



Vol. 18 No. 2 | Desember 2025

P - ISSN : 1907 – 8463

E - ISSN : 2772 – 8568

Indonesian Law Journal

TOPIC OF THIS EDITION

“COMPETITION LAW AND ECONOMIC”

Dominant Position Doctrine in Indonesia:
A Comparison to The German
Competition Law

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The Indonesian Law Journal (ILJ) is proud to present **Volume 18, Number 2**, with the theme **Competition Law and Economic**, which brings together critical perspectives from scholars across Indonesia to examine contemporary issues through comparative, normative, and empirical lenses. This edition features five authors who explore the dynamic intersections between market regulation, digital transformation, sustainability, and social justice.

The volume opens with “**Dominant Position Doctrine in Indonesia: A Comparison to the German Competition Law**” by Sahira Sajjadia Luthfia, which compares how Indonesia and Germany regulate dominant market positions. This is followed by Aji Baskoro with “**Green Power in Market Chains: Reshaping Competition Law in the Age of Renewable Energy**”, which explores the role of competition law in supporting Indonesia’s renewable energy transition.

The third article, “**Policy Analysis and Legal Evaluation of High Domestic Airfare Prices in Indonesia**” by Rama Gardika, evaluates the factors behind high airfare prices and highlights issues related to fuel pricing and fare regulation. Next, “**Competition Law and Economic Efficiency on Digital Platforms: A Study of Shopee in Indonesia**” by Cahyoko Edi Tando examines the rapid rise of digital platforms and their implications for competition law, particularly in relation to pricing practices, data-driven dominance, and regulatory gaps.

Completing this edition, “**Competition Law in Indonesia: Socio-Legal Approach**” by Pascalis Dani K. Wibowo offers a socio-legal analysis of how economic efficiency and social justice intersect within Indonesia’s competition law framework.

As always, the Indonesian Law Journal remains committed to advancing legal scholarship and fostering dialogue on national, regional, and international issues. We extend our gratitude to the contributors, peer reviewers, and the editorial team whose dedication has made this edition possible.

We invite our readers to engage with the thought-provoking analyses presented in this volume and to contribute to the ongoing discourse on strengthening the rule of law in addressing global challenges.

Editor of Indonesian Law Journal

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DOMINANT POSITION DOCTRINE IN INDONESIA: A COMPARISON TO THE GERMAN COMPETITION LAW

Sahira Sajjadia Luthfia

Faculty of Law, Gadjah Mada University, Indonesia
Author's e-mail: sahirasajjadialuthfia@mail.ugm.ac.id

ABSTRACT

This paper conducts a comparative legal study on the doctrine of dominant position in competition law, focusing on the frameworks of Indonesia and Germany. Although both countries prohibit the abuse of a dominant position, there are notable differences in the legal substance and practical application of their laws. This study addresses the gap in Indonesia's existing legal framework, which often struggles to effectively define and regulate dominant market power, especially in the digital economy era. Using a normative-comparative legal method, this paper analyzes legal norms and case law from both jurisdictions, examining the similarities and differences between them. By analyzing laws, doctrines, and cases from both countries, the paper finds that Indonesia's reliance on general provisions under Law No. 5/1999 complicates enforcement, whereas Germany's detailed rules facilitate addressing competition issues. The study suggests Indonesia can learn from Germany to better define dominance and regulate abuse, improving its competition law and market fairness.

Keywords: Competition Law; Dominant Position; Indonesian Law; German Law

A. Introduction

The rapid advancement of technology in the digital era, particularly since the Industrial Revolution 4.0, has transformed the business landscape. E-commerce and digital platforms now drive economic growth and reshape trade practices, benefiting both consumers and entrepreneurs. However, this shift also presents new legal challenges, especially in business competition.¹ Digital platforms not only facilitate commerce but also accumulate significant market power and control over consumer data, raising concerns about unfair competition and the potential abuse of dominant positions.² In Indonesia, the digital economy is expanding rapidly, with e-commerce leading the way and projections estimating a valuation of USD 133 billion by 2025. These developments underscore the need for robust legal

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- 1 Rezmia Febrina, "Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha," *Jurnal Karya Ilmiah Multidisiplin (JURKIM)* 2, no. 1 (2022): 121–27, <https://doi.org/10.31849/jurkim.v2i1.9309>.
 - 2 Despoina Mantzari, "Power imbalances in online marketplaces: at the crossroads of competition law and regulation." *Research Handbook on the Law and Economics of Competition Enforcement*. Edward Elgar Publishing, (2022) 170-192. <https://doi.org/10.4337/9781789903799.00017>

frameworks to address emerging competition issues in the digital market.³ For example, in 2025, Indonesia's Business Competition Supervisory Commission (IBCS) found Google LLC in violation of Law No. 5 of 1999 concerning the implementation of the Google Play Billing System and imposed a penalty through Decision 03/KPPU-I/2024. Google LLC required application developers to use the Google Play Billing System as the sole payment method for their applications. Non-compliance resulted in the removal of applications from the Google Play Store, as documented by evidence and witness statements. Google has announced its intention to appeal, asserting that its current practices benefit the Indonesian application ecosystem. The company maintains that by offering a secure platform, global market access, and options such as the user choice billing program, it supports the development of a healthy and competitive application market.⁴ This case exemplifies the ongoing conflict between a dominant platform's right to manage its ecosystem and the need to prevent anti-competitive behavior. It highlights the challenge for competition authorities, such as the IBSC, to distinguish between pro-competitive practices and the abuse of market power.

This is evidence that the current digital trade transaction pattern is shifting towards becoming one-stop shopping, where the transaction agreement encompasses the flow of information, the flow of money, and the flow of goods in a single location. The ability of digital economic platforms to reach multiple markets (multi-sided markets) through the internet network's reach is a key characteristic of the platform itself.⁵ Advances in communication and data processing have significantly impacted existing industries and reshaped economic values globally, enabling the emergence of new, disruptive products and services within the traditional economic system. This trend can provide benefits and stimulate economic growth. However, on the other hand, it can also give rise to business competition issues and create the need for new regulations.⁶ While Article 33, paragraph (4) of the 1945 Constitution of Indonesia states that it aims to maintain balance with the principles of togetherness, fairness, sustainability, environmental consciousness, and independence. It is interpreted as the harmony of various things. Styles that work with neither one dominating the other, nor one controlling the elements. This principle requires both parties to fulfill their obligations within the relationship between humans as legal subjects.⁷ In simple terms, it

3 Nailul Huda, et.al, *Digital Economy Outlook 2025* (Center of Economic and Law Studies, 2024)

4 Cecilia Mediana, "Terbukti Monopoli, Google dedenda KPPU," *Kompas*, 22 Januari 2025, <https://www.kompas.id/artikel/terbukti-monopoli-dan-memakai-posisi-dominan-dalam-google-play-billing-kppu-denda-google-rp-2025-m>.

5 Adis Nur Hayati, "Analisis Tantangan dan Penegakan Hukum Persaingan Usaha pada Sektor E-Commerce di Indonesia," *De Jure Legal Research Journal* 21, no. 1 (2021): 113.

6 MA Hasbullah, "Enforcement of Competition Law in the Digital Economy Sector," *Jurnal Ilmiah MEA (Manajemen, Ekonomi, dan Akuntansi)* (2020) 582

7 Muhammad Irayadi, "Asas Keseimbangan Dalam Hukum Perjanjian," *HERMENEUTIKA: Journal of Legal Studies* 5, no. 1 (2021).

can be understood that when carrying out activities in the economic sector, one party is not permitted to dominate another party to benefit from it.

By examining the unique challenges of the digital economy, which differ from business competition in traditional markets (offline/conventional), it is appropriate for both the government and competition authorities to devote special attention to addressing these issues. This is because some of the main characteristics of digital markets include business models based on platforms, multilateral markets, and network effects that make the subject of competition more complex. The substantial economic potential of e-commerce in Indonesia necessitates a comprehensive analysis of the competitive dynamics within the sector. Access and control of consumer data is the upstream of the abuse of dominant position in e-commerce, which has an impact on giving market power to digital platforms. The vertical development of digital platforms has an impact on increasing data collection capabilities and enhancing competitiveness, which can lead to an increased likelihood of abuse of position dominance among online store owners and application users.⁸

With Indonesia is the fifth most populous country globally and has the highest internet usage. Data from the Central Statistics Agency in 2021 stated that as many as 62.10% of the population used the internet. On the other side of the continent, Germany is listed as the country with the most internet users in Europe. As of December 2021, Internet users in Germany reached 79.1 million, equivalent to 95% of the German population.⁹ These figures highlight that the two nations represent distinct stages of digital economic development. Indonesia, with its large and growing internet user base, is experiencing rapid digital economic growth but faces early-stage challenges in regulating dominant players and ensuring fair competition. In contrast, Germany, with its mature digital economy and advanced legal system, has developed a comprehensive competition law framework to address dominance issues. For instance, the Amazon case investigated by the German Federal Cartel Office (FCO) highlights concerns regarding alleged monopolistic practices in the German e-commerce market. In November 2018, the FCO initiated an investigation into Amazon's contractual arrangements with its partners, focusing on the company's dominant position. The FCO determined that Amazon was leveraging its dominance to structure contracts and set market conditions in ways that disadvantaged small sellers and diminished competition within the e-commerce sector.¹⁰ Also, Germany has established specific regulations prohibiting the abuse of economic dependency, which do not require proof of market domination if certain prohibitions outlined in Article 102 of the Treaty on

8 Effendi, A. M. (2024). Peran Hukum Anti Trust Dalam Mengatur Dan Mengadili Praktik Monopoli Dan Persaingan Usaha Tidak Sehat. *Multilingual: Journal of Universal Studies*, 4(2), 186-195.

9 Marc Bourreau, et.al, "Digital Conglomerates and EU Competition Policy" Alexandre de Stree, University of Namur, *CRIDS / NADI, CERRE*, no. February (2019): 1-44.

10 Philipp Westerhoff, "The German Amazon Marketplace Agreement Case: A Landmark Settlement with Global Reach or More Hype Than Substance?" *Hausfeld Competition Bulletin*, Fall (2019) 1-7

the Functioning of the European Union (TFEU) are exceeded.¹¹ The German competition authority has a history of significant advancements, including the publication of the “Market Power of Platforms and Networks” working paper by the *Bundeskartellamt* in 2016, which details the identification of market power and dominance assessment in digital platforms and networks. In 2017, the Financial Services Authority and the German Competition Commission introduced criteria for identifying infringements in the digital sector, addressing unfair competition.¹² Legal reforms have also recognized the transformation of free products and services into unified markets. Furthermore, in 2021, Germany enacted the 10th Amendment to the Competition Act (*Gesetz gegen Wettbewerbschrankungen*), strengthening regulations to address competition issues in the digital economy, particularly those concerning dominant positions.¹³ This paper narrows its focus from the global digital era to a specific comparative study between Indonesia and Germany, aiming to draw lessons from Germany’s experience to strengthen Indonesia’s legal framework and promote fair competition in the digital economy.

As a nation governed by law, Indonesia implements business competition policies aimed at promoting general welfare, protecting small and medium-sized enterprises, preventing the concentration of economic power, and ensuring equal opportunities for competition.¹⁴ For these purposes, this article critically examines the challenges faced by Indonesia in defining, regulating, and addressing the abuse of dominant positions within its digital economy, highlighting shortcomings in the existing legal framework when compared to Germany’s more advanced and adaptive competition law. The study emphasizes that Indonesia’s current regulations are often too general and lack clear guidance for identifying and enforcing rules against dominance and anti-competitive practices by digital platforms. By drawing on Germany’s experience, where legal provisions are well-established and tailored to the complexities of digital markets, the article seeks to identify specific gaps in Indonesia’s approach and propose targeted reforms. Ultimately, this comparative analysis aims to offer practical insights for strengthening Indonesia’s competition law to better address market dominance and promote fairness in the rapidly evolving digital sector.

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- 11 Pranvera Këllezi, Bruce Kilpatrick, and Pierre Kobel, “Abuse of Dominant Position and Globalization & Protection and Disclosure of Trade Secrets and Know-How”, Springer (2017)
 - 12 Wolfgang Kerber and Karsten K. Zolna, The German Facebook Case: The Law and Economics of the Relationship between Competition and Data Protection Law, *European Journal of Law and Economics*, vol. 54 (Springer US, 2022), <https://doi.org/10.1007/s10657-022-09727-8>.
 - 13 Sascha Dethof and Lea Josten. “*Bundeskartellamt Gives Users of Google Services Better Control over their Data on the Basis of Section 19a of the German Competition Act, GWB (Germany)*.” *Journal of European Competition Law & Practice* 15.2 (2024): 108-116.
 - 14 H. Karli Kalianda, “*Problems of Regulating Business Competition in the Legal System Indonesia*,” *Wasaka Hukum* 8, 1(2020): <https://ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/49>

B. Research Method

This research is normative legal research with a conceptual approach. This paper also uses a comparative approach method, aiming to analyze the regulation and implementation of competition law concerning dominant position in the digital economy sector, specifically in Indonesia and German. The statute approach examines legal provisions governing abuse of dominant position, while selected case examples are analyzed to illustrate practical implementation in both jurisdictions. Data were collected through a literature review, including national legislation, policy documents, and scholarly publications related to competition law in digital markets.¹⁵ The analysis used in this study is qualitative, by studies from the laws and regulations, books, journals, and doctrines regarding laws and regulations related to dominant position. Such as Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia, and the Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen/GWB*) in Germany, as well as the applicable European Union regulations. Comparative analysis is used to identify similarities, differences, and potential lessons that Indonesia may adopt to strengthen its legal framework in response to emerging digital market challenges.

C. Discussions

This chapter comprises three sections. The first section analyzes the dominant position doctrine in Indonesia. The second section provides a comparative overview of the German competition law framework. The third section discusses gaps and lessons learned by comparing Indonesian and German law, including recommendations for strengthening competition law in Indonesia.

1. Analysis of the Dominant Position Doctrine in Indonesia

The issue of dominant positions in digital transactions has become a primary concern for the Indonesian Business Competition Supervisory Commission (IBCS or *Komisi Pengawas Persaingan Usaha*). The enforcement of relevant laws aims to prevent the emergence of unfair business competition. Article 1, No. 6 of Law No. 5 of 1999 defines unhealthy competition as competition among business actors in the production or marketing of goods and services that is conducted unethically, dishonestly, unlawfully, or in a manner that impedes competition. Unfair competition may arise through restrictive agreements or the abuse of dominant positions.¹⁶ IBCSC plays a critical role in the digital economy by preventing monopolistic practices, including the abuse of dominant positions, such as

15 Legrand, Pierre, and Roderick Munday, eds. *Comparative legal studies: traditions and transitions*. Cambridge University Press, 2003.

16 Aldo Suhartono Putra, "Competition Law 4.0: Issues of Big Data, Artificial Intelligence, and Blockchain in the Context of Competition Law in the Era of the Digital Economy Industry," *Dharmasysya: Journal of the Master of Law Program, Faculty of Law, University of Indonesia* 1, no. 3 (2021): 1131–1134.

when a dominant provider locks in consumers. The competition model on digital platforms, which involves big data and extensive networking, enables stored data to enhance inter-platform networks and strengthen the marketplace.¹⁷

From an economic perspective, the dominant position is occupied by business actors with the largest market share.¹⁸ Misusing the dominant position is regulated in Article 25 of the Law, which is regulated as follows (English version of the Act is translated by the Author):

- a) Business actors directly or indirectly determine the terms and conditions of trade by implementing measures that prevent or obstruct consumers from obtaining goods and/or services that can be competitive in terms of both price and quality.
- b) There are market restrictions and restrictions on technological development.
- c) Carrying out obstacles for other business actors who have the potential to become competitors in the relevant market scope.

The criteria for a dominant position, as outlined in the law, specify that a single business actor or group must control at least 50% of the market share for a particular type of good or service. If two or three business actors or groups are involved, they must collectively control at least 75% of the market share for the relevant goods or services. Abuse of a dominant position can occur through share ownership, particularly when affiliated business actors hold majority shares in multiple companies operating in the same sector. This structure increases the risk of unfair competition due to potential misuse of market power.¹⁹ Law No. 5 of 1999 also addresses prohibited activities related to dominant positions, including dual positions or affiliated management (Article 26), share ownership or affiliation (Article 27), and mergers and acquisitions (Articles 28 and 29).

The development of the digital ecosystem has significantly changed competition law in Indonesia. This shows that technology and information have been well received; for example, changes in the development of digital-based industries have encouraged a shift from traditional markets to digital markets. As a result, business implementation is expanded by business actors through digital platforms. Digital platforms also present challenges for business actors in the competitive business environment, as they must be able to innovate and adapt to create and market products, including both goods and services.²⁰

In Indonesia, regulations governing dominant positions in the digital economy, including e-commerce, are outlined in the same Business Competition Law. This law serves as the primary legal framework for regulating business competition and preventing unfair

17 Filippo Lancieri, and Patricia Morita Sakowski. "Competition in digital markets: a review of expert reports." *Stan. JL Bus. & Fin.* 26 (2021): 65.

18 Herman, *Law on the Prohibition of Monopolistic.*, 41.

19 Ganis Tribhuwana Kameswari, "Abuse of Market Dominance in Indonesia's Rice Industry: A Legal Analysis of PT Wilmar Padi's Alleged Price Monopoly." *Jurnal Hukum In Concreto* 3.2 (2024): 220-236.

20 *ibid*

practices, monopolies, and conduct detrimental to consumers and competitors. Since there is no specific legislation addressing e-commerce competition in the digital economy, the Indonesian Competition Law remains the principal basis for oversight in this sector.

Within the e-commerce sector, the IBCSC plays a crucial role in law enforcement during the digital economy era. As mandated by Articles 35 and 36 of Law No. 5 of 1999, the IBCSC is responsible for monitoring and enforcing competition laws in Indonesia. It operates as an independent body, free from influence by the government or any parties with conflicts of interest in the investigation, adjudication, or processing of business competition cases. The IBCSC enforces regulations on dominant positions in the e-commerce sector through investigations and supervision of business practices that may result in market domination or abuse of dominance. The IBCSC initiates investigations when there are allegations of competition rule violations, such as practices that harm consumers, restrict entry by competitors, or undermine healthy competition. Upon finding evidence of violations, the IBCSC may impose sanctions, including fines, and can require companies to cease unlawful practices or modify their business conduct to align with fair competition standards.²¹

The enforcement of regulations concerning dominant market positions by the IBCSC remains inadequate in the context of the digital era. The distinct mechanisms of e-commerce, particularly digital payment systems, introduce complexities that differ markedly from those in traditional markets, further complicating regulatory efforts.²² For example, in January 2025, the IBCSC determined that Google LLC had abused its dominant position by requiring app developers to use the Google Play Billing System, thereby excluding alternative payment options. This case illustrates that the conventional understanding of market control, previously centered on physical goods, must now address a landscape in which digital platforms, rather than products alone, can exert monopolistic influence and hinder innovation within the digital ecosystem.

Unhealthy competition can emerge in e-commerce in Indonesia, particularly among dominant start-ups, such as those classified as unicorns or decacorns, which possess significant market power.²³ For instance, Shopee, Lazada, Tokopedia, and Bukalapak are leading marketplace platforms. According to SimilarWeb, Shopee averaged 157.9 million visits in the first quarter of 2023, followed by Tokopedia with 117 million and Lazada with 83.2 million. These platforms occupy dominant positions in the Indonesian market. Their market power enables them to collect extensive data, enhance competitiveness, and operate as both marketplace owners and application providers. Such dominance can facilitate

21 Rika Azizah, et.al. "Fungsi Dan Peran Lembaga Kppu Dalam Praktek Persaingan Usaha." *Karimah Tauhid* 2.3 (2023): 697-707.

22 Tulung, Sonny V., and Hudi Yusuf. "Analisis Regulasi Hukum Dagang Atas Persaingan Usaha Dalam E-Commerce Di Era Digital." *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (2024): 1265-1278.

23 Dewi, Galuh Dian Prama, and Alvin Ernesto Lusikooy. "E-commerce transformation in Indonesia: Innovation and creative destruction." *Nation State: Journal of International Studies* 6.2 (2023): 117-138.

the abuse of market position, including limiting access to competitors, creating unequal partnerships, and fostering digital monopolies or lock-in effects. The current Indonesian Competition Law faces challenges in addressing these issues due to its limited scope of application.

2. The German Competition Law Framework as a Comparison

Germany enacted the 10th Amendment to the Anti-Terrorism Law in 2021, which has begun to encompass business competition in the digital economy-based industry. The Competition Law in Germany is regulated in the *Gesetz gegen Wettbewerbsbeschränkungen* (hereinafter referred to as GWB), which is also known as the German Antitrust Law. This law was first enacted in 1958 and has undergone several changes. The Formation of the Anti-Monopoly Law Towards an Information Society. Germany aims to protect healthy and fair business competition. The existence of this law regulates practices that can reduce unfair competition or harm consumers. Some aspects regulated by the German Anti-Monopoly Law, including supervision of mergers and acquisitions, arrangement of action in cases of dominant position, consumer protection, and compliance and sanctions.²⁴

As technology advances, the digitalization process alters market economic competition in several ways, leading to the emergence of new business models. A relevant example of this is the rise in the role of digital platforms and data-driven markets; these developments present specific challenges for competition policy, which must be addressed in consideration of the unique economic characteristics of digital goods and markets. Digitalization is rapidly providing momentum to all industrial markets and has triggered an extraordinary transformation process affecting companies, consumers, and competitors. Competition law in Germany also applies to digital economy-based industries.

However, due to the unique and continuously growing nature of the industry, several policies and more specific regulations are in place to ensure healthy business competition. The 9th Amendment to the GWB, which came into effect in 2017, previously provided several additional criteria for assessing market power. Primarily aimed at the digital market.²⁵

This law regulates several aspects, such as merger approval. Additionally, we handle acquisitions, dispute resolution, consumer collective action, and data protection. Additionally, the *Bundeskartellamt* (Competition Supervisory Agency) of Germany plays a crucial role in competition supervision, including the digital economy-based industry. This agency has the authority to monitor and investigate monopolistic or oligopolistic practices that may harm consumers or competitors in the market. On January 18, 2021, the German legislature

24 Sascha Dethof, and Lea Josten. "Bundeskartellamt Gives Users of Google Services Better Control over their Data on the Basis of Section 19a of the German Competition Act, GWB (Germany)." *Journal of European Competition Law & Practice* 15.2 (2024): 108-116.

