used for business competition events at KPPU, which is determined by KPPU itself. The last procedural law is in the form of KPPU's regulation Number 1 of 2010 concerning Procedures for Handling Cases.

*Inkracht* decision is a decision that has permanent legal force (*Inkracht van gewijsde*) is a KPPU decision for which there is no objection or cassation action taken by the Reported Party, hence the decision has permanent legal force after the grace period for submitting legal remedies is passed. This decision that can be applied for the execution of the decision to the court if the Reported Party does not carry out the decision voluntarily.

#### b) The Authority of KPPU in Investigation

According to the Article 36 of the Business Competition Law, it has been stipulated that the authority of the KPPU shall include conducting 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 (as mentioned in point c); 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 (as mentioned in point d); request the statement of Government institutions related to the investigation and or examination of business actors who have violated the provisions of this law (as mentioned in point h); and obtain, examine and or assess letters, documents or other instruments of evidence for the purpose of investigation and or examination (as mentioned in point i). The authority of the Commission has been stipulated through the Decision of Constitutional Court No.85/PUU-XIV/2016.<sup>14</sup>

<sup>14</sup>Constitutional Court's Decision No. 85/PUU-XIV/2016 which was decided on Monday the 18th, September, 2017 which in the decision, in the main case number 1.2 determines that: "states the phrase 'investigation' in Article 36 letter c, letter d, letter, h and letter i as well as Article 41 paragraph (1) and paragraph (2) of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (State Gazette of the Republic of Indonesia of 1999 Number 33, Supplement to the

The consequence of this decision was KPPU does not have the authority to take action in the form of search, confiscation, examination of letters, summons for examination and submission of files as defined in the definition of investigation in the sense of *pro justisia* as regulated in Law No.8 of 1981 concerning the Criminal Procedure Code. Hence, KPPU really does not have the authority to carry out investigations and KPPU commissioners are not investigators. Thus, the issue of the KPPU's decision which does not include the confiscation of collateral becomes true because KPPU does not have the authority to confiscate. In addition, based on the Business Competition Law, KPPU is not part of Law Number 48 of 2009 concerning Judicial Power (UU KK) in which judicial power is only exercised by judicial bodies under it in the general court environment, religious court environment, judicial environment military, state administrative court environment, and the Constitutional Court.<sup>15</sup>

The next issue is why the KPPU is given the authority to decide cases, but is not given the authority to confiscate in cases involving compensation and/or fines so that the decision can be executed?. Isn't KPPU's authority without the authority to confiscate it to be in vain, and its decisions to be useless, moreover KPPU has spent a large amount of state budget, then where is the significance of KPPU's existence? According to Posner, the law is efficient if in substance, the law can promote the effective allocation of all economic resources (to the market). On the other hand, the law is efficient if it is procedurally able to reduce costs (expenditures) and increase the accuracy and use of the legal system.<sup>16</sup>

#### c) Execution Process for Compensation and/or Fines from KPPU

Courts carry out executions of decisions that already have permanent legal force (*inkracht van gewijsde*). After taking various legal remedies and getting the verdict, the party may not immediately get their rights.

The rights can be obtained after execution of court decisions. In other words, execution is carried out, hence it can have meaning for justice. It is conceivable that if the execution is difficult to carry out, the enforcement of justice will be disrupted.<sup>17</sup>

Based on the application letter from the KPPU, the execution can be processed according to the stages of

*Gazette of the Republic of Indonesia Number 2817) contradicts the Constitution of the Republic of Indonesia Year 1945 is conditional and has no binding legal force as long as it is not interpreted as "collection of evidence as examination material."*

<sup>15</sup>Alum Simbolon. 2012. *Kedudukan Hukum Komisi Pengawas Persaingan Usaha Melaksanakan Wewenang Penegakan Hukum Persaingan Usaha*. Jurnal Mimbar Hukum Vol. 24 No. 3. p. 531.