25 The English translation of the 9th Amendment to the German Competition Act is available at <https://www.bundeskartellamt.de/SharedDocs/Publication/EN/Others/GWB.html>.

adopted the 10th Amendment to the GWB, which includes several Legal changes aimed at protecting competition in the digital era.²⁶ In addition to providing competitive protection, this Amendment also introduces changes to merger control, the implementation of the ECN+ directive (European Union directive that aims to empower National Competition Authorities by harmonizing their independence, resources, and enforcement powers for EU competition rules), and modifications to administrative processes.²⁷

The Competition Law regulates German competition law in digital economy-based industries regarding dominant positions. In articles 18 to 21 of the GWB regulate the prohibition of actions that lead to a dominant position. Alternatively, exploit a dominant market position. Regarding the provisions regulated regarding dominant position actions on the German Competition Act, or GWB can be briefly described as follows:

- a) Article 18: This provision prohibits practices that violate competition, including monopolistic and oligopolistic practices, that can cause harm to consumers or competitors.
- b) Article 19: This provision prohibits discriminatory practices by companies. Those who are in a dominant position, including discrimination in prices, conditions of purchase, or other requirements
- c) Article 20: This provision prohibits unfair pricing practices. Companies in dominant positions, including those that employ practices of high pricing and low pricing, can be detrimental to their competitors.
- d) Article 21: This provision prohibits mergers that result in market dominance.

The main innovation from the formation of the 10th Amendment is Article 19a, which relates to modernization and the granting of new powers to the *Bundeskartellamt* as the authority for German competition. In this case, the *Bundeskartellamt* controls abuse when dealing with large digital platforms. In GWB, the *Bundeskartellamt* is also allowed to intervene at an early stage to the end, faster and more effectively, in cases where companies critical to cross-competition are involved in specific behavior. The new provisions under Article 19a introduce a twofold mechanism for the *Bundeskartellamt*. First, the authority is empowered to designate a business as significant based on its strategic position and available resources. Second, Article 19a enables the *Bundeskartellamt* to intervene in markets where companies have not yet attained a dominant position, allowing the authority to prohibit certain forms of conduct identified as problematic, even before dominance is established. This approach reflects a proactive regulatory stance, aiming to

26 The decision of the German Bundestag on the GWB Digitalisation Act (Bundesrat publication 38/21) can be downloaded here: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s0002.pdf%27%5D_161104311854

27 Jens-Uwe Franck, and Martin Peitz. "Germany's new competition tool: sector inquiry with remedies." *Journal of European Competition Law & Practice* 15.8 (2024): 515-525.

address competition concerns at an early stage.²⁸

Differences in competition law in economic-based industries and digital-related industries in Indonesia and Germany. Germany prohibits unfair business practices, including practices that lead to market domination by one or more companies. If a violation is found, the company concerned may be fined or even removed from the market. Meanwhile, in Indonesia, competition law is regulated by Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. This law also prohibits business practices that lead to market domination by one or a few companies.

The regulation of dominant positions in Germany, as outlined in the 10th Amendment to the German Competition Act, identifies seven prohibited practices. These include self-preferencing by vertically integrated companies, obstructing the supply or distribution activities of other firms (including non-competitors), impeding competitors' market expansion, using collected data to raise market entry barriers or requiring user consent for such use, restricting competition by denying or limiting interoperability or data portability, withholding information about company performance, and demanding disproportionate compensation from business customers.²⁹

The Important criteria for the application of Article 19a of the Law on Competition are that the law addresses companies that are 'very important for competition in the entire market. The Competition Act of Germany is discussed in a memorandum prepared by the parliamentary committee responsible for reporting the final version of the 10th Amendment. The criteria for companies included in Article 19a are financial, technical, or related to their data or as an ecosystem or platform digital across markets, specifically able to expand their position of power across market boundaries or secure their positions that cannot be penetrated.³⁰ One of the reasons the German legislature adopted the Amendment, the 10th Law on German Competition ('*Gesetz Gegen Wettbewerbsbeschränkungen*'), is that it will cover several legal changes to protect competition in the digital era. Its main innovation is a competition instrument enshrined in Article 19a of the Law on Competition, which will give the *Bundeskartellamt* new strength. German competition authorities, when dealing with large digital platforms.

Various new arrangements are outlined in the 10th Amendment, one of which is the enforcement of the *Bundeskartellgesetz* aimed at companies that engage in prohibited practices. These practices include those that are 'unlawful', directly or indirectly, hinder competitors in the market, and can quickly expand their position. These provisions include

28 Kozak, Malgorzata, and Veerle Peters. "Double jeopardy of Article 102 TFEU and the DMA-the challenges of a multi-level enforcement system." *Available at SSRN* (2024).

29 König Carsten, and Fernanda Luisa Bremenkamp. "Competition Law Sanctions in Germany." *The Cambridge Handbook of Competition Law Sanctions* (2022): 381-406.

30 Deutscher Bundestag, Drucksache 19/25868, 13 Januari 2021, Beschlussempfehlung und Bericht des Ausschusses für Wirtschaft und Energie (9. Ausschuss), 112. Lihat: Drucksache 19/25868 (bundestag.de)

strategies to drive competitors out of the market. Not yet (not yet) dominated: predatory pricing, agreements, or bindings, anti-competitive exclusivity, and bundling practices.³¹ These arrangements apply to major cases such as the Amazon case.

In 2019, the *Bundeskartellamt* received extensive improvements for sellers on the Amazon online marketplace. The Amendment addresses many complaints about Amazon that the *Bundeskartellamt* received from sellers. Exceptions include unilateral responsibility for Amazon's profits, termination of employment, blocking of seller accounts, court jurisdiction in the event of a dispute, handling of product information, and other related issues. This case was resolved in eight months, and Amazon adjusted its business terms to sellers worldwide.³²

In May 2021, the *Bundeskartellamt* initiated proceedings against Amazon. Based on section 19a GWB, to check whether Amazon is essential for competition across the market. In line with this process, the *Bundeskartellamt* also initiated two proceedings against Amazon based on abuse of control rules before the latest amendments to the law on competition took effect. Examining the impact of seller prices on the Amazon marketplace through price control mechanisms and algorithms. In the second process, authorities examine the extent of the agreement between Amazon and brand manufacturers, including Apple, which excludes third-party sellers from selling products or brands on Amazon Marketplace that constitute a violation of competition rules.³³

3. Gaps and Lessons Learned: A Comparison of Indonesia and Germany

Indonesia, as one of the largest countries in Southeast Asia, must urgently reform and strengthen its legal system to effectively respond to the rapid growth of the digital economy and promote business competition. To build a more robust legal framework that can prevent and address competition issues in this sector, regulatory updates should be guided by Laurence M. Friedman's three pillars of the legal system: legal substance, legal structure, and legal culture.³⁴

In terms of legal substance, Indonesia needs to revise its Anti-Monopoly Law by learning from Germany's regulations. This includes expanding the scope of Law No. 5 of 1999 to explicitly cover business activities utilizing information systems, such as internet-based commerce. The law should also address the direct and indirect effects of network activities, user behavior involving multiple platforms, economies of scale associated with

31 Gesetzentwurf (n 7), 76; Beschlussempfehlung (n 29), 116.

32 Dominic Alexander Knappe. *Cooperation Strategies for the Amazon Marketplace*. Diss. Universität St. Gallen, 2021.

33 Sarah Hinck and Rupperecht Podszun. "Beyond DMA: the Amazon section 19a case (Germany)." *Journal of European Competition Law & Practice* 16.1 (2025): 35-40.

34 Halim, Mustafa' Afifi Ab, Shabrina Zata Amni, and Mufti Maulana. "Legal System in the Perspectives of HLA Hart and Lawrence M. Friedman." *Peradaban Journal of Law and Society* 2, no. 1 (2023): 51-61.

network effects, access to competitively relevant data, and innovation-driven market pressures. Provisions should also be established for intermediary companies operating in digital markets, including clear criteria, assessment mechanisms, and open market access to ensure fair procurement and sales practices. Additionally, restrictions should be imposed on companies engaging in extraordinary cross-market activities, with the IBCSC empowered to identify and regulate such behavior based on specific criteria. The law must also consider the conduct of firms with significant or superior market power, particularly in relation to small and medium-sized enterprises, considering factors such as market dominance, financial resources, vertical integration, and the impact on third-party access to markets.

The legal structure must also be reinforced to ensure more effective law enforcement, particularly by enhancing the capacity and functionality of the IBCSC in its supervisory role. The IBCSC must urgently and decisively review Law No. 5/1999 and implement revisions that foster fair business practices. It is imperative to strengthen Articles 8 to 18, which outline prohibited acts, and Articles 19 to 28, which address accountability, ensuring these reforms effectively promote fairness and economic integrity. Healthy commercial competition offers significant advantages to economic actors. Consumers enjoy lower prices, increased choices, and enhanced product quality. Conversely, unfair business competition among certain economic actors' harms market participants and consumers and weakens the national economy. This involves ensuring adequate human resources to manage public complaints and reports concerning unfair competition, as well as employing knowledgeable and skilled personnel capable of anticipating and resolving complex issues arising from the digital economy.³⁵

Ultimately, legal culture plays a pivotal role in bridging the gap between legal norms and societal behavior. As Friedman describes, legal culture encompasses the values and attitudes that shape the practice of law.³⁶ Strengthening legal substance and structure should be accompanied by fostering a legal culture that upholds healthy and fair business competition in the digital era. This will serve as a safeguard for the evolving marketplace, supporting the emergence of a vibrant digital economy. Echoing Roscoe Pound's, as cited in Gochhayat, argued that law is a tool for social engineering, these reforms are expected to create an environment in which business actors, including small enterprises, can compete fairly and contribute to a more equitable and dynamic economy for all.³⁷

35 Ahmad Sabirin and Raafid Haidar, " Dampak Ekosistem Digital terhadap Hukum Persaingan Usaha di Indonesia serta Optimalisasi Peran Komisi Pengawas Persaingan Usaha (KPPU) di Era Ekonomi Digital" *Jurnal Persaingan Usaha* 1, no. 2 (2021): 75-82.

36 Friedman, Lawrence M. "Law, lawyers, and popular culture." *Popular Culture and Law*. Routledge, 2017. 3-30.

37 Gochhayat, Sai Abhipsa. "Social Engineering by Roscoe Pound': Issues in Legal and Political Philosophy." *Available at SSRN 1742165* (2010).

Digital transformation challenges traditional economic systems, and competition law must adapt accordingly. To address these challenges, lawmakers, courts, institutions, and economists must take proactive roles. Indonesia requires legal regulations that address the unique issues of the digital economy. Digital economic developments have the potential to cause unfair business competition.³⁸ Therefore, legal regulations are essential to anticipate, prevent, and control conflicts of interest arising from business competition in the digital sector. Such measures are necessary to support healthy economic growth and promote the welfare of the broader community.

D. Conclusion

In summary, this study has highlighted a substantial gap in Indonesia's competition law, particularly in its capacity to address challenges arising from the digital economy. The current legal framework remains limited in scope and specificity, making it difficult to effectively regulate market dominance and anti-competitive practices by digital platforms. By analyzing Germany's more mature and adaptive approach, which underwent its 10th amendment in 2021 with additional protections in the digitalization era. In addition to the GWB, Germany implemented the Openness Act Digital in 2021 to oversee large technology companies. It becomes evident that Indonesia can benefit from comprehensive legal reforms that expand substantive provisions, strengthen institutional capacity, and foster a supportive legal culture. Lessons drawn from Germany demonstrate the importance of clear statutory definitions, proactive enforcement mechanisms, and a holistic regulatory strategy that integrates substance, structure, and culture. Bridging these gaps is crucial for Indonesia to establish a fair, competitive, and dynamic digital marketplace that fosters sustainable economic growth.

38 Hasbullah, "Enforcement of Competition Law in the Digital Economy Sector."

Bibliography

A. Books

- Friedman, Lawrence M. "Law, lawyers, and popular culture." In *Popular Culture and Law*. Routledge, 2017.
- König, Carsten, and Fernanda Luisa Bremenkamp. "Competition Law Sanctions in Germany." In *The Cambridge Handbook of Competition Law Sanctions*, 2022.
- Legrand, Pierre, and Roderick Munday, eds. *Comparative Legal Studies: Traditions and Transitions*. Cambridge University Press, 2003.
- Mantzari, Despoina. "Power imbalances in online marketplaces: at the crossroads of competition law and regulation." In *Research Handbook on the Law and Economics of Competition Enforcement*. Edward Elgar Publishing, 2022.
- Hermann, and in K. Hansen. *Law on the Prohibition of Monopolistic Practices and Unfair Business Competition*. Jakarta: Katalis, 2001.
- Westerhoff, Philipp. "The German Amazon Marketplace Agreement Case: A Landmark Settlement with Global Reach or More Hype Than Substance?" *Hausfeld Competition Bulletin*, Fall (2019): 1–7.

B. Articles

- Azizah, Rika, et al. "Fungsi Dan Peran Lembaga Kppu Dalam Praktek Persaingan Usaha." *Karimah Tauhid* 2, no. 3 (2023): 697-707.
- Bourreau, Marc, et al. "Digital Conglomerates and EU Competition Policy." *CERRE*, February (2019): 1–44.
- Dethof, Sascha, and Lea Josten. "Bundeskartellamt Gives Users of Google Services Better Control over their Data on the Basis of Section 19a of the German Competition Act, GWB (Germany)." *Journal of European Competition Law & Practice* 15, no. 2 (2024): 108-116.
- Effendi, A. M. "Peran Hukum Anti Trust Dalam Mengatur Dan Mengadili Praktik Monopoli Dan Persaingan Usaha Tidak Sehat." *Multilingual: Journal of Universal Studies* 4, no. 2 (2024): 186-195.
- Febrina, Rezmia. "Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha." *Jurnal Karya Ilmiah Multidisiplin (JURKIM)* 2, no. 1 (2022): 121-127.
- Gochhayat, Sai Abhipsa. "Social Engineering by Roscoe Pound: Issues in Legal and Political Philosophy." SSRN (2010).
- Hayati, Adis Nur. "Analysis of Challenges and Enforcement of Competition Law in the E-Commerce Sector in Indonesia." *De Jure Legal Research Journal* 21, no. 1 (2021): 113.
- Halim, Mustafa' Afifi Ab, Shabrina Zata Amni, and Mufti Maulana. "Legal System in the Perspectives of HLA Hart and Lawrence M. Friedman." *Peradaban Journal of Law and Society* 2, no. 1 (2023): 51-61.
- Hasbullah, MA. "Enforcement of Competition Law in the Digital Economy Sector." *MEA Scientific Journal* (2020).
- Huda, Nailul, et al. *Digital Economy Outlook 2025*. Center of Economic and Law Studies, 2024.

- Hinck, Sarah, and Rupprecht Podszun. "Beyond DMA: the Amazon section 19a case (Germany)." *Journal of European Competition Law & Practice* 16, no. 1 (2025): 35-40.
- Herfian, Raafid Haidar and Ahmad Sabirin. "The Impact of the Digital Ecosystem on Competition Law in Indonesia and Optimizing the Role of KPPU in the Era of the Digital Economy." *Journal of Business Competition* 1, no. 2 (2021): 75–82.
- Irayadi, Muhammad. "The Principle of Balance in Contract Law." *HERMENEUTIKA: Journal of Legal Studies* 5, no. 1 (2021).
- Kalianda, H. Karli. "Problems of Regulating Business Competition in the Legal System Indonesia." *Wasaka Hukum* 8, no. 1 (2020).
- Kerber, Wolfgang and Karsten K. Zolna. "The German Facebook Case: The Law and Economics of the Relationship between Competition and Data Protection Law." *European Journal of Law and Economics* 54 (2022).
- Këllezi, Pranvera, Bruce Kilpatrick, and Pierre Kobel. *Abuse of Dominant Position and Globalization & Protection and Disclosure of Trade Secrets and Know-How*, Springer (2017)
- Knape, Dominic Alexander. *Cooperation Strategies for the Amazon Marketplace*. Dissertation, Universität St. Gallen, 2021.
- Kameswari, Ganis Tribhuwana. "Abuse of Market Dominance in Indonesia's Rice Industry: A Legal Analysis of PT Wilmar Padi's Alleged Price Monopoly." *Jurnal Hukum In Concreto* 3, no. 2 (2024): 220-236.
- Putra, Aldo Suhartono. "Competition Law 4.0: Issues of Big Data, Artificial Intelligence, and Blockchain in the Context of Competition Law in the Era of the Digital Economy Industry." *Dharmasisya: Journal of the Master of Law Program, Faculty of Law, University of Indonesia* 1, no. 3 (2021): 1131–1134.
- Rohmat. "The Urgency of Establishing a Digital Market Law as an Instrument of Business Competition Supervision in the Digital Era." *Journal of Business Competition* 2, no. 2 (2022): 118–126.
- Sengge, Anhar, and Wahyudi Umar. "Pengawasan Dan Penegakan Hukum E-Commerce Oleh KPPU Dalam Mengatasi Persaingan Usaha Tidak Sehat." *Jurnal Hukum Lex Generalis* 5, no. 4 (2024).
- Suhartono Putra, Aldo. "Competition Law 4.0: Issues of Big Data, Artificial Intelligence, and Blockchain in the Context of Competition Law in the Era of the Digital Economy Industry." *Dharmasisya: Journal of the Master of Law Program, Faculty of Law, University of Indonesia* 1, no. 3 (2021): 1131–1134.
- Tulung, Sonny V., and Hudi Yusuf. "Analisis Regulasi Hukum Dagang Atas Persaingan Usaha Dalam E-Commerce Di Era Digital." *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (2024): 1265–1278.
- Westerhoff, Philipp. "The German Amazon Marketplace Agreement Case: A Landmark Settlement with Global Reach or More Hype Than Substance?" (2019).

C. Internet

Bundesrat. *The 9th Amendment to the German Competition Act*. <https://www.bundeskartellamt.de/SharedDocs/Publication/EN/Others/GWB.ht>.

Bundesrat. *Digitalisation Act (Bundesrat publication 38/21)*. https://www.bgbl.de/xaver/bgbl/start.xav#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl121s0002.pdf%27%5D__161104311854.

Kozak, Malgorzata, and Veerle Peters. "Double Jeopardy of Article 102 TFEU and the DMA- The Challenges of a Multi-Level Enforcement System." SSRN (2024).

Mediana, Cecilia. "Terbukti Monopoli, Google dedenda KPPU." Kompas.id, 22 Januari 2025.

D. Regulations

Law of the Republic of Indonesia No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition

Deutscher Bundestag. *Drucksache 19/25868*, 13 Januari 2021. <https://dserver.bundestag.de/btd/19/258/1925868.pdf>

Gesetzentwurf (n 7), 76; Beschlussempfehlung (n 29), 116.

Curriculum Vitae of Author

Sahira Sajjadia, a doctoral student at Gadjah Mada University, holds a master's degree in law from the same institution, specializing in Business Law. Her professional focus and research are centered on the Blue Economy, a field she has actively contributed to through legal research and policy analysis. Her recent academic works include the manuscript titled "A Juridical Study on the Potential of Blue Bonds for a Sustainable Blue Economy" and another on "Integrating Gender into the Maritime Legal Framework Toward an Inclusive Blue Economy." These works reflect her deep commitment to advancing legal frameworks that support sustainable development and social equity.

GREEN POWER IN MARKET CHAINS: RESHAPING COMPETITION LAW IN THE AGE OF RENEWABLE ENERGY

Aji Baskoro

Faculty of Law, Universitas Gadjah Mada
ajibaskoro@mail.ugm.ac.id

ABSTRACT

The global transition toward renewable energy raises critical questions about the adequacy of existing competition law frameworks in preventing market concentration and ensuring fair access. In Indonesia, the development of renewable energy remains challenged by oligopolistic tendencies, limited regulatory responsiveness, and unequal market entry opportunities. This paper adopts a normative and conceptual approach to critically examine whether the current Indonesian competition law paradigm sufficiently addresses the complexities of the renewable energy sector. Drawing on theoretical literature and national regulatory discourse, the study argues the objectives of competition law beyond economic efficiency, emphasizing sustainability and equity. The analysis concludes that conventional antitrust approaches must be recalibrated to support an inclusive and environmentally sound energy transition in Indonesia. It recommends a value-oriented reform of competition law aligned with the Sustainable Development Goals (SDGs), particularly in advancing climate justice and equitable energy access.

Keywords : competition law; renewable energi; sustainability; energy transition; market chains.

A. Introduction

The global imperative to transition towards a low-carbon economy has undeniably propelled renewable energy to the forefront of international energy agendas.¹ As the urgency to mitigate climate change intensifies, nations worldwide are making substantial investments in clean energy alternatives, particularly focusing on solar, wind, and other sustainable sources.² However, this profound transformation of energy systems extends beyond mere technical or financial considerations; it is fundamentally a legal and institutional undertaking, necessitating profound reforms in both market design and regulatory architecture.³ As renewable energy markets grow, competition law plays an increasingly important role in

1 Qusay Hassan et al., “The Renewable Energy Role in the Global Energy Transformations,” *Renewable Energy Focus* 48 (March 2024): 100545, <https://doi.org/10.1016/j.ref.2024.100545>.

2 Odunayo Adewunmi Adelekan et al., “ENERGY TRANSITION POLICIES: A GLOBAL REVIEW OF SHIFTS TOWARDS RENEWABLE SOURCES,” *Engineering Science & Technology Journal* 5, no. 2 (2024): 272–87, <https://doi.org/10.51594/estj.v5i2.752>.

3 Yashwant Singh Bisht et al., “Legal Framework for Energy Transition: Balancing Innovation and Regulation,” *E3S Web of Conferences* 540 (2024): 13015, <https://doi.org/10.1051/e3sconf/202454013015>.

regulating access to grids, ensuring fair investment opportunities, and preventing market dominance. This paper examines the legal dimension of the energy transition by analyzing the interplay between competition law and renewable energy markets, with a specific focus on Indonesia.

Climate change represents an unprecedented global crisis demanding coordinated and accelerated action from all stakeholders.⁴ As articulated within the Sustainable Development Goals (SDGs), notably Goal 7 (Affordable and Clean Energy) and Goal 13 (Climate Action), a robust energy transition is paramount for reducing carbon emissions and ensuring long-term environmental sustainability.⁵ In response, numerous countries are actively reorienting their energy policies towards fostering more inclusive, clean, and resilient systems.⁶ This significant global shift compels a rigorous examination of whether existing legal frameworks, including the very principles of competition law, are adequately equipped to facilitate equitable access and foster fair competition within the burgeoning renewable energy sector.⁷

Despite these aspirations, the practical implementation of power sector reforms, especially in developing nations, has diverged significantly from the idealized "textbook" models that gained prominence in the 1990s. As highlighted in the World Bank's seminal book, "Rethinking Power Sector Reform in the Developing World," contextual variables have profoundly influenced the trajectories of these reforms.⁸ While member countries of the Organisation for Economic Co-operation and Development (OECD) have, on average, adopted approximately 80 percent of the proposed reform elements, developing countries, particularly those characterized by smaller power systems or lower income levels, have implemented less than 40 percent. Furthermore, the momentum of reform adoption experienced a considerable slowdown between 2005 and 2015, suggesting the presence of deep-seated structural and institutional constraints that transcend purely economic rationality.⁹ These compelling findings raise critical questions regarding the institutional capacity and inherent legal adaptability of emerging economies as they navigate the

4 Renhe Zhang et al., "From Concept to Action: A United, Holistic and One Health Approach to Respond to the Climate Change Crisis," *Infectious Diseases of Poverty* 11, no. 1 (2022), <https://doi.org/10.1186/s40249-022-00941-9>.

5 "Sustainable Development Goal 7 and Sustainable Development Goal 13: Possible Ways of Interactions," in *Industry 4.0*, by Alexander M. Solntsev and Roza D. Akshalova (Springer International Publishing, 2021), https://doi.org/10.1007/978-3-030-75405-1_3.

6 Precious Oluwaseun Okedele et al., "Global Legal Frameworks for an Equitable Energy Transition: Balancing Growth and Justice in Developing Economies," *International Journal of Applied Research in Social Sciences* 6, no. 12 (2024): 2878-91, <https://doi.org/10.51594/ijarss.v6i12.1765>.

7 Raphael J. Heffron, "Applying Energy Justice into the Energy Transition," *Renewable and Sustainable Energy Reviews* 156 (March 2022): 111936, <https://doi.org/10.1016/j.rser.2021.111936>.

8 Vivien Foster and Anshul Rana, *Rethinking Power Sector Reform in the Developing World* (Washington, DC: World Bank, 2020), <https://doi.org/10.1596/978-1-4648-1442-6>.

9 *Ibid.*

multifaceted challenges associated with energy transitions.¹⁰ The formulation of the Regulatory Indicators for Sustainable Energy (RISE) 2016 score involved an assessment of a country's performance in three key areas: energy access, renewable energy, and energy efficiency. This evaluation was based on a comprehensive set of 27 indicators and 85 sub-indicators, where each indicator was assigned a score on a 0–100 scale. With all indicators being equally weighted, the final scores for each pillar and the country were determined by aggregating these individual indicator scores. The uneven spread of power sector reform across the developing world is visually represented in Figure 1.

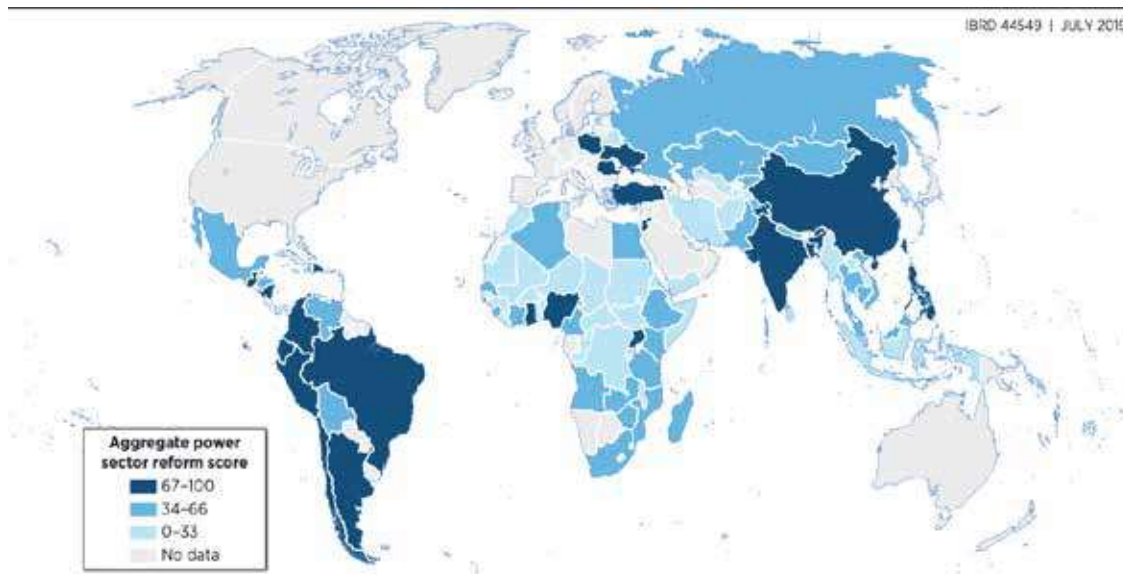


Figure. Divergent Patterns of Power Sector Reform Adoption in Developing Countries.

Source: Vivien Foster and Anshul Rana, 2019.

The Indonesian context notably reflects many of the intricate complexities underscored by the World Bank's analysis. Although renewable energy has been strategically positioned as a pivotal driver for sustainable development, the actual implementation of supportive legal and institutional frameworks remains conspicuously uneven. Indonesia's power sector, predominantly characterized by the dominance of state-owned enterprises and a highly centralized structure, faces unique challenges in fundamentally reforming its market architecture to effectively accommodate new, increasingly decentralized, and competitive actors.¹¹ This inherent complexity is further compounded by legacy regulations that are frequently ill-equipped to effectively manage the distributed nature inherent in modern renewable energy systems.¹²

¹⁰ *Ibid.*

¹¹ Indri Dwi Apriliyanti et al., "To Reform or Not Reform? Competing Energy Transition Perspectives on Indonesia's Monopoly Electricity Supplier Perusahaan Listrik Negara (PLN)," *Energy Research & Social Science* 118 (December 2024): 103797, <https://doi.org/10.1016/j.erss.2024.103797>.

¹² Dimitar Anguelov, "State-Owned Enterprises and the Politics of Financializing Infrastructure Development

When properly integrated, renewable energy possesses the dual potential to serve as both a powerful engine for sustainable development and a significant catalyst for inclusive market growth.¹³ However, without the presence of robust and adequate legal safeguards, the nascent renewable energy sector faces a substantial risk of being captured by monopolistic interests or entrenched large incumbents.¹⁴ Consequently, ensuring a truly level playing field within the renewable energy market necessitates a fundamental reevaluation of how competition law operates, specifically in its capacity to promote innovation, effectively deter the abuse of dominant positions, and proactively facilitate market entry for new players.

In Indonesia, the evolving direction of energy policy and the dynamic shifts within the electricity market reveal a confluence of both promising opportunities and inherent tensions.¹⁵ On one hand, recent regulatory initiatives, such as the National Energy Policy (KEN) as outlined in Government Regulation No. 79/2014, Presidential Regulation No. 112/2022 on renewable electricity tariffs, Law No. 30/2007 on Energy, and Law No. 30/2009 on Electricity, demonstrably indicate a growing commitment to the energy transition agenda.¹⁶ On the other hand, persistent structural barriers, including but not limited to limited grid access for independent power producers, opaque procurement processes, and insufficient enforcement of existing competition rules, collectively undermine the potential for cultivating a genuinely competitive renewable energy market.

Recent scholarly discussions have increasingly explored the complex interplay among competition law, sustainability principles, and the dynamic market forces shaping the global renewable energy transition. Schinkel and Treuren (2020) present a compelling argument that any relaxation of antitrust rules in the name of sustainability initiatives would ultimately prove counterproductive, underscoring instead that robust competition serves as a vital catalyst for innovation in green technologies.¹⁷ In a similar vein, Mondliwa et al. (2020) offer an insightful investigation into how deeply entrenched legacy regulations and the prevailing bargaining power within developing economies fundamentally mold energy value chains, thereby highlighting the indispensable need for competition authorities to assume active and

in Indonesia: De-Risking at the Limit?," *Development and Change* 55, no. 3 (2024): 493–529, <https://doi.org/10.1111/dech.12828>.

- 13 Chien-Heng Chou et al., "Renewable Energy Integration for Sustainable Economic Growth: Insights and Challenges via Bibliometric Analysis," *Sustainability* 15, no. 20 (2023): 15030, <https://doi.org/10.3390/su152015030>.
- 14 Lucy Baker et al., "Power Struggles: Governing Renewable Electricity in a Time of Technological Disruption," *Geoforum* 118 (January 2021): 93–105, <https://doi.org/10.1016/j.geoforum.2020.12.006>.
- 15 Abidah B. Setyowati and Jaco Quist, "Contested Transition? Exploring the Politics and Process of Regional Energy Planning in Indonesia," *Energy Policy* 165 (June 2022): 112980, <https://doi.org/10.1016/j.enpol.2022.112980>.
- 16 Rahmantara Trichandi, "A Brief Review on Indonesia's National Energy Policy," *Purnomo Yusgiantoro Center*, 2018, <https://purnomoyusgiantorocenter.org/opinion/a-brief-review-on-indonesias-national-energy-policy/>.
- 17 Maarten Pieter Schinkel and Leonard Treuren, "Green Antitrust: Friendly Fire in the Fight against Climate Change," *SSRN Electronic Journal*, ahead of print, Elsevier BV, 2020, <https://doi.org/10.2139/ssrn.3749147>.

decisive roles.¹⁸ Further contributing to this discourse, Beneke Avila (2025) emphasizes Latin America's significant clean energy potential while simultaneously advocating for proactive antitrust interventions specifically designed to mitigate undue market concentration in critical renewable energy industries.¹⁹ Concluding this body of work, Holmes and Meagher (2022) strongly advocate for the strategic utilization of established competition instruments, such as Article 102 TFEU and robust merger control mechanisms, as essential tools to effectively counteract monopolistic abuses that demonstrably threaten the achievement of broader sustainability goals.²⁰ Collectively, these various academic works comprehensively illuminate the multifaceted challenges and the inherent opportunities involved in effectively aligning the principles of competition law with the urgent imperatives of climate action and the accelerated development of renewable energy infrastructure.

While the scholarly studies undoubtedly provide valuable theoretical foundations and pertinent policy insights, their primary geographical focus is predominantly situated within the Global North or the specific contexts of Latin American nations. This concentrated focus leaves a discernible and significant research gap concerning the unique challenges and opportunities present in Southeast Asian countries, particularly Indonesia. Furthermore, it is observed that most of the existing scholarship does not adequately address the critical question of how competition law frameworks can be strategically realigned to ensure the simultaneous achievement of both market efficiency and energy justice during the ongoing transition to renewable energy sources. This paper endeavors to precisely fill that identified gap by meticulously examining the specific structural and legal challenges inherent in Indonesia's evolving energy market and by exploring the potential reorientation of its competition law regime. The distinctive novelty of this study resides in its integrative approach, a methodology that meticulously links the intricacies of competition regulation with the broader, overarching agenda of sustainable development and the fundamental principle of equitable energy access. In doing so, this research contributes a perspective that is both regionally grounded in the Indonesian context and yet globally relevant to the ongoing international debate surrounding energy transitions and competition policy.

This paper is systematically guided by two intrinsically interrelated research questions. Firstly, to what extent can Indonesia's current competition law effectively ensure the establishment and maintenance of a healthy market structure within its burgeoning renewable energy sector? Secondly, how can the existing framework of competition law be strategically reoriented to actively support a just and truly sustainable energy transition within the Indonesian context? In meticulously addressing these pivotal questions, the study

18 Pamela Mondliwa et al., "Competition and Power in Global Value Chains," *Competition & Change* 25, nos. 3–4 (2021): 328–49, <https://doi.org/10.1177/1024529420975154>.

19 Francisco E. Beneke Avila, "Competition Law in Latin America and Global Greenhouse Gas Emissions: The Way Forward," *World Competition* 48, no. Issue 1 (2025): 125–52, <https://doi.org/10.54648/woco2025014>.

20 Simon Holmes and Michelle Meagher, "A Sustainable Future: How Can Control of Monopoly Power Play a Part?," *SSRN Electronic Journal*, ahead of print, Elsevier BV, 2022, <https://doi.org/10.2139/ssrn.4099796>.

aims to critically reexamine the prevailing dominant paradigm of competition law as it is currently applied within Indonesia's energy governance landscape. It proposes an innovative alternative legal approach, one that comprehensively embeds the crucial principles of sustainability and energy justice directly within both the enforcement mechanisms and the fundamental design of competition policy. Through this rigorous inquiry, the paper also seeks to systematically unpack the inherent normative and institutional tensions that frequently arise between the objectives of market liberalization and the overarching goal of environmental stewardship. Ultimately, this research aspires to contribute significantly towards the development of more inclusive and adaptive legal frameworks that are directly aligned with the global sustainability agenda.

Academically, this paper significantly advances the ongoing discourse on competition law by proposing a novel, sustainability-oriented reconceptualization that is firmly grounded in the specific context of a developing country undergoing a critical energy transition. It further extends the normative debates surrounding market regulation by thoughtfully incorporating crucial considerations of climate equity and the imperative of long-term ecological viability. From a practical standpoint, the findings presented herein offer timely and highly relevant input for Indonesian policymakers, aiding them in the crucial task of designing energy and legal reforms that are not only responsive to economic imperatives but also deeply cognizant of environmental exigencies. The urgency of this study is particularly pronounced as Indonesia actively seeks to balance its international commitments to the Sustainable Development Goals (SDGs) with the complex realities of its rapidly evolving domestic energy market structure. By contributing valuable insights to both legal theory and practical policymaking, this paper strategically positions itself at a crucial intersection of law, governance, and the broader pursuit of sustainable development.

B. Research Method

This study adopts a normative-legal research methodology, strategically chosen for its inherent capacity to critically evaluate the intricate legal frameworks, foundational principles, and governing norms that shape competition law within Indonesia's dynamic energy sector. This approach facilitates a rigorous and in-depth exploration of the substantive content embedded in relevant statutes, established legal scholarship, and the core conceptual underpinnings of both competition and energy jurisprudence. The research design is inherently multifaceted, integrating both descriptive-analytical and conceptual qualities. It is descriptive-analytical in its careful delineation and detailed scrutiny of existing regulations and the practical dimensions of competitive dynamics within the Indonesian renewable energy domain. Concurrently, its conceptual orientation drives the development and subsequent proposition of a novel theoretical framework for competition law, thoughtfully engineered to incorporate the critical elements of sustainability and justice.

This research draws primarily on Indonesian statutory regulations and primary legal documents, including Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 30 of 2007 on Energy, Law No. 30 of 2009 on Electricity, Government Regulation No. 79 of 2014 on the National Energy Policy (KEN), and Presidential Regulation No. 112 of 2022 on the Acceleration of Rooftop Solar Power Plant Development, supplemented by relevant rulings and regulations issued by the Ministry of Energy and Mineral Resources (ESDM), the Business Competition Supervisory Commission (KPPU), and other competent authorities. Secondary sources encompass scholarly works, peer-reviewed articles, policy reports from national and international institutions, and contemporary media analyses that illuminate the challenges and opportunities of Indonesia's renewable energy sector. The study employs a qualitative normative methodology comprising legal interpretation, conceptual comparison, and argument synthesis, combined with critical analysis to identify gaps and inconsistencies within the existing competition law framework. This is complemented by a reconstructive analysis that advances proposals for reshaping competition law to better integrate sustainability, equity, and inclusivity, thereby aligning it with the demands of a just and effective energy transition in Indonesia.

C. Discussions

1. The Indonesian Competition Law Framework and Its Relevance to the Renewable Energy Sector

Indonesia's primary competition statute, Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, serves as the cornerstone of the nation's antitrust regime.²¹ Its foundational objectives are explicitly articulated as fostering a conducive business climate, ensuring fair competition, promoting economic efficiency, and ultimately enhancing consumer welfare.²² While these objectives are broadly beneficial for any market, their interaction with the energy sector, particularly the nascent and rapidly evolving renewable energy domain, warrants meticulous analysis.²³ The law provides the KPPU with a suite of instruments to achieve these aims, including prohibitions against restrictive agreements (such as cartels, price-fixing, and market division), prohibitions against anti-competitive activities (like tying arrangements and exclusive dealing),

21 Dennis Wye Keen Khon et al., "Two Decades of Business Competition Law: How Has Indonesian Competition Law Transformed?," *Journal of Private and Commercial Law* 7, no. 1 (2023): 45–68, <https://doi.org/10.15294/jpcl.v7i1.44355>.

22 Rizky Arjuna T Girsang, "Peranan Hukum Dalam Pembangunan Ekonomi Di Indonesia Berkaitan Dengan Pembentukan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," *Logika: Journal of Multidisciplinary Studies* 12, no. 01 (2021): 1–8, <https://doi.org/10.25134/logika.v12i01.3753>.

23 Aripin Ahmad, "Two Decades of Indonesian Business Competition Law: Implementation, Enforcement and Contribution to the Economy," *Journal of Research on the Lepidoptera* 51, no. 2 (2020): 277–92, <https://doi.org/10.36872/lepi/v51i2/301096>.

regulations concerning the abuse of dominant positions, and mechanisms for merger and acquisition control.²⁴

In the context of the renewable energy market, these instruments theoretically equip the KPPU to address various forms of anti-competitive behavior. For instance, prohibitions against restrictive agreements could target collusion among independent power producers (IPPs) or equipment suppliers that inflate prices or restrict market entry.²⁵ The provisions concerning the abuse of dominant positions could be invoked against a vertically integrated incumbent or a large player seeking to stifle competition from smaller renewable energy developers by denying essential facilities or imposing discriminatory terms.²⁶ Furthermore, merger control mechanisms are designed to prevent excessive market concentration that could arise from the consolidation of major players in the renewable energy generation, transmission, or distribution segments. Thus, on paper, Law No. 5 of 1999 appears to offer a robust set of tools for market oversight.²⁷

Providing a broader context to the efficacy and impact of this legal framework, recent assessments indicate a dynamic competitive landscape in Indonesia. The Center for Economics and Development Studies (CEDS) of the Faculty of Economics and Business (FEB) at Padjadjaran University (UNPAD) concluded that the national competition index increased to 4.87 in 2022 from 4.81 in the preceding year.²⁸ This upward trend suggests a "slightly high level of business competition" across the country, reflecting an improving economic climate in the post-COVID-19 pandemic era which has stimulated a more competitive national environment. The CEDS UNPAD study, based on a national business competition index aggregated from various economic sectors across 34 provinces, revealed that nearly all dimensional components contributing to the index showed an increase.²⁹ However, it is noteworthy that the dimensions of industrial performance and regulation recorded a decrease in their respective values.³⁰ This particular finding signals potential

24 Rahayu Hartini et al., "Implementation of Business Competition Compliance Program to Prevent Unfair Business Competition Practices Against Business Enterprises," *Audito Comparative Law Journal (ACLJ)* 5, no. 1 (2024): 42–55, <https://doi.org/10.22219/aclj.v5i1.29780>.

25 Rika Azizah et al., "Fungsi Dan Peran Lembaga KPPU Dalam Praktek Persaingan Usaha," *Karimah Tauhid* 2, no. 3 (2023): 697–707, <https://doi.org/10.30997/karimahtauhid.v2i3.8789>.

26 Rahmadani Rahmadani, "PENGUASAAN PASAR OLEH DISTRIBUTOR LAMPU HANNOCHS DI KOTA PEKANBARU BERDASARKAN UNDANG-UNDANG NOMOR 5 TAHUN 1999 TENTANG LARANGAN PRAKTIK MONOPOLI DAN PERSAINGAN USAHA TIDAK SEHAT," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 1, no. 2 (2022): 43–50, <https://doi.org/10.55681/seikat.v1i2.154>.

27 Huta Disyon and Elisatris Gultom, "Critical Review of the Implementation of the Making of SOE as a Holding from Anti-Monopoly and Unfair Business Competition Perspective," *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022): 191, <https://doi.org/10.30641/dejure.2022.v22.191-204>.

28 Fitri Novia Heriani, "Indeks Persaingan Usaha Naik, Sektor Pertambangan dan Konstruksi Paling Rendah," <https://www.hukumonline.com/berita/a/indeks-persaingan-usaha-naik-sektor-pertambangan-dan-konstruksi-paling-rendah-lt677e0159c5537/>.

29 asean-competition.org, "CEDS FEB UNPAD CONCLUDES THAT THE 2022 COMPETITION INDEX GOES UP ASEAN Competition," 2023, <https://asean-competition.org/read-news-ceds-feb-unpad-concludes-that-the-2022-competition-index-goes-up>.

30 *IBID.*

areas of concern where the current regulatory framework or industry structures might be less effective in fostering competition, a detail particularly relevant when considering the complexities of the renewable energy sector's development.

Historically, the conventional application of competition law in Indonesia's energy sector has largely focused on preventing traditional cartel behavior, regulating state-owned enterprises (SOEs) where they operate commercially, and scrutinizing mergers that could lead to dominant market positions.³¹ The KPPU has issued various decisions and interpretations concerning conventional energy markets, particularly in oil and gas distribution, coal supply, and general electricity infrastructure.³² While these precedents provide a basis for understanding the KPPU's analytical framework, their direct relevance to the renewable energy sector, with its distinct characteristics, remains limited.³³

The renewable energy market presents a unique set of characteristics that often challenge the straightforward application of conventional competition principles.³⁴ Firstly, the sector is highly capital-intensive, requiring substantial upfront investment, which can inherently limit the number of viable market entrants.³⁵ Secondly, the intermittency of certain renewable sources (e.g., solar, wind) necessitates robust grid infrastructure and often sophisticated energy storage solutions, creating dependencies on existing grid operators.³⁶ Thirdly, and most critically in Indonesia, the market structure is heavily influenced by the presence of a single state-owned off-taker, Perusahaan Listrik Negara (PLN), which holds a near-monopoly on electricity transmission and distribution and acts as the primary buyer for most IPPs.³⁷ This monopsony power fundamentally shapes market dynamics, potentially distorting price signals and creating significant bargaining power imbalances. These unique attributes suggest that a direct, unnuanced application of conventional competition law principles might not adequately capture or address the specific competitive challenges prevalent in the renewable energy landscape.

Despite its seemingly comprehensive toolkit, the conventional paradigm of competition law, with its singular focus on economic efficiency and consumer welfare through lower

31 Rafi Oktario Mahdi Alkari and Dwi Desi Yayi Tarina, *State-Owned Enterprises Restructuring and Its Challenges in Business Competition from the Perspective of Antitrust and Competition Law in Indonesia*, December 16, 2024, <https://doi.org/10.29303/ulrev.v8i2.381>.

32 Amanda et al., *Analysis of Competition Law on Alleged Monopolistic Practices in The Sale of Fuel Oil (BBM) by PT Pertamina (Persero) in Indonesia*, June 2, 2025, <https://lamlaj.ulm.ac.id/index.php/abc/article/view/208>.

33 Iman Prihandono and Ekawestri Prajwalita Widiati, "Regulatory Capture in Energy Sector: Evidence from Indonesia," *The Theory and Practice of Legislation* 11, no. 3 (2023): 207–31, <https://doi.org/10.1080/20508840.2023.2248837>.