<sup>16</sup>Novi Nurviani, 2011, *Peranan Hukum Persaingan Usaha dalam Pembangunan Ekonomi Nasional* dalam Ahmad Kaylani, (ed.), 2011, *Negara dan Pasar Dalam Bingkai Kebijakan dan Pasar*, KPPU, p. 21.

<sup>17</sup>Herri Swantoro, 2018, *Dilema Eksekusi Ketika Eksekusi Perdata Ada di Samping Jalan Pembelajaran Dari Pengadilan Negeri*, Rayyana Komunikasindo, Jakarta, p. 2.

execution, namely starting from the summons to the reported party in a security hearing, the determination of the confiscation of execution and the execution of the decision by the bailiff based on the decision of the head of the court. The execution of the court begins with the summons of the parties, both the applicant for execution and the petitioner for execution, on the agenda of the *aamaning* trial led by the chairman of the court together with the court clerk. In the agenda of the *aanmaning* trial, the reported party is ordered to fulfill the contents of the decision voluntarily so that there is no execution by court execution.

It will be a problem if the reported party is not present at the hearing, even though he is being summoned again, he does not come; then that means that the execution process will be continued with the next event, namely the determination of the execution by the court. This is where the problem arises for the execution of the executable, it is seen that the object to be executed is first seen whether there is an object that is declared confiscated or not. If something is declared confiscated, then the confiscated object will be executed, but if no execution object is declared confiscated, then the court may confiscate the execution at the request of the execution applicant.

This is where the problem arises where the applicant for execution in his application is obliged to submit data or object identity from the property rights of the reported party which is requested to be confiscated. KPPU will find it difficult to convey the identity of the reported property rights to be confiscated for execution if KPPU does not find the reported property rights; KPPU found the reported property rights but the reported ownership rights have been transferred to another party, KPPU no longer finds the reported party because it is no longer available at the reported residence address and apparently has fled abroad. The KPPU's difficulty will result in no object of the reported property's property being confiscated for execution in the context of the court's execution. This has a consequence that the court as the executor cannot carry out the execution of the KPPU's decision requested for the execution, which is known as the non-executable decision.

The case will be different if a KPPU's decision regarding compensation and/or fines in the KPPU's decision mentions the existence of a guarantee confiscation, which means that in the process of examining the case before it is decided, KPPU determines the placement of a guarantee confiscation on the property rights of the reported party in order to guarantee the certainty of fulfillment of the compensation and/or sanctions. fines imposed on the reported party at a later date after the decision has permanent legal force, if the reported party does not fulfill his obligations voluntarily. In other words, execution fails without confiscation of collateral. Execution constraints occur as a result of the sound factor of the KPPU's decision. The KPPU's ruling generally reads that the reported party is punished to pay a fine and compensation, but there is no guarantee declared to be confiscated by the KPPU to guarantee that the verdict of the fine and compensation can be fulfilled by the reported party. The factor of the court as the executor where the Court executes the decision in accordance with the the

KPPU's decision requested for execution, must not be contrary to the points of the decision.

The two factors abovementioned showed that, both the KPPU's decision factor and the court factor as the executor do not support each other, especially in the KPPU's decision which does not support the court to ensure that the execution can be carried out. According to Bernad Arief Sidartha the ideals of law are ideas, intentions, love and thoughts regarding the law or perceptions of the meaning of law, which in essence consists of three elements, namely justice, usability (*doelmatigheid*) and legal certainty.<sup>18</sup> Satjipto Raharjo defines legal protection as providing protection for human rights that are harmed by others and that protection is given to the community, hence they can enjoy all the rights granted by law. Philipus M. Hadjon considered that legal protection is the protection of the dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. According to Gustav Radbruch, the law must contain 3 (three) identity values, namely the principle of legal certainty (*rechmatigheid*). This principle reviews from a juridical point of view the principle of legal justice (*gerechtigheid*). This principle reviews from a philosophical point of view, where justice is equal rights for all before the court and the principle of legal expediency (*zwechmatigheid* or *doelmatigheid* or utility). Starting from the theory of legal protection, that the KPPU's decision cannot provide protection for human rights that are harmed by others, it is not beneficial for the business world so that the purpose of the KPPU's establishment is not achieved.