34 Daniel Scholten et al., "The Geopolitics of Renewables: New Board, New Game," *Energy Policy* 138 (March 2020): 111059, <https://doi.org/10.1016/j.enpol.2019.111059>.

35 Madjid Soltani and Artie Ng, eds., *Financial and Technological Innovation for Sustainability: Environmental, Social and Governance Performance*, Routledge International Studies in Money and Banking (Routledge, 2024).

36 Muhammed Y. Worku, "Recent Advances in Energy Storage Systems for Renewable Source Grid Integration: A Comprehensive Review," *Sustainability* 14, no. 10 (2022): 5985, <https://doi.org/10.3390/su14105985>.

37 Apriliyanti et al., "To Reform or Not Reform?"

prices, may prove insufficient to fully achieve the broader objectives of Indonesia's energy transition.³⁸ The transition to a low-carbon economy is not merely about fostering economic efficiency; it encompasses multifaceted goals such as environmental sustainability, climate justice, energy security, and universal energy access.³⁹ A competition law framework that prioritizes only static and dynamic efficiency might inadvertently overlook or even impede policy objectives related to de-carbonization, technological innovation for sustainability, and ensuring equitable participation in the green economy.⁴⁰

This narrow focus risks perpetuating what can be termed as “market failures” or “regulatory failures” that traditional antitrust approaches are not fully equipped to resolve. For instance, if market concentration, even if deemed “efficient” by conventional metrics, stifles the growth of decentralized renewable energy systems or disproportionately impacts vulnerable communities' access to clean energy, the conventional framework may not offer adequate remedies. Furthermore, promoting collaboration among companies for research and development of green technologies, or for establishing sustainable supply chains, might paradoxically face antitrust scrutiny if the law strictly adheres to an anti-collusion stance without sufficiently accounting for the collective benefits to sustainability.⁴¹ Therefore, a critical re-evaluation is necessary to determine whether the existing legal and conceptual foundations of Indonesian competition law are truly fit for purpose in navigating the complexities of a just and sustainable energy transition.

2. Reconceptualizing Competition Law: Towards a Just and Sustainable Energy Transition

The traditional paradigm of competition law predominantly centers on achieving economic efficiency (both allocative and dynamic) and maximizing consumer welfare, typically through lower prices and increased output.⁴² However, the pressing global challenges of climate change and the imperative of a just energy transition necessitate a critical re-evaluation of these singular objectives. The theoretical argument for expanding the scope of competition law stems from the recognition that markets, left unregulated solely by efficiency concerns, often fail to adequately account for environmental externalities and social inequities.⁴³ Climate change, for instance, represents the quintessential market

38 Laely Nurhidayah et al., “Indonesia’s Just Energy Transition: The Societal Implications of Policy and Legislation on Renewable Energy,” *Climate Law* 14, no. 1 (2024): 36–66.

39 Giuseppina Siciliano et al., “Low-carbon Energy, Sustainable Development, and Justice: Towards a Just Energy Transition for the Society and the Environment,” *Sustainable Development* 29, no. 6 (2021): 1049–61, <https://doi.org/10.1002/sd.2193>.

40 Amogh Ravishankara, “Institutional Analysis of Direct Air Capture in the Context of Aviation Sustainability” (PhD Thesis, Delft University of Technology, 2023).

41 Ramsi Woodcock, *The Contrasting Approaches to Power of the Modern State and the Antitrust Laws: Lessons for Platform Regulation* (SSRN, 2020).

42 Ioannis Lianos, “Competition Law as a Form of Social Regulation,” *The Antitrust Bulletin* 65, no. 1 (2020): 3–86, <https://doi.org/10.1177/0003603X19898626>.

43 *Ibid.*

failure where the true cost of carbon emissions is not fully internalized, leading to sub-optimal outcomes for the planet and future generations.⁴⁴

Therefore, the objectives of competition law must be broadened to explicitly incorporate environmental sustainability and social justice considerations.⁴⁵ This includes, but is not limited to, fostering climate justice (ensuring that the burdens and benefits of climate action are distributed equitably) and promoting universal energy access (guaranteeing affordable, reliable, and sustainable energy for all). Such a conceptual expansion recognizes that true long-term welfare extends beyond immediate economic gains to encompass ecological integrity and societal well-being. From a comparative perspective, this debate has gained significant traction in jurisdictions like the European Union, where the concept of “Green Antitrust” or “Sustainability-Oriented Competition Law” is actively being explored and debated.⁴⁶ Scholars and policymakers are increasingly arguing that competition authorities should facilitate, rather than hinder, collaborations that lead to environmentally beneficial outcomes, even if they entail minor restrictions on competition, provided the net societal benefit, including environmental gains, outweighs the competitive harm. This emerging perspective provides a robust theoretical foundation for re-imagining Indonesia’s competition law to serve a more holistic public interest in the context of its energy transition.

The practical integration of sustainability and justice considerations into competition law enforcement requires a deliberate shift in the analytical framework employed by bodies like the KPPU. Rather than merely assessing competitive effects in terms of price, output, and market shares, the KPPU could adopt a more nuanced approach that incorporates environmental and social impacts⁴⁷. For instance, in defining relevant markets within the renewable energy sector, the KPPU could consider not just direct substitutes but also the environmental footprint of different energy sources, acknowledging that cleaner energy might operate in a distinct “sustainability market.”

In merger control assessments, beyond evaluating traditional efficiency gains or potential market power, the KPPU could explicitly factor in the sustainability impacts of a proposed merger.⁴⁸ This would involve assessing whether a merger would accelerate or impede the adoption of renewable energy technologies, enhance or diminish grid stability for intermittent renewables, or contribute positively to emission reductions. Similarly, in evaluating abuse of dominant position cases, the KPPU could analyze whether certain

44 Christian Stoll and Michael A. Mehling, “Climate Change and Carbon Pricing: Overcoming Three Dimensions of Failure,” *Energy Research & Social Science* 77 (July 2021): 102062, <https://doi.org/10.1016/j.erss.2021.102062>.

45 Lianos, “Competition Law as a Form of Social Regulation.”

46 Edith Loozen, “EU Antitrust in Support of the Green Deal. Why Better Is Not Good Enough,” *Journal of Antitrust Enforcement* 12, no. 1 (2024): 75–97, <https://doi.org/10.1093/jaenfo/jnad005>.

47 Ahmad, “Two Decades of Indonesian Business Competition Law.”

48 Dian Parluhutan, “Analisis Hukum Kompetisi Terhadap ‘Big Data’ Dan Doktrin ‘Essential Facility’ Dalam Transaksi Merger Di Indonesia,” *Jurnal Persaingan Usaha* 1, no. 1 (2021): 83–96, <https://doi.org/10.55869/kppu.v1i1.14>.

behaviors by dominant incumbents not only harm competition but also obstruct the energy transition or disadvantage smaller, greener players.⁴⁹ For example, discriminatory grid access policies by a dominant utility could be scrutinized not just for competitive harm but also for their negative impact on renewable energy development and equitable access.

Furthermore, a reoriented competition law can proactively support pro-environment collaborations among businesses without violating core competition principles. Traditional antitrust concerns often view horizontal agreements with suspicion. However, specific guidelines or block exemptions could be developed for collaborations aimed at achieving demonstrable sustainability benefits, such as joint research and development of low-carbon technologies, collective efforts to establish sustainable supply chains, or pooling resources for large-scale renewable energy infrastructure development.⁵⁰ Such collaborations would need careful scrutiny to ensure they do not become disguised cartels, but a “green antitrust” framework would provide a legal safe harbor for genuinely sustainability-driven initiatives, recognizing that collective action is often necessary to address complex environmental challenges.

A thoughtfully reoriented competition law can serve as a powerful catalyst for both innovation in renewable energy technologies and the development of more inclusive business models.⁵¹ By ensuring a genuinely level playing field and preventing monopolistic capture of nascent green markets, competition law incentivizes firms to invest in research and development, constantly seeking more efficient, affordable, and accessible renewable energy solutions. This dynamic competition drives down costs, improves performance, and accelerates the diffusion of clean energy technologies, which are all vital for a rapid and effective energy transition. Preventing the abuse of dominance by large, established players, for instance, protects the innovative potential of start-ups and smaller firms that often introduce disruptive green technologies.⁵²

Beyond innovation, competition law plays a crucial role in fostering inclusivity within the renewable energy value chain. By actively ensuring equal opportunities for all market participants, including Small and Medium-sized Enterprises (SMEs) and local communities, it can democratize access to the burgeoning green economy. This involves addressing barriers to entry for smaller players, such as complex regulatory hurdles, discriminatory procurement processes, or limited access to financing. A competition authority with a sustainability mandate could advocate for policies that promote community-owned

49 Silvia Rahmawati et al., “Urgensi Pemberlakuan Kewajiban Pre-Merger Notification Oleh Komisi Pengawasan Persaingan Usaha,” *JURNAL ACITYA ARDANA* 3, no. 2 (2023): 74–84, <https://doi.org/10.31092/jaa.v3i2.2560>.

50 Muhammad Pravest Hamidi et al., “Tinjauan Green Economy Dalam Hukum Persaingan Usaha Di Indonesia,” *Jurnal Persaingan Usaha* 2, no. 1 (2022): 5–19, <https://doi.org/10.55869/kppu.v3i-.48>.

51 Bukran Bukran and Rizal Ramdani, “PENGARUH KEBIJAKAN EKONOMI HIJAU TERHADAP INOVASI BISNIS BERKELANJUTAN DI SEKTOR MANUFAKTUR,” *ECONOMIST: Jurnal Ekonomi Dan Bisnis* 1, no. 3 (2024): 35–42, <https://doi.org/10.63545/economist.v1i3.58>.

52 Hamidi et al., “Tinjauan Green Economy Dalam Hukum Persaingan Usaha Di Indonesia.”

renewable energy projects, facilitate the participation of local businesses in renewable energy supply chains, or ensure fair competition in the provision of distributed energy resources. By fostering genuine competition, competition law can empower a broader range of actors to participate in and benefit from the energy transition, thereby contributing to its social justice dimension and ensuring that the green transformation is not merely an economic shift but a truly equitable one.

Table. Green Antitrust Framework and Its Strategic Impacts

Aspect	Description
Framework Focus	Conditional approval of environmentally beneficial collaborations
Main Instruments	<ul style="list-style-type: none"> · Joint Research and Development (R&D) · Investment in Clean Infrastructure · Development of Green Supply Chains
Regulatory Objective	To ensure that antitrust enforcement aligns with environmental and climate goals
Strategic Impacts	<ul style="list-style-type: none"> · Open Innovation. Encouraging cooperative innovation to address climate challenges · Inclusive Markets. Enabling access for small and medium enterprises in green industries · Acceleration of Renewable Energy. Facilitating rapid deployment of clean energy technologies · Just Transition. Ensuring social equity in the shift towards a sustainable economy

3. Strategies for Reorientation and Policy Recommendations for Indonesia

a. Legislative and Regulatory Reforms

To effectively embed sustainability and justice into Indonesia's competition law, specific legislative and regulatory reforms are imperative. Firstly, it is highly recommended to consider specific amendments to Law No. 5 of 1999, or to enact new implementing regulations, that explicitly incorporate sustainability and social justice as legitimate objectives of competition policy, particularly within the context of the renewable energy sector. This could involve adding clauses that allow for sustainability benefits to be considered in competitive assessments, similar to provisions emerging in other jurisdictions. For instance, the law could permit certain pro-environmental collaborations that might otherwise be deemed anti-competitive, provided their net positive impact on sustainability demonstrably outweighs any minor restrictive effects on competition.⁵³

Secondly, beyond the primary statute, there is a clear need for the development of specific guidelines or dedicated handbooks by the KPPU for the enforcement of competition law in the renewable energy sector. These guidelines would provide clarity on how existing

⁵³ Kurnia Toha, "URGENSI AMANDEMEN UU TENTANG PERSAINGAN USAHA DI INDONESIA: PROBLEM DAN TANTANGAN," *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 76, <https://doi.org/10.21143/jhp.vol49.no1.1911>.

competition principles apply to unique characteristics of renewable energy markets, such as power purchase agreements with single off-takers, grid access issues, and the treatment of joint ventures for large-scale renewable projects. Such guidelines would offer much-needed predictability for market participants and equip the KPPU with a tailored framework to address emerging anti-competitive practices that could impede the energy transition. These specific guidelines should also elaborate on how sustainability considerations are to be weighed in merger reviews, dominant position analyses, and cartel investigations within this crucial sector.

b. Strengthening the Role of the KPPU

One of the key challenges is the limited scope of the KPPU authority in addressing sustainability-related issues. Although KPPU holds a strong mandate to oversee monopolistic practices and review mergers and acquisitions, its jurisdiction has not fully expanded to consider environmental externalities, renewable energy access, or pro-competitive green collaborations. For instance, merger assessments remain narrowly focused on price and efficiency, while exemptions or conditional approvals have yet to extend to joint initiatives in clean technology and renewable infrastructure. The effectiveness of any reorientation strategy heavily depends on strengthening the capacity and mandate of the KPPU. It is strongly advocated that the KPPU should significantly enhance its capacity and expertise in understanding the intricate dynamics of the renewable energy market and deeply engaging with sustainability issues. This involves specialized training for its commissioners and investigators on energy economics, renewable energy technologies, environmental law, and the multi-dimensional aspects of sustainable development. A more profound understanding would enable the KPPU to conduct more nuanced market analyses, identify truly anti-competitive behaviors versus legitimate business practices in a complex and evolving sector, and evaluate the broader societal impact of its decisions.⁵⁴

Furthermore, the KPPU should adopt a more proactive and preventive enforcement approach to preempt unhealthy market concentration within the renewable energy sector. This could include conducting regular market studies specifically targeting the renewable energy value chain to identify potential bottlenecks, emerging monopolies, or practices that disproportionately disadvantage new entrants and smaller players⁵⁵. Early intervention, through advisory opinions or non-binding recommendations, could prevent the crystallization of anti-competitive structures before they become entrenched. The KPPU should also actively monitor procurement processes for large-scale renewable energy projects to

54 A. Asmah, "Penguatan Kewenangan Komisi Pengawas Persaingan Usaha Lewat Putusan Mahkamah Konstitusi (Putusan Mk No.85/Puu-Xiv/2016)," *KERTHA WICAKSANA* 15, no. 1 (2021): 11–17, <https://doi.org/10.22225/kw.15.1.2808.11-17>.

55 Nova Angelina Silalahi, "Pembentukan Perangkat Kepatuhan Persaingan Usaha Sebagai Strategi Untuk Meningkatkan Kepatuhan Persaingan Usaha," *Jurnal Persaingan Usaha* 2, no. 1 (2022): 30–42, <https://doi.org/10.55869/kppu.v3i-.50>.

ensure fairness and transparency, thereby mitigating the risks of collusion or discriminatory practices that could hinder genuine competition and project development.

c. Enhancing Inter-Agency Coordination

Effective reorientation of competition law requires a robust and synergistic approach involving multiple government agencies. It is critical to recommend the establishment of stronger coordination and synergy mechanisms between the KPPU, the Ministry of Energy and Mineral Resources (ESDM), the Ministry of Environment and Forestry (KLHK), and other relevant regulatory bodies. This intensified inter-agency collaboration is essential to ensure that policies related to energy, environment, and competition are coherent, mutually reinforcing, and do not create unintended conflicts that could undermine the energy transition. For instance, energy policies designed to accelerate renewable energy deployment should be vetted for potential anti-competitive impacts, and competition enforcement should consider the broader energy and climate goals.⁵⁶

A key aspect of this enhanced coordination involves the importance of inter-agency data and information exchange for more comprehensive market analysis. By sharing data on energy production, consumption, project development, market players, and environmental indicators, agencies can develop a more holistic understanding of the energy market's structure and behavior. This shared intelligence would enable more informed decision-making, allowing regulators to identify systemic issues, anticipate market distortions, and formulate targeted interventions that promote both competition and sustainability. Regular joint meetings, working groups, and even shared databases could facilitate this crucial exchange.⁵⁷

d. Promoting Inclusive Participation and Market Access

Finally, a fundamental aspect of reorienting competition law towards justice and sustainability involves actively promoting inclusive participation and ensuring equitable market access within the renewable energy sector. This entails proposing affirmative policies or incentives, which are supported by competition law principles, to encourage the participation of new entrants and Small and Medium-sized Enterprises (SMEs) in the EBT sector. Such measures could include favorable financing schemes, streamlined permitting processes for smaller-scale projects, or specific set-asides in tenders for local developers and community-based initiatives, all designed to counteract inherent market barriers. Competition law, while ensuring these incentives do not lead to undue market distortions, can safeguard that these opportunities genuinely foster new competition rather than merely creating new forms of capture.⁵⁸

56 Mukti Wibowo et al., "Pengawasan Persaingan Usaha Dan Kepastian Hukum: Tantangan Dan Solusi," *Journal of Knowledge and Collaboration* 1, no. 3 (2024): 116–22, <https://doi.org/10.59613/p95e8z22>.

57 *Ibid.*

58 Athariq Wibawa and Sapto Hermawan, "KRITIK ATAS RANCANGAN UNDANG -UNDANG ENERGI BARU

Concurrently, it is crucial to recommend improvements in grid access policies and procurement processes to ensure fairness and transparency. Discriminatory or opaque grid connection rules can be significant barriers for independent power producers, particularly those focused on renewables. Reforming these policies to ensure non-discriminatory access and clear, merit-based interconnection procedures is vital. Similarly, procurement processes for renewable energy projects, including Power Purchase Agreements (PPAs) with PLN, must be made transparent, competitive, and predictable. This ensures that the most efficient and innovative projects, regardless of the size or incumbency of their developers, are selected, thereby fostering genuine competition and accelerating the deployment of renewable energy in an equitable manner.⁵⁹

D. Closing

This study conclusively asserts that Indonesia's current competition law, primarily embodied in Law No. 5 of 1999, is insufficient to fully ensure the establishment and maintenance of a healthy and equitable market structure within its burgeoning renewable energy sector. While the existing framework conceptually provides foundational tools for market oversight and aims to prevent basic anti-competitive practices, its conventional focus on narrow economic efficiency and consumer welfare, predominantly assessed through price and output mechanisms, critically overlooks the unique and complex structural characteristics of the renewable energy market. These include the pervasive role of State Electricity Company or PLN as a near-monopsony off-taker, the sector's inherent capital intensity, and the intermittency challenges of renewable generation. This historically constrained paradigm proves demonstrably inadequate in addressing deep-seated structural barriers, mitigating emerging oligopolistic tendencies, and rectifying discriminatory practices that systematically impede new entrants and hinder genuinely inclusive participation. Ultimately, this prevents the sector from realizing its full competitive potential and navigating the intricate interplay between traditional economic imperatives and the crucial, multi-dimensional goals of sustainability and energy justice.

Therefore, to proactively support a truly just and sustainable energy transition within the Indonesian context, the existing framework of competition law must be strategically reoriented. This essential reorientation necessitates a fundamental paradigm shift that explicitly expands the normative objectives of competition law beyond mere economic efficiency to comprehensively embrace environmental sustainability and social justice as integral and equally weighted goals. By deliberately integrating these broader societal and ecological considerations into its analytical and enforcement framework, the KPPU can

TERBARUKAN DI INDONESIA DALAM KERANGKA DESAIN PENYUSUNAN LEGISLASI EFEKTIF," *Bina Hukum Lingkungan* 8, no. 3 (2024): 159–90, <https://doi.org/10.24970/bhl.v8i3.140>.

59 Izzy Al Kautsar, "Memaknai Persaingan Usaha Yang Berkeadilan Dan Menyejahterakan Dalam Perspektif Keadilan Sosial," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 7, no. 1 (2023): 59–79, <https://doi.org/10.33474/yur.v7i1.19983>.

more effectively assess market behaviors and structures specific to the renewable energy sector. This refined approach allows for the proactive facilitation of collaborations that yield significant environmental benefits while simultaneously preventing anti-competitive abuses that undermine sustainable development and equitable access. Ultimately, such a transformative reorientation positions competition law not merely as a traditional economic regulator, but as a powerful and indispensable catalyst for driving green innovation, fostering inclusive market growth, and ensuring that Indonesia's ambitious energy transition contributes genuinely to its broader Sustainable Development Goals.

Bibliography

A. Books

Soltani, Madjid, and Artie Ng, eds. *Financial and Technological Innovation for Sustainability: Environmental, Social and Governance Performance*. Routledge International Studies in Money and Banking. Routledge, 2024.

Sustainable Development Goal 7 and Sustainable Development Goal 13: Possible Ways of Interactions. In *Industry 4.0*, by Alexander M. Solntsev and Roza D. Akshalova. Springer International Publishing, 2021. https://doi.org/10.1007/978-3-030-75405-1_3.

Woodcock, Ramsi. *The Contrasting Approaches to Power of the Modern State and the Antitrust Laws: Lessons for Platform Regulation*. SSRN, 2020.

B. Paper/Article/Proceeding/Research Result

Ahmad, Aripin. "Two Decades of Indonesian Business Competition Law: Implementation, Enforcement and Contribution to the Economy." *Journal of Research on the Lepidoptera* 51, no. 2 (2020): 277-92. <https://doi.org/10.36872/lepi/v51i2/301096>.

Al Kautsar, Izzy. "Memaknai Persaingan Usaha Yang Berkeadilan Dan Menyejahterakan Dalam Perspektif Keadilan Sosial." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 7, no. 1 (2023): 59-79. <https://doi.org/10.33474/yur.v7i1.19983>.

Alkari, Rafi Oktario Mahdi, and Dwi Desi Yayi Tarina. *State-Owned Enterprises Restructuring and Its Challenges in Business Competition from the Perspective of Antitrust and Competition Law in Indonesia*. December 16, 2024. <https://doi.org/10.29303/ulrev.v8i2.381>.

Amanda, Aurelia Denise, and Catherine Vellynia Samudra. *Analysis of Competition Law on Alleged Monopolistic Practices in The Sale of Fuel Oil (BBM) by PT Pertamina (Persero) in Indonesia*. June 2, 2025. <https://lamlaj.ulm.ac.id/index.php/abc/article/view/208>.

Anguelov, Dimitar. "State-Owned Enterprises and the Politics of Financializing Infrastructure Development in Indonesia: De-Risking at the Limit?" *Development and Change* 55, no. 3 (2024): 493-529. <https://doi.org/10.1111/dech.12828>.

Apriliyanti, Indri Dwi, Diwangkara Bagus Nugraha, Stein Kristiansen, and Indra Overland. "To Reform or Not Reform? Competing Energy Transition Perspectives on Indonesia's Monopoly Electricity Supplier Perusahaan Listrik Negara (PLN)." *Energy Research & Social Science* 118 (December 2024): 103797. <https://doi.org/10.1016/j.erss.2024.103797>.

Asmah, A. "Penguatan Kewenangan Komisi Pengawas Persaingan Usaha Lewat Putusan Mahkamah Konstitusi (Putusan Mk No.85/Puu-Xiv/2016)." *KERTHA WICAKSANA* 15, no. 1 (2021): 11-17. <https://doi.org/10.22225/kw.15.1.2808.11-17>.

Azizah, Rika, Rika Azizah, Dr. Jacobus Jopie Gilalo, and R. Yuniar Anisa. "Fungsi Dan Peran Lembaga KPPU Dalam Praktek Persaingan Usaha." *Karimah Tauhid* 2, no. 3 (2023): 697-707. <https://doi.org/10.30997/karimahtauhid.v2i3.8789>.

Baker, Lucy, Andrew Hook, and Benjamin K. Sovacool. "Power Struggles: Governing Renewable Electricity in a Time of Technological Disruption." *Geoforum* 118 (January 2021): 93-105. <https://doi.org/10.1016/j.geoforum.2020.12.006>.

- Beneke Avila, Francisco E. "Competition Law in Latin America and Global Greenhouse Gas Emissions: The Way Forward." *World Competition* 48, no. Issue 1 (2025): 125-52. <https://doi.org/10.54648/woco2025014>.
- Bisht, Yashwant Singh, Laith H. Alzubaidi, Uralova Gulbakhor, et al. "Legal Framework for Energy Transition: Balancing Innovation and Regulation." *E3S Web of Conferences* 540 (2024): 13015. <https://doi.org/10.1051/e3sconf/202454013015>.
- Bukran, Bukran, and Rizal Ramdani. "PENGARUH KEBIJAKAN EKONOMI HIJAU TERHADAP INOVASI BISNIS BERKELANJUTAN DI SEKTOR MANUFAKTUR." *ECONOMIST: Jurnal Ekonomi Dan Bisnis* 1, no. 3 (2024): 35-42. <https://doi.org/10.63545/economist.v1i3.58>.
- Chou, Chien-Heng, Sa Ly Ngo, and Phung Phi Tran. "Renewable Energy Integration for Sustainable Economic Growth: Insights and Challenges via Bibliometric Analysis." *Sustainability* 15, no. 20 (2023): 15030. <https://doi.org/10.3390/su152015030>.
- Disyon, Huta, and Elisatris Gultom. "Critical Review of the Implementation of the Making of SOE as a Holding from Anti-Monopoly and Unfair Business Competition Perspective." *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022): 191. <https://doi.org/10.30641/dejure.2022.v22.191-204>.
- Foster, Vivien, and Anshul Rana. *Rethinking Power Sector Reform in the Developing World*. Washington, DC: World Bank, 2020. <https://doi.org/10.1596/978-1-4648-1442-6>.
- Girsang, Rizky Arjuna T. "Peranan Hukum Dalam Pembangunan Ekonomi Di Indonesia Berkaitan Dengan Pembentukan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat." *Logika : Journal of Multidisciplinary Studies* 12, no. 01 (2021): 1–8. <https://doi.org/10.25134/logika.v12i01.3753>.
- Hamidi, Muhammad Pravest, Muhammad Anas Fadli, and Yonathan Wiryajaya Wilion. "Tinjauan Green Economy Dalam Hukum Persaingan Usaha Di Indonesia." *Jurnal Persaingan Usaha* 2, no. 1 (2022): 5-19. <https://doi.org/10.55869/kppu.v3i-48>.
- Hartini, Rahayu, Muhammad Arief, and Adi Permana. "Implementation of Business Competition Compliance Program to Prevent Unfair Business Competition Practices Against Business Enterprises." *Audito Comparative Law Journal (ACLJ)* 5, no. 1 (2024): 42-55. <https://doi.org/10.22219/aclj.v5i1.29780>.
- Hassan, Qusay, Patrik Viktor, Tariq J. Al-Musawi, et al. "The Renewable Energy Role in the Global Energy Transformations." *Renewable Energy Focus* 48 (March 2024): 100545. <https://doi.org/10.1016/j.ref.2024.100545>.
- Heffron, Raphael J. "Applying Energy Justice into the Energy Transition." *Renewable and Sustainable Energy Reviews* 156 (March 2022): 111936. <https://doi.org/10.1016/j.rser.2021.111936>.
- Holmes, Simon, and Michelle Meagher. "A Sustainable Future: How Can Control of Monopoly Power Play a Part?" *SSRN Electronic Journal*, ahead of print, Elsevier BV, 2022. <https://doi.org/10.2139/ssrn.4099796>.
- Khon, Dennis Wye Keen, Muhammad Iqbal Baiquni, and Waspiyah Waspiyah. "Two Decades of Business Competition Law: How Has Indonesian Competition Law Transformed?" *Journal of Private and Commercial Law* 7, no. 1 (2023): 45-68. <https://doi.org/10.15294/jpcl.v7i1.44355>.
- Lianos, Ioannis. "Competition Law as a Form of Social Regulation." *The Antitrust Bulletin* 65, no. 1 (2020): 3-86. <https://doi.org/10.1177/0003603X19898626>.
- Loozen, Edith. "EU Antitrust in Support of the Green Deal. Why Better Is Not Good Enough."

- Journal of Antitrust Enforcement* 12, no. 1 (2024): 75-97. <https://doi.org/10.1093/jaenfo/jnad005>.
- Mondliwa, Pamela, Simon Roberts, and Stefano Ponte. "Competition and Power in Global Value Chains." *Competition & Change* 25, nos. 3-4 (2021): 328-49. <https://doi.org/10.1177/1024529420975154>.
- Nurhidayah, Laely, Shawkat Alam, Nurrahman Aji Utomo, and Agus Suntoro. "Indonesia's Just Energy Transition: The Societal Implications of Policy and Legislation on Renewable Energy." *Climate Law* 14, no. 1 (2024): 36-66.
- Odunayo Adewunmi Adelekan, Bamidele Segun Ilugbusi, Olawale Adisa, et al. "ENERGY TRANSITION POLICIES: A GLOBAL REVIEW OF SHIFTS TOWARDS RENEWABLE SOURCES." *Engineering Science & Technology Journal* 5, no. 2 (2024): 272-87. <https://doi.org/10.51594/estj.v5i2.752>.
- Parluhutan, Dian. "Analisis Hukum Kompetisi Terhadap 'Big Data' Dan Doktrin 'Essential Facility' Dalam Transaksi Merger Di Indonesia." *Jurnal Persaingan Usaha* 1, no. 1 (2021): 83-96. <https://doi.org/10.55869/kppu.v1i1.14>.
- Precious Oluwaseun Okedele, Onoriode Reginald Aziza, Portia Oduro, and Akinwale Omowumi Ishola. "Global Legal Frameworks for an Equitable Energy Transition: Balancing Growth and Justice in Developing Economies." *International Journal of Applied Research in Social Sciences* 6, no. 12 (2024): 2878-91. <https://doi.org/10.51594/ijarss.v6i12.1765>.
- Prihandono, Iman, and Ekawestri Prajwalita Widiati. "Regulatory Capture in Energy Sector: Evidence from Indonesia." *The Theory and Practice of Legislation* 11, no. 3 (2023): 207-31. <https://doi.org/10.1080/20508840.2023.2248837>.
- Rahmadani, Rahmadani. "PENGUASAAN PASAR OLEH DISTRIBUTOR LAMPU HANNOCHS DI KOTA PEKANBARU BERDASARKAN UNDANG-UNDANG NOMOR 5 TAHUN 1999 TENTANG LARANGAN PRAKTIK MONOPOLI DAN PERSAINGAN USAHA TIDAK SEHAT." *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 1, no. 2 (2022): 43-50. <https://doi.org/10.55681/seikat.v1i2.154>.
- Rahmawati, Silvia, Rizki Nurhayati, and Naila Maulidya Rahma. "Urgensi Pemberlakuan Kewajiban Pre-Merger Notification Oleh Komisi Pengawasan Persaingan Usaha." *JURNAL ACITYA ARDANA* 3, no. 2 (2023): 74-84. <https://doi.org/10.31092/jaa.v3i2.2560>.
- Ravishankara, Amogh. "Institutional Analysis of Direct Air Capture in the Context of Aviation Sustainability." PhD Thesis, Delft University of Technology, 2023.
- Schinkel, Maarten Pieter, and Leonard Treuren. "Green Antitrust: Friendly Fire in the Fight against Climate Change." *SSRN Electronic Journal*, ahead of print, Elsevier BV, 2020. <https://doi.org/10.2139/ssrn.3749147>.
- Scholten, Daniel, Morgan Bazilian, Indra Overland, and Kirsten Westphal. "The Geopolitics of Renewables: New Board, New Game." *Energy Policy* 138 (March 2020): 111059. <https://doi.org/10.1016/j.enpol.2019.111059>.
- Setyowati, Abidah B., and Jaco Quist. "Contested Transition? Exploring the Politics and Process of Regional Energy Planning in Indonesia." *Energy Policy* 165 (June 2022): 112980. <https://doi.org/10.1016/j.enpol.2022.112980>.
- Siciliano, Giuseppina, Linda Wallbott, Frauke Urban, Anh Nguyen Dang, and Markus Lederer. "Low-carbon Energy, Sustainable Development, and Justice: Towards a Just Energy Transition for the Society and the Environment." *Sustainable Development* 29, no. 6 (2021): 1049-61. <https://doi.org/10.1002/sd.2193>.

- Silalahi, Nova Angelina. "Pembentukan Perangkat Kepatuhan Persaingan Usaha Sebagai Strategi Untuk Meningkatkan Kepatuhan Persaingan Usaha." *Jurnal Persaingan Usaha* 2, no. 1 (2022): 30-42. <https://doi.org/10.55869/kppu.v3i-50>.
- Stoll, Christian, and Michael A. Mehling. "Climate Change and Carbon Pricing: Overcoming Three Dimensions of Failure." *Energy Research & Social Science* 77 (July 2021): 102062. <https://doi.org/10.1016/j.erss.2021.102062>.
- Toha, Kurnia. "URGENSI AMANDEMEN UU TENTANG PERSAINGAN USAHA DI INDONESIA: PROBLEM DAN TANTANGAN." *Jurnal Hukum & Pembangunan* 49, no. 1 (2019): 76. <https://doi.org/10.21143/jhp.vol49.no1.1911>.
- Trichandi, Rahmantara. "A Brief Review on Indonesia's National Energy Policy." *Purnomo Yusgiantoro Center*, 2018. <https://purnomoyusgiantorocenter.org/opinion/a-brief-review-on-indonesias-national-energy-policy/>.
- Wibawa, Athariq, and Sapto Hermawan. "KRITIK ATAS RANCANGAN UNDANG-UNDANG ENERGI BARU TERBARUKAN DI INDONESIA DALAM KERANGKA DESAIN PENYUSUNAN LEGISLASI EFEKTIF." *Bina Hukum Lingkungan* 8, no. 3 (2024): 159-90. <https://doi.org/10.24970/bhl.v8i3.140>.
- Wibowo, Mukti, Evi Nur Fatimah, and Ammar Albie Putra Wibowo. "Pengawasan Persaingan Usaha Dan Kepastian Hukum: Tantangan Dan Solusi." *Journal of Knowledge and Collaboration* 1, no. 3 (2024): 116-22. <https://doi.org/10.59613/p95e8z22>.
- Worku, Muhammed Y. "Recent Advances in Energy Storage Systems for Renewable Source Grid Integration: A Comprehensive Review." *Sustainability* 14, no. 10 (2022): 5985. <https://doi.org/10.3390/su14105985>.
- Zhang, Renhe, Xu Tang, Jian Liu, et al. "From Concept to Action: A United, Holistic and One Health Approach to Respond to the Climate Change Crisis." *Infectious Diseases of Poverty* 11, no. 1 (2022). <https://doi.org/10.1186/s40249-022-00941-9>.

C. Regulation

- Undang-Undang Republik Indonesia Nomor 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat. Lembaran Negara Republik Indonesia Tahun 1999 Nomor 33, Tambahan Lembaran Negara Republik Indonesia Nomor 3817.
- Undang-Undang Republik Indonesia Nomor 30 Tahun 2007 tentang Energi. Lembaran Negara Republik Indonesia Tahun 2007 Nomor 80, Tambahan Lembaran Negara Republik Indonesia Nomor 4737.
- Undang-Undang Republik Indonesia Nomor 30 Tahun 2009 tentang Ketenagalistrikan. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 153, Tambahan Lembaran Negara Republik Indonesia Nomor 5052.
- Peraturan Pemerintah Republik Indonesia Nomor 79 Tahun 2014 tentang Kebijakan Energi Nasional. Lembaran Negara Republik Indonesia Tahun 2014 Nomor 265, Tambahan Lembaran Negara Republik Indonesia Nomor 5609.
- Peraturan Presiden Republik Indonesia Nomor 112 Tahun 2022 tentang Percepatan Pengembangan Pembangkit Listrik Tenaga Surya Atap. Lembaran Negara Republik Indonesia Tahun 2022 Nomor 176.

D. Internet

asean-competition.org. "CEDS FEB UNPAD CONCLUDES THAT THE 2022 COMPETITION INDEX GOES UP ASEAN Competition." 2023. <https://asean-competition.org/read-news-ceds-feb-unpad-concludes-that-the-2022-competition-index-goes-up>.

Heriani, Fitri Novia. "Indeks Persaingan Usaha Naik, Sektor Pertambangan dan Konstruksi Paling Rendah." hukumonline.com, 2025. <https://www.hukumonline.com/berita/a/indeks-persaingan-usaha-naik--sektor-pertambangan-dan-konstruksi-paling-rendah-1t677e0159c5537/>.

Curriculum Vitae of Author

Aji Baskoro is a Master of Law student at Universitas Gadjah Mada, where his academic interests converge on Environmental Law, Energi Law, Human Rights, Constitutional Law, and Socio-legal Studies. Demonstrating a proactive engagement in both academic and non-academic initiatives, he is notably the founder of Binar Scholars and actively embraces innovative approaches in his work. He has made significant contributions to various research centers, including PUKAT FH UGM and PANDEKHA FH UGM. His research endeavors frequently involve collaboration with fellow academics, a commitment that is reflected in his substantial publication record in both national and international peer-reviewed journals.

POLICY ANALYSIS AND LEGAL EVALUATION OF HIGH DOMESTIC AIRFARE PRICES IN INDONESIA

Rama Gardika

National Legal Development Agency, Ministry of Law of the Republic of Indonesia
Jakarta, Indonesia
E-mail: ramagardika@gmail.com

ABSTRACT

Domestic airfare prices in Indonesia remain high compared to other ASEAN countries, prompting concerns over competitiveness. This study evaluates the regulatory framework influencing ticket prices, focusing on aviation fuel pricing and upper fare limits. Using the Guidelines for the Evaluation of Legislation, six dimensions were assessed: Pancasila alignment, regulatory form, disharmony, legal drafting clarity, conformity with legal principles, and implementation effectiveness. Findings indicate that the aviation fuel pricing formula (Ministerial Decree No. 17.K/10/MEM/2019) and limited competition in fuel distribution reduce market efficiency and fail to promote social justice. The study recommends reforming aviation energy policy, liberalising fuel distribution access, and reassessing airfare caps through participatory processes to create a fairer, more competitive framework.

Keywords: Air Transportation, Airfare Pricing, Aviation Fuel, Policy Analysis, Regulatory Evaluation.

A. Introduction

The sharp surge in domestic airfare prices in Indonesia in recent years has drawn significant public scrutiny and prompted serious concern from the government. This phenomenon has affected not only the tourism sector and public mobility but has also raised critical issues regarding equitable access to transportation and the population's purchasing power.¹ The steep fare increases are often perceived as disproportionate to the travel distance and quality of service provided, prompting questions about the underlying cost structure and the regulatory framework governing the national aviation industry.²

One of the primary factors widely believed to be driving the surge in airfare prices is the high cost of aviation fuel. According to data from the Asia Pacific Solidarity Network³ and

- 1 Hörcher, Daniel, and Alejandro Tirachini. 2021. "A Review of Public Transport Economics." *Economics of Transportation* 25: 100196. <https://doi.org/10.1016/j.ecotra.2021.100196>.
- 2 Köse, Yaşar, and Ceyda Aktan. 2022. "Analysis of Cost Structures and Cost Control Strategies of Airlines: An Empirical Study on a Hypothetical Airline Company." *Journal of Aviation* 6, no. 1: 42-49. <https://doi.org/10.30518/jav.1024489>.
- 3 Asia Pacific Solidarity Network. 2024. "AirAsia Boss Says Indonesia's Avtur Price Is the Highest in ASEAN." September 6, 2024. <https://www.asia-pacific-solidarity.net/news/2024-09-06/airasia-boss-says-indonesias-avtur-price-highest-asean.html>.

VOI⁴, aviation fuel prices in Indonesia rank among the highest in Southeast Asia, reaching approximately USD 0.56 per litre, or around IDR 13,200. In comparison, aviation fuel prices in Malaysia and Singapore range between USD 0.52 and 0.54 per litre. This elevated cost is largely attributed to a distribution structure that is effectively monopolised by Pertamina, as stipulated in BPH Migas Regulation No. 13/P/BPH Migas/IV/2008. The closed nature of this market structure is seen as limiting competition and hindering price efficiency.

Table 1 and Figure 1 illustrate a comparative overview of aviation fuel prices and domestic airfares in Indonesia and several neighbouring Southeast Asian countries. The data confirm that aviation fuel prices in Indonesia are relatively higher than those in the region, averaging about 8% more expensive. While this pricing gap does contribute to elevated airfares, it does not fully explain the significant difference in ticket prices, which are around 70% higher on average. This finding weakens the argument that fuel prices are the primary driver of high ticket costs and instead suggests that other structural and regulatory factors—such as limited market competition, fare cap regulations, airport charges, and operational efficiency—play a larger role.

Table 1. Comparison of Aviation Fuel Prices and Domestic Airline Tickets in Several ASEAN Countries

Country	Aviation Fuel Price per Litre	Aviation Fuel Price Comparison	Ticket Price per Hour	Ticket Price Comparison
Indonesia	USD 0.56 / IDR 9,098	-	USD 95.74 / IDR 1,556,527	-
Malaysia	USD 0.52 / IDR 8,438	Cheaper ~7.3%	USD 25.53 / IDR 414,759	Cheaper ~73.3%
Vietnam	USD 0.51 / IDR 8,285	Cheaper ~8.9%	USD 27.66 / IDR 449,343	Cheaper ~71.1%
Thailand	USD 0.52 / IDR 8,438	Cheaper ~7.3%	USD 31.91 / IDR 518,681	Cheaper ~66.7%
Philippines	USD 0.53 / IDR 8,601	Cheaper ~5.5%	USD 23.40 / IDR 380,156	Cheaper ~75.6%

References: Asia Pacific Solidarity Network (2024), VOI.id (2024), Jet-A1-Fuel.com (2024), exchange rate conversion as of July 2024 (USD 1 = IDR 16.246)

Table 1 highlights the disparity in aviation fuel prices between Indonesia and its neighbouring countries, with Indonesian prices averaging about 7-9% higher than those in Malaysia, Thailand, and Vietnam. While this price gap does increase airline operating costs, the data suggest that its impact on ticket prices is relatively limited. Despite the modest difference in fuel prices, domestic airfares in Indonesia are nearly three times higher than those in neighbouring ASEAN countries. This pattern may indicate that Indonesian airlines maintain unusually high margins between costs and ticket revenues, potentially translating into excessive profit-taking at the expense of passengers. Future research should therefore

4 VOI. 2024. "When Asked by AirAsia Boss about the Most Expensive Indonesian Avtur Price in ASEAN, Pertamina Opens Voice." September 9, 2024. <https://voi.id/en/economy/414907>.

provide more comprehensive cost structure data to determine the precise contribution of fuel prices to total ticket costs.

In addition to the elevated cost of aviation fuel, several other factors contribute to the high domestic airfare prices in Indonesia, including airline operational expenses, taxes, and various ancillary charges. Collectively, these elements result in significantly higher ticket prices compared to neighbouring countries, which, despite benefiting from lower aviation fuel prices, also maintain more efficient operational cost structures.⁵



Figure 1. Comparison of Aviation Fuel Costs and Ticket Revenue per Hour in Several ASEAN Countries

Figure 1 presents a comparison between aviation fuel costs (in red) and ticket revenue per hour of domestic flight (in blue) across Indonesia and its neighbouring countries. The gap between the red and blue bars represents the difference between fuel expenses and ticket revenue. In Indonesia, this gap is disproportionately wide, not solely because of slightly higher fuel prices but because ticket revenue per flight hour is nearly three times higher than in neighbouring ASEAN countries. This raises important questions: while part of the gap may reflect higher operational costs, airport charges, and taxes, it may also indicate that Indonesian airlines enjoy significantly higher profit margins, potentially at the expense of passengers. This is an area that warrants further investigation and discussion, as excessive pricing power could be a structural barrier to affordable air travel.

Industry estimates place jet fuel at about 30-40% of airline operating costs, but this does not imply an equivalent share of ticket revenue—the proportion reflected in fares depends on network economics such as load factors, route yields, and fixed costs rather than fuel price alone.⁶ The disparity in aviation fuel prices therefore contributes to higher operating costs, but its direct effect on ticket prices is only partial. Elevated operational

5 Sun, Xiaoqian, Mark Hansen, Paul Chiambaretto, and Jie Wang. 2024. "Airline Competition: A Comprehensive Review of Recent Research." *Journal of the Air Transport Research Society* 2: 100013. <https://doi.org/10.1016/j.jatrs.2024.100013>.

6 Akbar, Ibrahim, and Utomo Sarjono Putro. 2024. "SAF Implementation in 2027: A Case Study of Indonesia." *European Journal of Business and Management Research* 9, no. 5: 1-15. <https://doi.org/10.24018/ejbmr.2024.9.5.2408>.

expenses in other areas—including airport charges, maintenance, and overhead—also significantly influence the high cost of domestic flights in Indonesia. In response, Indonesia’s Business Competition Supervisory Commission (KPPU) has advocated for reforms in the aviation fuel distribution system, including the implementation of a multi-provider model. This approach aims to reduce costs and enhance the competitiveness of the domestic aviation industry.⁷

Furthermore, the tax structure within the aviation sector also contributes to the burden on airfare pricing.⁸ Value-added tax (VAT) is imposed on both aviation fuel and passenger tickets, with a combined rate reaching up to 10%. In addition, import duties on aircraft spare parts compel airlines to conduct maintenance abroad, resulting in capital outflows and higher maintenance costs.⁹ Consequently, domestic airfares in Indonesia are not only driven up by fuel prices but are also significantly affected by a complex and burdensome fiscal regime.