When it is associated with the principle that it can be implemented in the formation of legislation (*Het Beginsel van Uitvoerbaarheid*), which every formation of legislation must be based on the calculation that the laws and regulations that are formed later can be effective in the community because they have received support both philosophically, juridically, and sociologically since the drafting stage, the provisions of Law No.5 of 1999 is also not fulfilled because many KPPU refuse because they do not feel there is any benefit for the aggrieved party. The Law No.5 of 1999 also contradicts the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislations, reminding lawmakers to always pay attention to the principles of establishing good laws and regulations and the principle of material content. One of these principles is the principle of versatility and result.

The KPPU in Indonesia should be given the authority to search and confiscate by placing investigators in the KPPU, both investigators from the Police and civil servant investigators so that the investigation process can be carried out which leads to the KPPU's decision to stipulate the existence of a limited guarantee confiscation concerning the amount of nominal value to be confiscated is in accordance with the range of nominal value of compensation and or fines to be imposed as stipulated in the business competition law and there has been sufficient preliminary evidence as evidenced by the existence of a stipulation for a follow-up

<sup>18</sup>Bernad Arief Sidartha, 2009, *Refleksi Tentang Struktur Ilmu Hukum*, Mandar Maju, Bandung, p. 180-181.

examination; to ensure that the execution of the decision can be carried out in the future. In order to guarantee the justice of the parties in the case and to avoid any loss of the rights of the reported party against the placement of the collateral confiscation by KPPU, the reported party may file a pre-judgment lawsuit to the court on the validity of the confiscation carried out by KPPU.

When compared to the KPK, the KPK without an investigator, the KPK does not have investigative authority because the KPK commissioner is not an investigator; same with KPPU. KPK is indeed different from KPPU where KPK is an extraordinary crime institution while KPPU is not. The KPPU's investigative authority is not excessive because there is a function of the KPPU that can decide cases related to compensation and or fines, the implementation of which is a decision by the court. In order to guarantee the principle of presumption of innocence from the reported party, the authority to confiscate collateral needs to be affirmed regarding the criteria for sufficient initial evidence, the limit on the amount of value confiscated so that it is proportional to the amount of compensation and/or fines, and the Reported Party has the right to file a pretrial on the KPPU's confiscation determination. If the KPPU does not have the authority to decide cases of compensation and/or fines, which only have an administrative function and supervision of business competition, then the investigative authority to be able to place collateral confiscations can be categorized as excessive or inappropriate for that.

#### d) Case Study of Execution

KPPU's decisions in Indonesia are administrative in nature whose execution can be carried out by KPPU (Article 47 of Business Competition Law). Meanwhile, for decisions that cannot be implemented by the KPPU, an execution may be requested from the court (Article 46 of Business Competition Law).

The case for business competition in Germany is regulated in *The Act against Restraints of Competition (Gesetz gegen Wettbewerbs Beschränkungen / "GWB")*, where the decision on a business competition case is administrative which accompanied by the authority to confiscate as well as the authority to search and the decision is executed by *The Federal Cartel Office (German: Bundeskartellamt)* including regarding the issue of compensation and/or fines executed by the court, not by the German KPPU.<sup>19</sup>

Business competition cases in Australia are regulated in *Trade Practices Act No.51 of 1974 as amended to Competition and Consumer Act No.44 of 2010*,<sup>20</sup> where the business competition case is administrative accompanied by the authority to confiscate<sup>21</sup> as well as the authority to search<sup>22</sup> carried out by the ACCC (*Australian Competition*

*and Consumer Commission*) as a decision-making body. Meanwhile, cases involving compensation and/or fines are decided by a federal court and executed by the court.<sup>23</sup>

There are differences in authority in regulating business competition case settlement institutions between Indonesia and other countries, where KPPU has broad authority when compared to Australia and Germany, as well as being the supervisor of business competition as well as deciding cases of compensation and/or fines. As a decision-making such as a court, KPPU should be equipped with confiscation authority hence, it can place a confiscation of collateral to ensure that the decision can later be executed after it has permanent legal force.