The upper and lower fare regulations imposed by the Ministry of Transportation through Ministerial Regulation No. 106 of 2019 are increasingly viewed as misaligned with current market conditions. The assumptions regarding aviation fuel prices and exchange rates embedded in the regulation have significantly diverged from present-day realities. As a result, airlines are caught between the need to maintain business sustainability and the obligation to comply with outdated pricing policies.¹⁰ Moreover, the KPPU has also raised concerns over potential anti-competitive practices, such as price cartels—an issue previously confirmed by a Supreme Court ruling and now subject to ongoing regulatory scrutiny.¹¹

This study contributes to the policy discourse by applying a six-dimensional regulatory evaluation framework—assessing alignment with Pancasila values, regulatory form, harmony, clarity of legal formulation, consistency with legal principles, and implementation effectiveness. Unlike prior studies that focus solely on economic modelling or airfare elasticity, this approach integrates legal-normative analysis with policy effectiveness assessment, offering a more comprehensive understanding of why regulatory misalignment persists and

7 Wibowo, Agung Satryo, M. Rizky Satrio, and Dwi Fajar Rachmawati. 2023. “Optimizing the Principles of Healthy Business Competition and the Role of KPPU for a Fair Economy in the Digital Era.” *Journal of Social Science Studies* 3, no. 1: 95-100. <https://jos3journals.id/index.php/jos3/article/view/218>.

8 Bernardo, Valeria, Xavier Fageda, and Jordi Teixidó. 2024. “Flight Ticket Taxes in Europe: Environmental and Economic Impact.” *Transportation Research Part A: Policy and Practice* 179: 103892. <https://doi.org/10.1016/j.tra.2023.103892>.

9 Rahmawati, Farida, Rizka Isditami Syarif, and Herindra Adhi Nusantara. 2019. “The Impact of Aircraft Spare Parts Import Duty Exemption on the MRO Industry’s Competitiveness and Its Services Export.” *International Conference on Trade 2019 (ICOT 2019)*. Atlantis Press. <https://doi.org/10.2991/icot-19.2019.42>.

10 Azzolina, Stefano, Andrea Ceron, Andrea Esuli, and Fabrizio Sebastiani. 2021. “Price Discrimination in the Online Airline Market: An Empirical Study.” *Journal of Theoretical and Applied Electronic Commerce Research* 16, no. 6: 2282–2303. <https://doi.org/10.3390/jtaer16060126>.

11 Pasaribu, Manaek S. 2016. “Challenges of Indonesian Competition Law and Some Suggestions for Improvement.” *Economic Research Institute for ASEAN and East Asia (ERIA)* 47. <https://www.eria.org/research/challenges-of-indonesian-competition-law-and-some-suggestions-for-improvement>.

how it affects airfare levels.

Given these findings, this study evaluates the adequacy of Indonesia's regulatory framework governing domestic airfare pricing, with a specific focus on aviation fuel pricing mechanisms and upper fare limits. To guide this evaluation, the research is framed around a single question: "How adequate is the current regulatory framework—particularly the aviation fuel pricing mechanism and the upper fare limit policy—in ensuring fair, efficient, and socially just domestic airline ticket prices in Indonesia?"

B. Research Method

The research methodology employed in this study is a legal analysis and evaluation approach, utilizing a normative-empirical qualitative framework. It is based on the Guidelines for the Evaluation of Legislation developed by the National Law Development Agency under the Ministry of Law and Human Rights of the Republic of Indonesia, which outlines six key dimensions of assessment. This method is used to evaluate both the substance and implementation of regulations that contribute to the high cost of domestic airfares in Indonesia. The analysis focuses particularly on pivotal regulations such as Ministerial Decree of Energy and Mineral Resources No. 17 K/10/MEM/2019 on the Basic Aviation Fuel Pricing Formula and BPH Migas Regulation No. 13/P/BPH Migas/IV/2008 concerning the Procedures for Setting Aviation Fuel Prices.

The evaluation in this study is structured around six key dimensions: 1) Pancasila Dimension, which assesses the alignment of regulations with the core values of Indonesia's legal philosophy—namely, social justice, humanity, and public welfare; 2) Appropriateness of Legal Form, which examines whether the type and level of regulation are suitable for governing complex matters such as aviation fuel pricing and airfare policy; 3) Regulatory Disharmony, which investigates potential overlaps, contradictions, or inconsistencies among different legal instruments; 4) Clarity of Legal Drafting, which evaluates the extent to which legal norms are articulated in clear, unambiguous language that can be readily understood by relevant stakeholders; 5) Conformity with Legal Principles in the Relevant Sector, particularly those concerning fair competition, market efficiency, and consumer protection; and 6) Regulatory Effectiveness, which measures how well the regulation is implemented in practice, including the structural or institutional barriers that may hinder its optimal enforcement.

As a theoretical foundation, this study also draws upon Hans Kelsen's Hierarchical Jurisprudence Theory, or *Stufenbau des Rechts*. According to Kelsen, the legal system is structured in a hierarchical, tiered manner—resembling a staircase—where each lower-level legal norm derives its validity from a higher-level norm. At the apex lies the *Grundnorm* (basic norm), which serves as the ultimate source of legitimacy for the entire national legal system. Consequently, regulations such as ministerial decrees or BPH Migas regulations must remain consistent with, and not contradict, higher-ranking laws such as Acts of

Parliament, and ultimately, the Constitution as the supreme legal authority. In this context, regulatory disharmony and potential violations of fair competition principles may be viewed as legal defects or invalidities from the perspective of Kelsen's legal hierarchy theory.

This study integrates secondary data from legal documents and national policy frameworks, along with primary data comprising comparative analyses of aviation fuel prices and domestic airfare rates across ASEAN countries. The objective is to provide a comprehensive evaluation of aviation fuel policy and its impact on airfare pricing, while formulating constructive policy recommendations grounded in legal principles, economic efficiency, and social justice.

C. Discussions

1. Evaluation of Regulations Based on Pancasila Dimension

In evaluating legislation that impacts the cost structure of domestic airfares in Indonesia, the first analytical approach employed is the Pancasila Dimension. This dimension aims to assess the extent to which relevant regulations align with the nation's foundational values, particularly social justice (the 5th principle), just and civilized humanity (the 2nd principle), and the ideals of welfare and equitable distribution (the 5th and 1st principles). Ideally, regulations in the energy and air transportation sectors should reflect a commitment to public welfare, regional accessibility, and the principle of serving the greater good.

In practice, however, several existing regulations appear to diverge from these fundamental values. The high cost of aviation fuel—constituting the largest component of airfare pricing—and the limited number of players involved in aviation fuel distribution serve as indicators of the ongoing lack of fairness and efficiency in public service delivery. The following table presents an evaluation of key legal provisions influencing airfare pricing, viewed through the lens of the Pancasila dimension:

Table 2. Evaluation of Regulations from the Perspective of Pancasila Dimension

Regulation / Provision	Analysis (Pancasila Dimension)	Recommended Amendment	Remarks
Ministerial Decree of Energy and Mineral Resources No. 17.K/10/MEM/2019 on Aviation Fuel Pricing Formula	The pricing formula is based on actual transportation and storage costs plus profit margins, without considering the needs of underdeveloped, remote, and outermost (3T) regions or broader public accessibility. This contradicts the principle of social justice (5 th principle of Pancasila), as it reinforces a cost structure disproportionately burdensome to consumers.	Revise the pricing formula to incorporate a Public Service Obligation (PSO) mechanism or allow margin adjustments for 3T regions and essential routes to promote fairness and equitable access to public services.	The current formula is overly market-driven and fails to reflect affirmative policy needs.

Regulation / Provision	Analysis (Pancasila Dimension)	Recommended Amendment	Remarks
BPH Migas Regulation No. 13/P/BPH Migas/IV/2008 on Aviation Fuel Distribution	The exclusive appointment of Pertamina as the primary distributor of aviation fuel across most regions of Indonesia fosters monopolistic practices, restricts healthy competition, and contributes to inefficiently high prices. This runs counter to the principles of social justice and fair humanity (2nd and 5th principles of Pancasila).	Reassess the distribution system by allowing qualified alternative providers to participate, thereby fostering competition and price efficiency.	This regulation reinforces an oligopolistic market structure and undermines the principle of fair and open markets.
Law No. 1 of 2009 on Aviation, Article 129(1): "Each commercial air transport operator is required to submit economy class passenger fares to the Minister for determination of upper and lower fare limits."	The regulation on fare ceilings and floors is intended to protect airlines from destructive price wars but has, in practice, become a justification for inflated pricing due to weak oversight and lack of transparency. It fails to reflect consumer interests and equitable access (5th principle of Pancasila).	Amend the article to allow for fare-setting mechanisms based on regional affordability indices and greater transparency in pricing processes.	Implementation requires stronger oversight mechanisms and inclusive public participation in fare policy reviews.

The evaluation through the Pancasila dimension reveals that several existing regulations remain heavily aligned with corporate interests or market logic alone, and have yet to fully ensure the protection of the public's right to fair and affordable transportation. The principles of social justice and humanity—core foundations of the Indonesian state—should serve as the primary basis for formulating public policy, particularly in critical sectors such as energy and aviation. Therefore, regulatory reforms are needed not only to improve technical aspects of governance but also to realign policy direction with the nation's fundamental ideals as enshrined in Pancasila.

2. Evaluation of Regulations Based on the Dimension of Appropriateness of Types of Legislation

The second dimension of this evaluation focuses on the alignment between the substance of a policy and the appropriate type of legislative instrument used to regulate it. This principle is codified in Articles 8 and 10 of Law No. 12 of 2011 on the Formation of Laws and Regulations, which stipulate that legal content must be governed by the correct type of regulation, in accordance with its normative character and position within the legal hierarchy. Misclassification or improper use of regulatory instruments can undermine the legal legitimacy of a policy and increase the risk of normative conflict or even abuse of authority.

In the context of high domestic airfare prices, several regulatory provisions—despite having significant material impact on the public—are enacted merely through ministerial regulations or internal institutional decrees. This raises legal concerns regarding transparency, public participation, and legal certainty. The following is an evaluation of selected regulations based on the appropriateness of the legal instruments employed:

Table 3. Evaluation of Regulations from the Perspective of the Appropriateness of the Type of Legislation

Regulation / Provision	Analysis (Type of Regulation)	Recommended Amendment	Remarks
Ministerial Decree of Energy and Mineral Resources No. 17.K/10/MEM/2019 on Aviation Fuel Pricing Formula	A Ministerial Decree is used to regulate the aviation fuel pricing formula, despite the fact that the substance affects a strategic sector with direct implications for the public and national cost structure. Ideally, such matters should be governed through a Ministerial Regulation or even a Government Regulation, to ensure broader public participation and stronger legal harmonisation.	Convert into a Ministerial Regulation of the Ministry of Energy and Mineral Resources (MEMR), or formulate jointly with the Ministry of Finance and the Ministry of State-Owned Enterprises as a Joint Regulation or Government Regulation, given its cross-sectoral impact.	Relying solely on a Ministerial Decree provides an insufficient legal foundation for regulating strategic energy pricing, as such matters require a stronger and more comprehensive statutory framework.
BPH Migas Regulation No. 13/P/BPH Migas/IV/2008 on Aviation Fuel Distribution	The regulation governing aviation fuel distribution monopoly is issued by the Head of BPH Migas, an administrative agency. Since the regulation affects market structure and business competition, it should be governed under a higher-level regulation to prevent potential conflicts of interest.	Recommended to be elevated to a Presidential or Government Regulation, given its implications for market structure and the need for strong legal legitimacy in regulating business actors.	Institutional regulations tend to be technocratic and lack sufficient political-legal legitimacy.
Circular Letter of the Directorate General of Civil Aviation on Domestic Passenger Fare Mechanisms	A circular letter is used to regulate the technicalities of fare ceilings, despite containing binding norms and sanctions. The use of a circular to regulate pricing norms risks being legally invalid (<i>ultra vires</i>).	Should be formalised through a Ministerial Regulation issued by the Ministry of Transportation to ensure legal enforceability and proper public review mechanisms.	Circular letters are not recognised as formal legislation under Law No. 12 of 2011.

The analysis based on the appropriateness of regulatory instruments reveals a mismatch in both the form and hierarchical level of certain regulations. The use of circular letters or ministerial decrees to govern strategic economic matters—such as aviation fuel pricing and airfare tariffs—poses significant legal risks. Such regulatory choices often

bypass the principle of checks and balances, and undermine public participation and accountability in the rulemaking process. Therefore, harmonisation and revision of the legal forms of these policies are necessary to align them with the principles of a democratic rule-of-law state.

3. Evaluation of Regulation Based on the Dimension of Regulatory Disharmony

This third dimension assesses the coherence and consistency among regulations within the national legal system. Regulatory disharmony arises when there is overlap of norms, substantive contradictions, or a lack of continuity between existing legal instruments. In the case of domestic airfare pricing, disharmony emerges from the misalignment of policies across key sectors—namely, the energy sector (related to aviation fuel pricing), the transportation sector (fare mechanisms), and the competition sector (aviation market structure and the monopoly in aviation fuel distribution).

This lack of regulatory harmony not only creates confusion in practical implementation but also generates legal uncertainty for both businesses and the public. In strategic sectors such as aviation, policy coherence is essential to ensure that regulations are effective and mutually reinforcing, rather than contradictory. The following table outlines key instances of regulatory disharmony:

Table 4. Evaluation of Regulatory Disharmony Regarding Ticket Prices and Aviation Fuel

Regulation / Provision	Analysis (Regulatory Disharmony)	Recommended Amendment	Remarks
Ministerial Decree of Energy and Mineral Resources No. 17.K/10/MEM/2019 vs. BPH Migas Regulation No. 13/P/BPH Migas/IV/2008	The aviation fuel pricing formula is determined by the Ministry of Energy and Mineral Resources, while BPH Migas sets a monopolistic distribution model. There is no inter-agency coordination, leaving market players with no alternatives despite high prices.	Reform through an integrated regulation involving multiple ministries (Energy, Transportation, and SOEs) in the form of a Joint Regulation or Presidential Regulation to create a more competitive aviation fuel market.	Aims to prevent single-player dominance (monopoly) and expand market access.
Ministry of Transportation Regulation No. 20/2019 (fare caps) vs. Law No. 5 of 1999 on the Prohibition of Monopolistic Practices	The fare cap mechanism restricts airlines' pricing flexibility, yet is not matched by competitive fuel market regulation. This undermines the principle of fair competition.	Harmonise fare regulation and aviation fuel policy under the principle of equal competition—for example, by adjusting fare structures based on transparently verified operational costs.	Imbalance between airfare control and aviation fuel price control.

Regulation / Provision	Analysis (Regulatory Disharmony)	Recommended Amendment	Remarks
Law No. 19 of 2003 on State-Owned Enterprises vs. Pertamina's Aviation Fuel Policy	Pertamina, as a state-owned enterprise, holds a dominant role in aviation fuel distribution, but is not legally bound to ensure price efficiency or public accountability in service delivery.	Amend implementing regulations under the SOE Law to impose a public service obligation (PSO) on aviation fuel supply at domestic airports.	Introduces public service principles into the energy sector for public transportation needs.

Based on the evaluation of regulatory disharmony outlined above, it can be concluded that the lack of coherence among relevant regulations significantly contributes to the high operational costs borne by airlines—costs which are ultimately passed on to consumers in the form of elevated ticket prices. When airfare policies are strictly regulated while aviation fuel costs remain uncontrolled or shielded from competition, a systemic distortion arises, undermining the efficiency of the national aviation industry. To address this imbalance, a coordinated policy package should be developed: (1) liberalising aviation fuel distribution through a multi-provider model to encourage competition and reduce prices, (2) revising fare cap regulations to reflect cost structures more accurately while maintaining consumer protection, and (3) establishing a cross-ministerial task force involving the Ministry of Transportation, MEMR, and KPPU to ensure ongoing regulatory harmonisation and monitoring. These measures would provide a targeted framework to foster a more equitable, transparent, and competitive aviation ecosystem.

4. Evaluation of Regulations Based on the Dimension of Clarity of Formulation

The fourth dimension emphasises the extent to which laws and regulations are formulated using clear, unambiguous, systematic, and accessible legal language for all stakeholders. Ambiguously worded or multi-interpretable norms pose significant risks, including mis-implementation, inter-agency conflicts, and potential exploitation by business actors with disproportionate access to resources.

In the context of regulating aviation fuel prices and airline ticket fares, several provisions have been identified as lacking in specificity and failing to provide clear technical guidance for implementation on the ground. This ambiguity spans both the formulation of pricing mechanisms and the delineation of institutional authority. The following is an evaluation of the relevant regulatory language:

Table 5. Evaluation of the Clarity of the Formulation of Ticket and Aviation Fuel Price Regulations

Regulation / Provision	Provision Analysis	Recommended Amendment	Remarks
Ministerial Decree of Energy and Mineral Resources No. 17.K/10/MEM/2019, Annex II: Aviation Fuel Pricing Formula	The regulation lacks detailed elaboration on the components of the pricing formula (e.g., distribution costs, Pertamina's margin, storage costs), leaving significant room for non-transparency.	Explicitly list each price component in writing and ensure periodic publication through an online platform to guarantee information transparency.	Enhances transparency and mitigates the risk of monopolistic pricing practices.
Minister of Transportation Regulation No. 20/2019, Articles 2 and 3	The provisions concerning upper and lower fare limits are overly general and do not explain the mechanism for adjusting fares in response to aviation fuel price fluctuations or market dynamics.	Introduce supplementary provisions that outline an automatic fare adjustment mechanism based on objective operational cost indicators.	Prevents rigid and unresponsive fare policies.
BPH Migas Regulation No. 13/P/BPH Migas/IV/2008, Article 6	Fails to explicitly define the mechanism for selecting business entities authorised to distribute aviation fuel, resulting in de facto exclusivity for Pertamina with no competitive oversight.	Clarify the article by incorporating an open selection mechanism or require KPPU oversight to monitor aviation fuel distribution practices.	Opens up the aviation fuel market to other qualified business entities and fosters competition.

Based on the table above, it is evident that the wording of several key regulations does not yet meet the standards of legal clarity. Vague phrasing, the absence of technical implementation mechanisms, and a lack of mandatory transparency obligations render these regulations susceptible to misinterpretation or unaccountable enforcement. A more precise regulatory formulation should, at minimum, include: (1) a transparent, publicly accessible formula for aviation fuel price calculation that clearly specifies cost components (e.g., base fuel price, distribution margin, taxes), (2) mandatory periodic publication of benchmark prices by the MEMR, and (3) a clear dispute-resolution mechanism for airlines to challenge price irregularities. These provisions would enhance legal certainty, promote accountability, and ensure fairer price-setting in the aviation fuel market.

5. Evaluation of Regulations Based on the Dimension of Compliance with the Principles of the Relevant Legal Field

This dimension emphasises the importance of aligning legislation with the foundational principles of the relevant branches of law. In this context, the areas of concern include competition law, consumer protection law, and public service law. Core principles such as fairness, efficiency, transparency, non-discrimination, and accountability serve as benchmarks for assessing whether a given regulation upholds the fundamental tenets of the legal domain it governs.

In the context of aviation fuel distribution and airline fare regulation, there are strong indications that existing regulations do not fully align with the aforementioned legal principles. The monopolistic practices in aviation fuel distribution at airports, coupled with the lack of healthy competition in aviation service provision, have contributed to inflated and inefficient operational costs. The following table presents a more detailed analysis:

Table 6. Evaluation of Regulatory Compliance with Legal Principles

Regulation / Provision	Principle-Based Analysis	Recommended Amendment	Remarks
BPH Migas Regulation No. 13/P/BPH Migas/IV/2008, Article 6	Contradicts the principle of fair competition, as a single state-owned enterprise is granted exclusive rights to distribute aviation fuel across all airports.	Introduce provisions that ensure market openness and competition in the aviation fuel sector.	Requires active oversight by the KPPU and the Ministry of Energy and Mineral Resources.
Ministerial Decree of ESDM No. 17.K/10/MEM/2019, Aviation Fuel Pricing Formula Attachment	Lacks transparency and does not adhere to the principles of openness and fairness in public service pricing.	Revise the formula to incorporate efficiency parameters and mandate regular public disclosure to both airlines and the public.	Aims to uphold consumer rights to fair and auditable pricing.
Minister of Transportation Regulation No. 20 of 2019, Article 3	The rigid upper fare cap, which is not adjusted to reflect consumers' purchasing power, undermines the principles of consumer protection and social justice.	Revise the fare scheme to be more adaptive, data-driven, and inclusive of public participation mechanisms.	Especially impacts residents in non-Java regions with limited travel alternatives.

Given the misalignment of current regulations with the core principles of the relevant branches of law, it is essential for the government to undertake a systematic evaluation of both the substantive content and the implementation mechanisms. Regulatory harmonisation grounded in the principles of justice, transparency, and fair competition will foster a more efficient, equitable, and accessible air transportation system for all segments of society.

6. Evaluation Based on the Dimension of Effectiveness of Implementation of Legislation

The effectiveness of regulatory implementation constitutes a crucial dimension in assessing whether a legal provision can truly achieve its intended objectives when applied in practice. A regulation that is normatively sound will yield little benefit if it is not supported by consistent enforcement, robust oversight, and institutional capacity to carry it out. In the context of regulations governing aviation fuel pricing and domestic airline fares, there are multiple indications that implementation remains suboptimal.

First, the current jet fuel distribution mechanism—monopolised by a single state-owned enterprise—remains effectively closed to other potential providers, despite legal

provisions allowing for market entry. This is largely due to weak implementation and a lack of facilitation by the relevant regulatory authorities. Second, inefficiencies in the aviation fuel supply and transportation chain have led to higher operating costs for airlines, which are ultimately passed on to consumers through elevated ticket prices. Third, the upper and lower fare limits set by the Ministry of Transportation are not regularly adjusted to reflect market dynamics or public purchasing power, and are not supported by a robust price monitoring mechanism.

Table 7. Evaluation of the Effectiveness of Implementing Aviation Fuel and Airline Ticket Price Regulations

Regulation / Provision	Implementation Analysis	Recommended Amendment	Remarks
BPH Migas Regulation No. 13/P/BPH Migas/IV/2008	While normatively allowing other business entities to distribute aviation fuel, in practice no competitors have entered the market due to the absence of entry incentives or institutional safeguards.	Introduce incentives and institutional support mechanisms to encourage new entrants in the aviation fuel distribution sector.	Requires the development and facilitation of fuel infrastructure at domestic airports.
Ministerial Decree of Energy and Mineral Resources No. 17.K/10/MEM/2019	The implementation of the base price formula lacks public verifiability and does not accommodate fluctuations in global market conditions.	Ensure pricing transparency and subject price-setting mechanisms to independent or public oversight.	Should include regular audits of distribution costs and pricing margins.
Minister of Transportation Regulation No. 20/2019	Ceiling fare evaluations are not conducted periodically based on actual economic data, and oversight of airline fare compliance remains insufficient.	Develop a participatory and data-driven (real-time) fare evaluation system.	Should incorporate integration of airline fare reporting systems with government monitoring platforms.

Overall, the weak implementation of these various regulations underscores the fact that the mere existence of legal provisions is insufficient without robust and consistent enforcement. An effectiveness-based evaluation highlights the critical need for cross-sectoral collaboration—among the Ministry of Energy and Mineral Resources, the Ministry of Transportation, BPH Migas, and the KPPU—as well as active public participation in oversight and policy advocacy. The overarching goal is to ensure that prevailing air transportation fares genuinely reflect the principles of fairness, efficiency, and affordability.

D. Closing

The evaluation of statutory regulations governing domestic airfare pricing demonstrates that elevated ticket prices in Indonesia are not merely the result of market dynamics or airline operational costs, but are significantly shaped by a regulatory framework that lacks coherence, transparency, and adaptability. The aviation fuel pricing formula set forth in

Ministerial Decree of Energy and Mineral Resources No. 17 K/10/MEM/2019, combined with a generalised airfare ceiling policy, has created systemic inefficiencies that ultimately burden consumers. These findings confirm the presence of regulatory disharmony, vague legal drafting, and underdeveloped participatory mechanisms, all of which undermine the principles of social justice, market efficiency, and fair competition mandated under Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

To address these issues, the government should elevate the legal basis of aviation fuel pricing from a ministerial decree to a government regulation, thereby providing stronger legal certainty and better alignment with the hierarchy of norms as outlined in Hans Kelsen's *Stufenbau des Rechts* theory. This regulation should require the Ministry of Energy and Mineral Resources to disclose a transparent pricing formula that specifies cost components, including the international benchmark price, distribution margin, taxes, and handling fees. The ministry should also be mandated to publish benchmark prices on a monthly basis, ensuring accountability and enabling independent oversight.

Furthermore, fuel distribution should be liberalised through the adoption of a multi-provider model that allows new market entrants to compete under fair and non-discriminatory access conditions to airport storage and hydrant facilities. The KPPU should actively monitor market concentration levels and intervene where there is evidence of dominant position abuse.

In parallel, the upper airfare limit policy should be reformed to reflect actual airline cost structures and the purchasing power of the population. This can be achieved through biennial reviews conducted by the Ministry of Transportation, supported by stakeholder consultation forums that include airlines, consumer associations, economists, and tourism representatives. Such reviews would ensure that fare regulations strike a balance between affordability, industry sustainability, and regional connectivity.

Finally, regulatory harmonisation must be institutionalised by establishing a cross-ministerial task force consisting of the Ministry of Transportation, MEMR, KPPU, and the Ministry of Finance. This task force should periodically review aviation-related regulations to ensure they remain consistent with competition law and Pancasila's social justice mandate. In addition, airlines and Pertamina should be required to submit cost and pricing data to an independent public dashboard, thereby enhancing transparency, supporting evidence-based policymaking, and enabling data-driven adjustments to both fuel pricing and fare cap policies.

Taken together, these measures would lay the groundwork for a more competitive, transparent, and socially equitable domestic aviation market—one that supports national mobility, promotes regional development, and strengthens Indonesia's competitiveness in the ASEAN aviation sector.

Bibliography

- Akbar, Ibrahim, and Utomo Sarjono Putro. 2024. "SAF Implementation in 2027: A Case Study of Indonesia." *European Journal of Business and Management Research* 9, no. 5: 1-15. <https://doi.org/10.24018/ejbmr.2024.9.5.2408>.
- Asia Pacific Solidarity Network. 2024. "AirAsia Boss Says Indonesia's Avtur Price Is the Highest in ASEAN." September 6, 2024. <https://www.asia-pacific-solidarity.net/news/2024-09-06/airasia-boss-says-indonesias-avtur-price-highest-asean.html>.
- Azzolina, Stefano, Andrea Ceron, Andrea Esuli, and Fabrizio Sebastiani. 2021. "Price Discrimination in the Online Airline Market: An Empirical Study." *Journal of Theoretical and Applied Electronic Commerce Research* 16, no. 6: 2282-2303. <https://doi.org/10.3390/jtaer16060126>.
- Bernardo, Valeria, Xavier Fageda, and Jordi Teixidó. 2024. "Flight Ticket Taxes in Europe: Environmental and Economic Impact." *Transportation Research Part A: Policy and Practice* 179: 103892. <https://doi.org/10.1016/j.tra.2023.103892>.
- Hörcher, Daniel, and Alejandro Tirachini. 2021. "A Review of Public Transport Economics." *Economics of Transportation* 25: 100196. <https://doi.org/10.1016/j.ecotra.2021.100196>.
- Köse, Yaşar, and Ceyda Aktan. 2022. "Analysis of Cost Structures and Cost Control Strategies of Airlines: An Empirical Study on a Hypothetical Airline Company." *Journal of Aviation* 6, no. 1: 42-49. <https://doi.org/10.30518/jav.1024489>.
- Pasaribu, Manaek S. 2016. "Challenges of Indonesian Competition Law and Some Suggestions for Improvement." *Economic Research Institute for ASEAN and East Asia (ERIA)* 47. <https://www.eria.org/research/challenges-of-indonesian-competition-law-and-some-suggestions-for-improvement>.
- Rahmawati, Farida, Rizka Isditami Syarif, and Herindra Adhi Nusantara. 2019. "The Impact of Aircraft Spare Parts Import Duty Exemption on the MRO Industry's Competitiveness and Its Services Export." *International Conference on Trade 2019 (ICOT 2019)*. Atlantis Press. <https://doi.org/10.2991/icot-19.2019.42>.
- Sun, Xiaoqian, Mark Hansen, Paul Chiambaretto, and Jie Wang. 2024. "Airline Competition: A Comprehensive Review of Recent Research." *Journal of the Air Transport Research Society* 2: 100013. <https://doi.org/10.1016/j.jatrs.2024.100013>.
- VOI. 2024. "When Asked by AirAsia Boss about the Most Expensive Indonesian Avtur Price in ASEAN, Pertamina Opens Voice." September 9, 2024. <https://voi.id/en/economy/414907>.
- Wibowo, Agung Satrio, M. Rizky Satrio, and Dwi Fajar Rachmawati. 2023. "Optimizing the Principles of Healthy Business Competition and the Role of KPPU for a Fair Economy in the Digital Era." *Journal of Social Science Studies* 3, no. 1: 95-100. <https://jos3journals.id/index.php/jos3/article/view/218>.

Curriculum Vitae of Author

Rama Gardika, S.M. is a graduate of the International Management Program with a concentration in Financial Management from the Faculty of Economics and Business, Universitas Jenderal Soedirman, completing his studies in 2017 with a GPA of 3.28 out of 4.00. Immediately after graduation, he was appointed Chief Editor, overseeing four academic journals at his alma mater.

Rama currently serves as a Policy Analyst (First Expert) at the Ministry of Law of the Republic of Indonesia. He brings over eight years of professional experience in business development, market research, financial analysis, and corporate strategy across the technology and retail sectors.

He is also an alumnus of the Social and Ecological Market Economy Training from Germany and a co-founder of UrbanWit, an environmental organisation active since 2016. A prolific writer, Rama frequently contributes articles to various online platforms and published an international scientific paper titled “Comparative Study Between the Performances of Two Islamic Indices: Study on FTSE Bursa Malaysia EMAS Shariah (FBMS) and Indonesia Sharia Stock Index (ISSI)” in 2018.

With his strong academic and professional background, Rama remains deeply committed to advancing discourse in management, public policy, and sustainability while continuously honing his expertise in policy analysis and scholarly writing.

COMPETITION LAW AND ECONOMIC EFFICIENCY ON DIGITAL PLATFORMS: A STUDY OF SHOPEE IN INDONESIA

Cahyoko Edi Tando

Department Community Guidance, Politeknik Pengayoman Indonesia,
Ministry of Law, Indonesia

Author's e-mail: cahyoyoko7@gmail.com

ABSTRACT

Digital transformation has potential predatory pricing practices and significantly reshaped the landscape of trade in Indonesia, particularly through the emergence of e-commerce platforms such as Shopee. The dynamics of business competition in the digital space have introduced new legal challenges, especially concerning pricing practices, market dominance, and the protection of small enterprises. This study is important because the rapid growth of digital platforms has outpaced existing legal frameworks, creating regulatory gaps that threaten market fairness and consumer protection. Using a normative juridical research method, it examines the principles outlined in Law No. 5 of 1999 and their implementation within digital business models. The analysis reveals that although Shopee enhances economic efficiency and broadens market access, there are indications of market dominance through cross-subsidization. Therefore, regulatory adjustments are necessary to ensure fair competition in the digital economy sector. Hence, this study contributes to bridging the theoretical and practical gap in understanding how traditional competition law can adapt to digital market dynamics.

Keywords: competition law; economic efficiency; e-commerce; Indonesia; predatory pricing practice

A. Introduction

The development of the digital economy has fundamentally transformed the pattern of economic interaction within Indonesian society.¹ Over the past decade, digital-based trade has become one of the key contributors to Indonesia's economy and remains a significant sector today.² According to the report by Google, Temasek, and Bain & Company, the value of Indonesia's digital economy reached USD 82 billion in 2023 and is projected to grow

1 Diah Rukmana Sari and Nasrudin Nasrudin, "Constructing Indonesian Digital Economy Index in Determining Economic Policy Priorities amidst the Covid-19 Pandemic," *Economics and Finance in Indonesia* 68, no. 1 (2022): 62-74, <https://doi.org/10.47291/efi.2022.05>.

2 Febrian Al Aziz and Mahlil Adriaman, "Ancaman Shop Tokopedia Dalam Praktek Monopoli Perdagangan Dan Persaingan Usaha Tidak Sehat Terhadap Keberlangsungan UMKM Di Kota Bukittinggi," *Bhirawa Law Journal* 5, no. 2 (2024): 1-11, <http://jurnal.unmer.ac.id/index.php/blj/>.

to USD 130 billion by 2025.³ This growth is driven by the widespread penetration of the internet, the expansion of online transactions, and the rise of major digital platforms such as Shopee,⁴ Tokopedia, BliBli.com, Lazada, etc which facilitate transactions for millions of businesses and consumers daily.⁵

However, behind this impressive growth lies a range of legal issues related to business competition in the digital space. The transformation from conventional business models to digital platforms has introduced new economic practices that are not fully covered by existing positive laws.⁶ Platform-based business models, which rely heavily on user data, recommendation algorithms, and network effects, have challenged traditional concepts within competition law.⁷

Shopee, as one of the largest digital platforms in Indonesia and a dominant player in Southeast Asia,⁸ serves as a concrete example of Indonesia's economic dynamics.⁹ Previously, Shopee was a company based in Singapore that began developing its e-commerce business in 2015 (previously known as Garena).¹⁰ The company initially started as an online shopping platform with a mobile-first concept, recognizing the potential market in the Southeast Asian region, where it has since continued to expand and grow. Shopee's aggressive strategies including large-scale discounts, shipping subsidies, and continuous promotions have succeeded in attracting consumers and expanding market reach. Nevertheless, these strategies raise fundamental questions from a competition law perspective, particularly regarding whether such practices constitute legitimate market innovation or indicate potential predatory pricing that could eliminate competitors and disrupt market balance.¹¹

3 Google and Temasek, "E-Conomy SEA 2018 Southeast Asia's Internet Economy Hit Inflection Point" (Singapura, 2018).

4 Kompas.com, "Persaingan E-Commerce Ketat, Shopee Unggul Dalam Jumlah Kunjungan Pelanggan," Kompas.com, 2021, accessed Nov 5, 2025, <https://money.kompas.com/read/2021/10/08/145757126/persaingan-e-commerce-ketat-shopee-unggul-dalam-jumlah-kunjungan-pelanggan?page=all>.

5 Rianto Anugerah Wicaksono, "E-Commerce Market Saturation in Indonesia: The Dynamics of Price Competition from Islamic Economic Perspective.," *Jurnal Ekonomika Dan Bisnis Islam* 8 (2025): 1-19, <https://doi.org/10.26740/jekobi.v8n1.p1-19>.

6 Q.Xing-hong, S.Qiang, and H.Zhi-sheng, "Competitive and Cooperative Strategies for Online Shopping Logistics Service Supply Chain Considering Customer Expectations and Quality Cost," *Journal of Industrial Engineering and Engineering Management* 33, no. 3 (2019): 136-46, <https://doi.org/https://doi.org/10.13587/j.cnki.jieem.2019.03.016>.

7 A. Ezrachi and M. E. Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Harvard University Press, 2016).

8 Endah Mustika Asih, "Analisis Pada Shopee Sebagai E-Commerce Terpopuler Di Indonesia," *Jurnal Ekonomi Bisnis Antartika* 2, no. 1 (2024): 73-79, <https://doi.org/10.70052/jeba.v2i1.299>.

9 Laras Putri Olifiani, Moh Talabul Amal, and Fany Anggun Abadi, "Pengaruh E-Commerce Shopee Terhadap Ekonomi Indonesia Di Masa Pandemi," *Jurnal Komunikasi Peradaban* 3, no. 2 (2025): 1-13.

10 M. Zeng and F. Li, "Digital Platform Ecosystems in Southeast Asia: The Case of Shopee," *Asia Pacific Business Review* 28, no. 4 (2022): 521-538.

11 Iqta Adzkiya, Elisatris Gultom, and Deviana Yuanitasari, "Analisis Dugaan Monopoli Sistem Pembayaran Oleh Shopee Di Indonesia, Mencakup Dampaknya Terhadap Persaingan Usaha, Penegakkan Hukum, Dan Implikasi Hukum Dalam Ekosistem E-Commerce Digital," *Jihhp* 5, no. 5 (2025): 1-10, <https://dinastirev.org/DOI:https://doi.org/10.38035/jihhp.v5i5https://creativecommons.org/licenses/by/4.0/>.

Shopee's e-commerce model recorded the highest transaction value, reaching USD 47 billion in 2023.¹² This achievement reflects remarkable efficiency in distribution, expansion of small-scale economic activities, and acceleration of digital economic inclusion across various regions of Indonesia.¹³ However, from a legal standpoint, the issue becomes complex due to the involvement of vast amounts of user data and the algorithmic power that determines product visibility.

In Indonesian competition law, Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition serves as the primary legal framework governing market behavior.¹⁴ Article 3 explicitly states that the goal of competition law is to safeguard the public interest and enhance national economic efficiency. However, the data-driven, algorithmic, and multi-sided nature of the digital economy is not explicitly accommodated within the existing legal norms.¹⁵ Consequently, there exists a normative gap between the evolving dynamics of digital business practices and the capacity of regulation to enforce them effectively.¹⁶

At the global level, several competition authorities such as the European Commission, the U.S. Federal Trade Commission (FTC), and the U.K. Competition and Markets Authority (CMA) have identified potential abuses of dominant positions by digital platforms through data control and self-preferencing behavior, where platforms prioritize their own products or services over those of third parties.¹⁷ This phenomenon can be observed in Shopee's business model, which functions not only as a marketplace provider but also as an active economic actor that determines transaction flows, pricing, and product exposure.

Digital transformation has fundamentally changed the way businesses compete and interact in the marketplace. In the context of the digital economy, market power is no longer determined solely by production scale or financial capital but also by access to data, control over algorithms, and network effects that reinforce the dominant position of certain platforms. This condition poses a serious challenge to traditional competition law systems, which were primarily designed for industrial-based economies.¹⁸ They emphasize that competition law must adapt to the emergence of non-traditional forms of dominance,

12 Nabilah Muhamad, "Shopee Dominasi Pasar E-Commerce Asia Tenggara Pada 2023," *databoks.katadata.co.id*, 2024, accessed Nov 5, 2025, [https://databoks.katadata.co.id/teknologi-telekomunikasi/statistik/66989de7b7168/shopee-dominasi-pasar-e-commerce-asia-tenggara-pada-2023#:~:text=Langsung baca artikel \"Shopee Dominasi,pembayaran masih dalam proses aktivasi.&text=Berdasarkan laporan Momen.](https://databoks.katadata.co.id/teknologi-telekomunikasi/statistik/66989de7b7168/shopee-dominasi-pasar-e-commerce-asia-tenggara-pada-2023#:~:text=Langsung baca artikel \)

13 Asih, "Analisis Pada Shopee Sebagai E-Commerce Terpopuler Di Indonesia."

14 "Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat" (n.d.).

15 Lutfiyah Al Humairah, "Strategi Ekspansi Shopee Di Indonesia: Respon Dan Kebijakan Indonesia Dalam Perspektif Ekonomi Politik Internasional," *Dialogika: Jurnal Penelitian Komunikasi Dan Sosialisasi* 1, no. 3 (2025): 53-61.

16 R. Whish and D. Bailey, *Competition Law: Tenth Edition* (Oxford: Oxford University Press, 2021).

17 J. Crémer, Y.-A. de Montjoye, and H. Schweitzer, *Competition Policy for the Digital Era* (European Commission Report, 2019).

18 R. Whish and D. Bailey, *Competition Law*, 10th ed. (Oxford University Press, 2021).

where digital platforms can control the flow of information and market behavior through algorithmic technologies. In this context, market power is derived not only from market share but also from user data that can be tracked and from recommendation algorithms that determine product visibility and consumer behavior.¹⁹ In other words, control over data in the digital world has become a new form of economic power that is often beyond the reach of conventional competition law instruments.

Ezrachi and Stucke introduce the concept of “algorithmic collusion,” referring to a new form of collusion in the digital environment where coordination occurs not through explicit agreements among firms, but through algorithmic interactions that automatically adjust prices.²⁰ This phenomenon challenges the fundamental principle of competition law, which traditionally requires an explicit agreement to establish collusion. In digital markets such as Shopee, algorithms can determine prices, highlight featured products, and prioritize certain sellers based on the platform’s commercial interests. This may create market distortions and disadvantage small businesses that lack comparable technological capacity.

Furthermore, the digital economy also gives rise to what is known as “self-preferencing,” where digital platforms use their role as market operators to favor their own products or services. The Google Shopping case in the European Union serves as a key precedent, where the European Commission ruled that Google had prioritized its own products over those of competitors.²¹ Such practices are also potentially relevant in Indonesia, where Shopee, as one of the largest digital marketplace operators, can determine product and seller exposure through its internal algorithmic systems.

From a legal standpoint, Law No. 5 of 1999 in Indonesia does not yet explicitly address data-based dominance or algorithmic collusion. The Indonesian Competition Commission (KPPU) continues to use a conventional approach, assessing violations based on market share, written agreements, and price control activities. Meanwhile, the Competition Policy for the Digital Era report highlights that the unique characteristics of digital markets require new methods for assessing dominance—incorporating indicators such as access to large datasets, network effects, and exclusionary algorithmic behavior.²²

Shopee, as a primary example, operates within a legal framework that lacks specific guidelines for assessing anti-competitive behaviors based on algorithms or data control. Therefore, strengthening regulations and updating analytical guidelines for digital markets are crucial to ensure that competition law remains relevant and effective in addressing modern competitive dynamics. In this digital era, a new paradigm in competition law is urgently needed. Regulation should no longer focus solely on traditional price fixing or market

19 F. H. Kristanto, H. Wimanda Rahma, and M. Nahrowi, “Factors Affecting E-Commerce Customer Loyalty In Indonesia,” *Jurnal Syntax Transformation* 39, no. 3 (2022): 1150–64, <https://doi.org/https://doi.org/10.46799/jst.v3i09.613>.

20 Ezrachi and Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy*.

21 European Commission, “Google Search (Shopping) Case AT.39740” (Brussels, 2017).

22 Crémer, de Montjoye, and Schweitzer, *Competition Policy for the Digital Era*.

dominance but must also consider data power, algorithmic behavior, and the mechanisms of economic platformization. Future law enforcement must adopt a multidisciplinary approach that integrates perspectives from law, digital economics, and information technology to maintain a balance between innovation and market fairness.²³

Based on this analysis, it can be observed that research examining Shopee from a normative legal perspective remains limited, making this study novel both in terms of its subject matter and its methodological approach. Furthermore, this condition highlights the urgency of reassessing the effectiveness of Indonesia's competition law in addressing platform-based economic structures. As Fox argues,²⁴ developing countries need to adapt their competition laws to not only focus on economic efficiency but also to ensure structural fairness and sustainable market ecosystems. In this context, a legal analysis of Shopee's business practices becomes relevant to understanding how Indonesia's competition law can regulate digital competition dynamics and maintain a balance between economic innovation and the protection of small and medium enterprises.

Therefore, this article seeks to examine the relationship between competition law and economic efficiency within the digital economy context, using Shopee as the primary case study.

B. Research Method

This study employs a normative juridical approach, which focuses on the examination of legal norms, principles, and doctrines to assess the conformity between statutory regulations and their practical implementation within a specific context.²⁵ This approach is used because the legal issue under study namely, the application of competition law to digital platforms such as Shopee concerns the normative aspects of Indonesia's positive law, which must be analyzed through relevant legislation, legal doctrines, and theoretical frameworks. The normative juridical approach is complemented by conceptual and comparative approaches. The conceptual approach examines key legal concepts such as *economic efficiency*, *dominant position*, *predatory pricing*, and *algorithmic collusion* within competition law. Meanwhile, the comparative approach is used to analyze and compare how digital competition law is enforced in other jurisdictions (e.g., European Union, Singapore, and the United State) that have developed more advanced legal frameworks to regulate digital platforms.

Data for this research are drawn from primary, secondary, and tertiary legal sources.²⁶ The primary sources include relevant legislation such as Law No. 5 of 1999 concerning

23 Sufiya M. Shaikh, "Law Through a Multidisciplinary Lens: Insights From Social, Economic, Technological and Historical Frameworks," *Indian Journal of Law and Legal Research* VII, no. III (2025): 6556–66.

24 E. M. Fox, *Antitrust and Global Capitalism: The Quest for Inclusive Competition Policy* (Oxford University Press, 2019).

25 S. Soekanto and S. Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Rajawali Press, 2015).

26 L. J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2019).

the Prohibition of Monopolistic Practices and Unfair Business Competition; Law No. 11 of 2008 on Electronic Information and Transactions (ITE) and its amendments; the Indonesia Competition Commission (KPPU) regulations concerning digital market assessment and dominant position guidelines; as well as KPPU decisions and annual reports. Secondary sources include scholarly works such as books, journal articles, and institutional reports relevant to the research topic. Tertiary sources consist of legal encyclopedias, law dictionaries, and other supporting documents that clarify legal terminology and contextualize issues in digital law. The data collection technique used in this research is library-based, involving a comprehensive review of national and international legal sources accessed through databases such as HeinOnline, ScienceDirect, and OECD iLibrary. The search was conducted using keywords including *digital competition law*, *platform economy regulation*, *predatory pricing*, *algorithmic collusion*, and *Shopee Indonesia*.