#### e) Innovation of KPPU

KPPU makes announcements that are announced in the "List of Reported Parties Who Are Not Cooperative In Implementing KPPU's Decisions", such as an example of an announcement, namely the List of Reported Parties who are Not Cooperative in Implementing KPPU's Decisions up to December 2, 2018, with the hope that the reported parties who are not cooperative will be embarrassed and eventually expected to comply with the KPPU's decision voluntarily. As a result, the announcement did not embarrass the reported parties, so the existence of the announcement would still be in vain.

#### f) Discourse on the Revision of the Business Competition Law

KPPU is an institution that decides cases such as a court, in addition to being a supervisor of business competition. In order for the KPPU's decision to be executed by the court, the juridical consequence is that the KPPU's decision must stipulate the confiscation of guarantees in accordance with judicial procedural law in general.

The KPPU's decision in order to determine the confiscation of guarantees in the KPPU's decision, the judicial consequence of the KPPU is that KPPU is given the authority to confiscate by placing investigators who are part of the unity of the KPPU.

Unfortunately, that in the draft Law submitted by the government to the DPR in accordance with the Draft Law of the Republic of Indonesia concerning the Prohibition of Monopolistic Practices and Unfair Business Competition Commission VI DPR RI 2017, it also does not regulate the issue of confiscation authority from the KPPU when handling cases. business competition.

Besides, there are other discourses. If there is a KPPU's decision in the form of a fine, which has permanent legal force and is not implemented by the parties, it becomes the state's debt, then the bill stipulates that the state debt agency is obliged to complete the implementation of the decision. Furthermore, for any person and/or corporation that intentionally prevents, obstructs, or thwarts KPPU directly or indirectly in carrying out the investigation and/or

<sup>19</sup>Section 33B The Act against Restraints of Competition (Gesetz gegen Wettbewerbs Beschränkungen/GWB).

<sup>20</sup>Trade Practices Act No. 51 of 1974 as amended to Competition and Consumer Act No. 44 of 2010 of Australia.

<sup>21</sup>Part XIX, Search and Seizure, Competition and Consumer Act 2010

<sup>22</sup>*Ibid.*

<sup>23</sup>Federal Court of Australia, *Australian Competition and Consumer Commission v Cornerstone Investment Aust Pty Ltd (in liq) (No 5) [2019] FCA 1544*, p. 7.

examination process, this Bill stipulates a maximum imprisonment of 6 (six) months<sup>24</sup>, however, this discourse is also not included in the draft of bill.

#### 4. Conclusion

The KPPU's decision on compensation and fines that have permanent legal force cannot be executed by the Commercial Court because the KPUU's decision does not determine the existence of guarantees. Seizure guarantees more certainty in the execution of executions in confiscation of executions. The existence of KPPU is very much needed both nationally and internationally, therefore KPPU is deemed necessary to be equipped and to exercise the authority for confiscation in limited business competition cases, so that the execution of KPPU's decisions by courts in the future can be ensured. KPPU's authority is a logical consequence of the KPPU's role as a business competition supervisory agency that can decide cases that may impose administrative sanctions, compensation and fines, basic and additional penalties.

#### References

##### Books

- [1] Diantha, I. M. P., 2016. Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum. *Jakarta: Kencana Prenada Media Group*.
- [2] Diantha, I. M. P. et. al., 2018. Metode Penelitian Hukum dan Penulisan Disertasi, *Denpasar: Swasta Nulus*.
- [3] Efendi, J., dan Ibrahim, J., 2020. Metode Penelitian Hukum Normatif dan Empiris. *Jakarta: Kencana Prenada Media Group*.
- [4] Elias, A. S., 2012. Legal research: how to find & understand the law. *USA: Nolo*.
- [5] Hamzah, A., 2017. Kejahatan di Bidang Ekonomi Economic Crime. *Jakarta: Sinar Grafika*.
- [6] Ibrahim, J., 2008. Teori & Metodologi Hukum Normatif. *Malang: Bayumedia Publishing*.
- [7] Nugroho, S. A. N., 2010. Acara Pemeriksaan Perkara Persaingan Usaha Dalam Litigasi Persaingan Usaha. *Tangerang: CFISEL*.
- [8] Nurviani, N., 2011, Peranan Hukum Persaingan Usaha dalam Pembangunan Ekonomi Nasional dalam Ahmad Kaylani, (ed.), 2011, *Negara dan Pasar Dalam Bingkai Kebijakan dan Pasar*, Jakarta: KPPU.
- [9] Sidartha, B. A., 2009. Refleksi Tentang Struktur Ilmu Hukum. *Bandung: Mandar Maju*.
- [10] Sudiro, A., dan Bram, D., 2013. Hukum dan Keadilan Aspek Nasional dan Internasional. *Depok: Grafindo Persada*.
- [11] Swantoro, H., 2018. Dilema Eksekusi Ketika Eksekusi Perdata Ada di Simpang Jalan Pembelajaran Dari Pengadilan Negeri. *Jakarta: Rayyana Komunikasindo*.

##### Journals

- [12] Nugroho, F. B. S.2019. Sifat Keberlakuan Asas Erga Omnes Dan Implementasi Putusan Mahkamah Konstitusi. *Jurnal Gorontalo Law Review*, 2 (2).
- [13] Prananingrum, D. H., Budiyono, T., dan Siswanto, A., 2016, Karakteristik Imperatif Dan Rekomendatif Putusan-Putusan Komisi Pengawas Persaingan Usaha. *Refleksi Hukum: Jurnal Ilmu Hukum*, 1 (1).
- [14] Silalahi, U. and Parluhutan, D.2017. The Necessity of ASEAN Competition Law: Rethinking. *Jurnal Hasanuddin Law Review*, 3 (3).
- [15] Simbolon. A., 2012. Kedudukan Hukum Komisi Pengawas Persaingan Usaha Melaksanakan Wewenang Penegakan Hukum Persaingan Usaha. *Jurnal Mimbar Hukum* 24 (3).
- [16] Sukarmi, S., Qaqaya, H., Listiyanto, F. and Kurniaty, R.2021. The Qualified Effects Doctrine In The Extraterritorial Of Competition Law Application: An Indonesia Perspective. *Jurnal Sriwijaya Law Review*, 5 (2).

##### Internet

- [17] Laoli, N.2016. *Pengusaha Resah Wacana Penguatan KPPU*. <https://nasional.kontan.co.id/news/pengusaha-resah-wacana-penguatan-kppu>, diakses pada tanggal 15 September 2021.
- [18] Permana, M.2017. *DPR Sahkan RUU Tentang Larangan Praktik Monopoli*. [rri.co.id. https://rri.co.id/nasional/peristiwa/387444/dpr-sahkan-ruu-tentang-larangan-praktik-monopoli](https://rri.co.id/nasional/peristiwa/387444/dpr-sahkan-ruu-tentang-larangan-praktik-monopoli). diakses pada tanggal 15 September 2021.

##### Laws and Regulations:

- [19] Law No.5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.
- [20] Constitutional Court's Decision No.85/PUU-XIV/2016
- [21] The Decision of the Commission for the Supervision of Business Competition (KPPU) No.19/KPPU-L/2007
- [22] Trade Practices Act No.51 of 1974 as amended to Competition and Consumer Act No.44 of 2010 of Australia.
- [23] The Act against Restraints of Competition (Gesetz gegen Wettbewerbs Beschränkungen/GWB)

<sup>24</sup>Munzir Permana, 2017, *DPR Sahkan RUU Tentang Larangan Praktik Monopoli*, <https://rri.co.id/nasional/peristiwa/387444/dpr-sahkan-ruu-tentang-larangan-praktik-monopoli>, accessed on 15 September 2021.