Data were analyzed using a qualitative descriptive method, interpreting legal provisions and competition law theories to identify the conformity or inconsistency between Shopee's business practices and Indonesia's positive legal norms.²⁷ The analysis follows the stages of legal interpretation grammatical, systematic, and teleological as suggested by Marzuki.²⁸ Through this approach, the study aims to produce an in-depth legal analysis of the application of competition law in the digital era and to offer adaptive legal recommendations suited to the dynamics of platform-based economies, with Shopee serving as the focal case of analysis.²⁹

C. Discussions

In this discussion, the researcher will address the research problems in accordance with the subtopics of discussion to facilitate a clearer understanding of the structure and flow of this study. The explanation is as follows:

1. The Principle of Economic Efficiency in Competition Law

The principle of economic efficiency represents one of the fundamental objectives of competition law. In the Indonesian context, Article 3(c) of Law No. 5 of 1999 explicitly states that the purpose of competition law is "to enhance national economic efficiency as an effort to improve public welfare." Thus, every policy or law enforcement measure concerning competition must strike a balance between achieving efficiency and maintaining a competitive market structure.

According to Motta,³⁰ efficiency in competition law consists of three main dimensions: allocative efficiency, productive efficiency, and dynamic efficiency. Allocative efficiency

27 Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis: A Methods Sourcebook*, 3rd ed. (Arizona State University: SAGE Publications, 1994).

28 P. M. Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2017).

29 Hardani et al., *Metode Penelitian Kualitatif Dan Kuantitatif*, 2020.

30 M. Motta, *Competition Policy: Theory and Practice* (Cambridge University Press, 2018).

refers to the market's ability to allocate resources in line with consumer needs; productive efficiency relates to the production of goods and services at the lowest possible cost; and dynamic efficiency concerns innovation and the continuous improvement of product quality. In the context of the digital economy, these dimensions undergo transformation due to the pervasive influence of technology, data, and algorithms.

In this study, the digital platform Shopee has significantly contributed to distribution and transactional efficiency in Indonesia. Through integrated logistics, digital payment systems, and algorithmic matching technologies, Shopee has successfully reduced transaction costs and expanded market access for micro and small business units. According to the OECD,³¹ the digital economy serves as a solution for improving market efficiency, reducing transaction costs, and expanding access to markets for small enterprises. However, such efficiency must be evaluated not only from an economic standpoint but also in terms of long-term competitive fairness.

This implies that digital platform dominance can create new forms of economic dependency, in which small businesses act merely as content providers without bargaining power against the platform's algorithmic policies. Therefore, efficiency achieved through digital mechanisms must not come at the expense of business diversity or fair competition. At the national legal level, digital economic activities are not only governed by Law No. 5 of 1999 but also intersect with Law No. 11 of 2008 on Electronic Information and Transactions (ITE), as amended by Law No. 19 of 2016. Although the ITE Law does not specifically regulate competition, it functions as a legal instrument overseeing electronic trade activities, data protection, and digital transaction integrity. In practice, synergy between the ITE Law and the Competition Law is essential to prevent data misuse and algorithm-based discriminatory practices that could undermine market fairness.

Another regulation, namely the Regulation of the Minister of Trade of the Republic of Indonesia Number 31 of 2023,³² also governs business actors engaged in trade through electronic systems. However, similar to previous regulations, it does not specifically address electronic commerce; instead, it only refers to individuals who operate online-based trading activities.

According from Gal and Rubinfeld,³³ highlight that users' personal data can be considered a form of "currency" in the digital economy, where data concentration by a single entity may create new forms of dominance that are difficult to regulate under traditional legal frameworks. Therefore, the principle of efficiency in the digital era must include informational efficiency and data security, ensuring that all market participants have balanced access to and protection of digital data used in business processes.

31 OECD, "Digital Economy Outlook 2023," 2023.

32 "Peraturan Menteri Perdagangan Republik Indonesia Nomor 31 Tahun 2023 Tentang Perizinan Berusaha, Periklanan, Pembinaan, Dan Pengawasan Pelaku Usaha Dalam Perdagangan Melalui Sistem Elektronik" (n.d.).

33 M. S. Gal and D. L. Rubinfeld, "The Hidden Costs of Free Digital Services. Oxford," *Journal of Legal Studies* 39, no. 3 (2019): 517-51.

Furthermore, the OECD's Competition in Digital Markets report emphasizes that efficiency in the digital economy can only be considered legally legitimate if it results from non-exclusive innovation,³⁴ not from data or algorithm control that prevents new competitors from entering the market. Accordingly, in the case of Shopee, pricing strategies, aggressive promotions, and product recommendation systems must be evaluated not only for their short-term benefits to consumers but also for their potential long-term impacts on market structure and competitive sustainability.

From an Indonesian legal perspective, reinterpretation of Articles 19 and 25 of Law No. 5 of 1999 is necessary so that the assessment of "market control" and "abuse of dominant position" goes beyond quantitative indicators such as market share, incorporating factors such as control over digital data, network effects, and cross-platform integration.

Thus, the principle of economic efficiency in digital competition law can no longer be understood narrowly as cost reduction or output maximization alone. It must be reconceptualized as a multidimensional principle that harmonizes economic performance with legal equity, technological ethics, and societal inclusiveness. In this sense, true efficiency is achieved when digital markets operate transparently, empower small enterprises, encourage fair innovation, and ultimately contribute to sustainable public welfare in line with Indonesia's constitutional mandate of social justice.

2. Legal Analysis of Shopee's Business Practices

The legal analysis of Shopee's business practices as one of the largest e-commerce platforms in Southeast Asia illustrates the intersection between digital innovation and the principles of competition law.³⁵ The digital economy model adopted by Shopee, which operates as a two-sided platform, creates market dynamics determined not only by price mechanisms but also by control over digital infrastructure, algorithms, and user data.³⁶ In traditional competition law, the main analytical focus lies on market dominance through market share and pricing behavior. However, in the context of the digital economy, as argued by Petit,³⁷ market power in the era of big tech is no longer defined solely by price dominance,³⁸ but rather by a platform's ability to control digital ecosystems and influence consumer behavior through data and algorithms.

34 OECD, "Digital Economy Outlook 2023."

35 Mela Devita, Zuhrial M Nawawi Nawawi, and Nuri Aslami, "E-Commerce Shopee Marketing Strategy in International Business," *Journal of Social Research* 1, no. 12 (2022): 491–97, <https://doi.org/10.55324/josr.v1i12.350>.

36 Xiaohui Zhou and Xin Tian, "Impact of Live Streamer Characteristics and Customer Response on Live-Streaming Performance: Empirical Evidence from e-Commerce Platform," *Procedia Computer Science* 214, no. C (2022): 1277–84, <https://doi.org/10.1016/j.procs.2022.11.306>.

37 N. Petit and D. Teece, "Dynamic Efficiency and Competition Policy in Digital Markets," *Industrial and Corporate Change* 31, no. 5 (2022): 987–1009.

38 Kinanti Putri Kusumah Lestari, Kurnia Khafidhatur Rafiah, and Muhammad Rifqi Arviansyah, "Live Shopping and Consumers' Purchase Intention in E-Commerce: A Systematic Literature Review," *Airlangga Journal of Innovation Management* 6, no. 1 (2025): 171–83, <https://doi.org/10.20473/ajim.v6i1.70707>.

Shopee has employed aggressive strategies such as price promotions and shipping subsidies to attract new users and retain customer loyalty. While these strategies enhance short-term efficiency and market access, from a legal perspective, they can also raise suspicions of predatory pricing, which, if proven, indicates an intent to eliminate competitors. Article 20 of Law No. 5 of 1999 prohibits selling below cost with the intent to drive competitors out of the market. Fletcher and Lianos, argue that below-cost pricing in digital markets is difficult to assess using conventional cost-based approaches,³⁹ as platform marginal costs are near zero, and their business models often rely on cross-subsidization from other revenue streams such as advertising or logistics. Therefore, assessing intent and market effect becomes more relevant than simply comparing price and production costs.

Official reports from the Indonesia Competition Commission (KPPU) between 2022 and 2024 indicate that Shopee's large-scale and repetitive discount promotions potentially disrupt competition, particularly among small and medium enterprises (SMEs) that lack equivalent financial capacity or subsidy levels. This situation reflects a potential market exclusion, where dominant players leverage capital resources to lock in consumers and sustain loyalty. Argue from Khan concept of the Amazon Antitrust Paradox highlights how digital market dominance can arise from vertical integration,⁴⁰ data control, and distribution infrastructure, which is relevant to Shopee's strategy. Shopee's extensive use of subsidies may thus be viewed as an instrument to expand market power and create structural dependency among small businesses operating within its digital ecosystem.

Furthermore, Shopee's use of data raises significant legal concerns. The platform's capability to analyze transaction behaviors, product preferences, and purchasing patterns enables it to strengthen its position through algorithmic personalization. According from Cremer,⁴¹ in a report for the European Commission, emphasized that control over digital assets especially data constitutes a new form of market power. In Shopee's case, exclusive access to consumer and transaction data may be exploited to reinforce its dominant position, either by more targeted promotions or through algorithmic adjustments favoring specific sellers. Such practices may constitute abuse of dominance under Article 25(1) of Law No. 5 of 1999, as they create structural imbalances between the platform and dependent businesses.

A parallel can be drawn to the Google Shopping case,⁴² in which Google was found guilty of self-preferencing placing its own products at the top of search results to the detriment of competitors. If Shopee's algorithms similarly prioritize "Shopee Mall" products or exclusive partner sellers, this may constitute discriminatory behavior and unfair competition against

39 A. Fletcher and I. Lianos, "Reassessing Predation in Digital Markets," *Competition Policy International* 17, no. 2 (2021): 45–62.

40 L. Khan, "Amazon's Antitrust Paradox," *Yale Law Journal* 126, no. 3 (2018): 710–805.

41 Crémer, de Montjoye, and Schweitzer, *Competition Policy for the Digital Era*.

42 European Commission, "Google Search (Shopping) Case AT.39740."

independent merchants. Iacobucci and Ducci note that self-preferencing risks market foreclosure, stifles innovation, and reduces consumer choice.⁴³

Another emerging concern is the potential for algorithmic collusion in Shopee's pricing and promotional systems. Even without explicit agreements among competitors, algorithms that autonomously learn from market data can produce outcomes resembling collusion. According from Deng, Geradin, and Riefa,⁴⁴ argue that such phenomena challenge traditional competition law, which relies on evidence of explicit coordination. If Shopee's algorithms interact with competitors' algorithms to indirectly synchronize prices, the market may appear competitive while actually exhibiting price homogenization that harms consumers. This scenario calls for an effect-based legal approach, focusing on market impact rather than explicit intent.

From a broader regulatory perspective, Indonesia's Law No. 5 of 1999 (Competition Law), Law No. 11 of 2008 (Electronic Information and Transactions/ITE Law),⁴⁵ and the Personal Data Protection Law must be strengthened to effectively address digital economy challenges. The ITE Law imposes responsibilities on electronic system operators to safeguard user data, while the Personal Data Protection Law establishes the legal basis for transparent and proportional data processing. If Shopee uses consumer data to strengthen its market position without adequate consent or transparency, such practices may violate not only competition principles but also data protection norms. As Bania emphasizes, integrating competition policy with data protection frameworks is crucial to prevent excessive concentration of digital power.⁴⁶

In conclusion, this legal analysis reveals that Shopee's practices in Indonesia require comprehensive regulatory oversight that goes beyond traditional price- and output-based assessments. The KPPU should expand its analytical framework to include new determinants of market power, such as data control, algorithmic behavior, and platform conduct toward SMEs. Additionally, stronger inter-agency coordination between competition, digital, and data protection authorities is essential. Reinforcing legal guidelines on digital markets represents a strategic step to ensure that innovation and economic efficiency do not compromise fairness and sustainability in Indonesia's digital competition landscape. In this regard, the future of competition law enforcement must evolve toward a multidimensional approach that integrates economic analysis, legal reform, and technological literacy. Such an approach will enable regulators to anticipate and address algorithm-driven market distortions, prevent predatory pricing disguised as promotional strategies, and safeguard equitable participation for micro and small enterprises. Moreover, enhancing legal certainty

43 E. Iacobucci and F. Ducci, "Self-Preferencing and the Digital Economy: Legal and Economic Perspectives," *Antitrust Law Journal* 89, no. 1 (2022): 123–68.

44 F. Deng, D. Geradin, and C. Riefa, "Algorithmic Collusion and Antitrust Enforcement Challenges," *Journal of Antitrust Enforcement* 10, no. 3 (2022): 472–99.

45 "Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (n.d.).

46 N. Bania, "Data Power and Antitrust: The Emerging Intersection of Competition and Privacy Law," *Stanford Technology Law Review* 25, no. 1 (2022): 115–47.

and transparency in digital trade practices can strengthen consumer trust, foster ethical innovation, and contribute to Indonesia's long-term economic resilience. Thus, fair and sustainable digital market governance should not merely aim to control competition, but to cultivate an inclusive and balanced digital ecosystem aligned with the nation's broader goals of social justice and welfare.

3. Shopee's Business Model and Legal Challenges

Shopee operates in Indonesia a multi-sided marketplace model that combines the roles of market intermediary, auxiliary service provider, and ecosystem manager for payment and promotional systems. Within this business process, the model relies on cross-subsidization, where one business unit funds discounts, vouchers, and shipping subsidies to lower final prices for consumers. The goal is to accelerate user growth and reinforce network effects. Economically, this form of cross-subsidization can increase short-term market efficiency but also carries the risk of competitive distortion if such subsidies are used as an exclusionary tool against rivals unable to sustain comparable subsidies.

In practice, Shopee's marketplace structure integrates various components of the digital economy—e-commerce transactions, digital finance (through ShopeePay and SPayLater), and logistics (through Shopee Xpress)—into a unified ecosystem. This integration allows Shopee to leverage internal data analytics and algorithmic personalization to optimize pricing and user engagement across platforms. Such interconnectivity generates significant *network effects*, where the value of the platform increases as more buyers and sellers participate. However, these same network effects can create high entry barriers for new competitors and strengthen Shopee's position as a dominant intermediary in the market.

Economically, this form of cross-subsidization can increase short-term market efficiency but also carries the risk of competitive distortion if such subsidies are used as an exclusionary tool against rivals unable to sustain comparable subsidies.⁴⁷

From a legal standpoint, large-scale subsidies and aggressive promotional strategies must be tested against Article 20 (predatory pricing) and Article 25 (abuse of dominant position) of Indonesia's Law No. 5 of 1999. Two evidentiary issues arise when these provisions are applied to digital platforms. First, traditional cost-based benchmarks (such as Average Variable Cost) are often inadequate for multi-sided platforms because the marginal transaction cost in digital environments is very low, and subsidies typically originate from other business units. Second, intent to exclude is difficult to establish when a strategy can be justified as consumer-friendly market penetration. Therefore, recent literature advocates an effects-based approach rather than a purely price cost test, suggesting modified predation tests that account for platform structure, capital access, and potential recoupment. These

47 Qi Fu and Gaoyan Lyu, "Competition Between Two-Sided Platforms With Quality-Based Subsidization," *International Journal of Electronic Commerce* 26, no. 4 (2022): 526–51.

studies stress the need for tailored assessments to detect algorithmic forms of predation.⁴⁸

In Indonesia, enforcement practices have illustrated this tension. In 2024, the KPPU opened an investigation into Shopee's courier service arrangements and later closed several cases following behavioral commitments by the parties involved. This development reflects KPPU's emerging antitrust approach toward platform-based discriminatory behavior without relying solely on conventional cost formulas. Public announcements also revealed conflict-of-interest concerns, heightening worries about self-preferencing. This practice has been a regulatory focus in Europe, where the European Commission accepted Amazon's behavioral commitments in 2022 and the Digital Markets Act (DMA) explicitly prohibits several forms of preferential treatment by "gatekeepers." Such precedents provide useful reference points for how jurisdictions formalize prohibitions and remedies for platform favoritism.⁴⁹

Another major challenge lies in data dominance and information asymmetry. Shopee collects extensive data on transactions, search behavior, pricing history, and seller performance. This capability enables the platform to optimize recommendation algorithms, target promotions, and tailor offers enhancing its competitive advantage. Recent literature identifies two key insights: (1) data can function as a barrier to entry and a source of market power when access is exclusive; and (2) traditional oversight mechanisms must be supplemented by data access and algorithmic transparency rules to allow regulators to evaluate competitive impact. Nonetheless, several scholars caution against automatically treating all data accumulation as monopolistic behavior. Overregulation could stifle innovation; hence, empirical evidence on the actual impact of data on market power is necessary.⁵⁰ Normatively, integrating competition law and data protection law serves as a crucial instrument for balancing efficiency with fair competition.⁵¹

From a normative legal perspective, several implications arise from the combination of commercial facts and academic findings. The interpretation of predatory pricing (Article 20) should evolve toward a test that reflects the two-sided nature of digital markets and the origin of subsidies. A purely variable-cost-based test is insufficient; evidence of exclusionary effects and the likelihood of recoupment must be central to the analysis.⁵² This approach

48 Zhou and Tian, "Impact of Live Streamer Characteristics and Customer Response on Live-Streaming Performance: Empirical Evidence from e-Commerce Platform."

49 Reuters, "E-Commerce Firm Shopee to Adjust Services in Indonesia after Antitrust Violation," Reuters.com, 2024, <https://www.reuters.com/business/retail-consumer/indonesia-says-e-commerce-firm-shopee-admits-violating-monopoly-rule-2024-06-26/html>.

50 Marco Gambaro, "Big Data Competition and Market Power," *Market and Competition Law Review* 2, no. 2 (2019): 99-122.

51 Alden Abbott and Satya Marrar, "Is Data Really a Barrier to Entry? Rethinking Competition Regulation in Generative AI" (Arlington, 2025).

52 Christopher R. Leslie, "Predatory Pricing Algorithms," *New York University Law Review* 98, no. 1 (2023): 49-111.

aligns with emerging literature advocating modified predation tests for digital platforms.⁵³ Likewise, the definition of abuse of dominance (Article 25) should expand to include control over data, logistics access, and algorithmic self-preferencing as potential abuse forms when they lead to market foreclosure. Non-price factors must therefore be integrated into dominance assessments a principle already reflected in the EU's DMA approach to gatekeeper behavior.⁵⁴

Regarding remedial measures, traditional sanctions should be complemented by appropriate structural or behavioral remedies for platforms. These may include obligations of non-discrimination in ranking and algorithms, data interoperability requirements, and limited algorithmic transparency. Such measures echo international policy recommendations on digital markets and align with commitments demanded by European regulators.⁵⁵

Finally, regulatory coordination is crucial. Since the core issues span competition, electronic transactions, and data processing, a technical and procedural coordination mechanism must be established to ensure that investigations can access technical evidence while complying with personal data protection laws.⁵⁶ Normatively, this reflects the idea that digital-era antitrust enforcement requires cross-regulatory technical capacity.⁵⁷

In conclusion, Shopee's business model based on cross-subsidization and ecosystem control has generated efficiency benefits but also poses significant competitive risks. Indonesia's Law No. 5 of 1999 provides the normative foundation to address anti-competitive practices such as predatory pricing and abuse of dominance, yet its enforcement effectiveness depends on adapting evidentiary methods, recognizing non-price forms of abuse, and improving regulatory coordination frameworks. The latest international literature supports this trajectory, recommending platform-specific tests, transparency and interoperability obligations, and remedies addressing self-preferencing and algorithmic harms, while emphasizing the need for robust empirical evidence before imposing restrictions that might inadvertently hinder innovation.

4. Economic Efficiency and the Protection of Market Fairness

Shopee is often praised for its contribution to economic efficiency through the digitalization of product distribution, the expansion of market access, and the reduction of transaction costs. The platform enables small-scale entrepreneurs to reach consumers

53 Anush Ganesh, "Predatory Pricing in Platform Markets: A Modified Test for Firms within the Scope of Article 3 of the DMA and Super-Dominant Platform Firms under Article 102 TFEU," *European Competition Journal*, 2025, 1–37, <https://doi.org/10.1080/17441056.2024.2428032>.

54 Martin Peitz, "The Prohibition of Self-Preferencing in the DMA," *CERRE Issue Paper*, 2022.

55 Bania, "Data Power and Antitrust: The Emerging Intersection of Competition and Privacy Law."

56 Peter J. van de Waerdt, "Reinforcing Data Protection and Competition through Art. 6(2) of the Digital Markets Act," *International Review of Law and Economics* 82, no. 106265 (2025): 1–17, <https://doi.org/10.1016/j.irl.2025.106265>.

57 KPPU, "Indonesia: Closed KPPU Investigation into Shopee and Shopee Express for Alleged Abuse of Market Power," [digitalpolicyalert.org](https://digitalpolicyalert.org/event/24371-closed-kppu-investigation-into-shopee-and-shopee-express-for-alleged-abuse-of-market-power?html), 2024, <https://digitalpolicyalert.org/event/24371-closed-kppu-investigation-into-shopee-and-shopee-express-for-alleged-abuse-of-market-power?html>.

across regions without requiring substantial physical infrastructure. In the short term, marketplace systems such as Shopee enhance *allocative efficiency* by rapidly matching supply and demand while minimizing transaction costs. However, from a competition law perspective, economic efficiency cannot serve as an absolute justification if it is achieved through practices that undermine a competitive market structure. This principle aligns with the spirit of Articles 3 and 9 of Law No. 5 of 1999, which emphasize that the purpose of competition law is not merely efficiency but also to ensure equal opportunities for business actors and to protect the public interest.

Normatively, the core issue lies in balancing economic efficiency and market fairness. On one hand, Shopee's strategies such as promotions, large-scale discounts, and shipping subsidies can enhance consumer welfare by lowering prices and increasing accessibility. On the other hand, if such strategies systematically suppress profit margins of small businesses and create dependency on the platform's ecosystem, the efficiency becomes illusory, built upon exclusive practices that weaken long-term market competitiveness. This aligns with the view of Capobianco and Nyoike in the *OECD Competition Policy Roundtable on Competition in Digital Markets*,⁵⁸ which asserts that competition policy in the digital era must assess efficiency dynamically, taking into account its long-term effects on innovation and market pluralism.

Moreover, the issue of market fairness in the digital context extends beyond pricing it also involves access to data, algorithms, and visibility within the platform. Shopee, through its algorithmic infrastructure, possesses the capacity to determine which products are prioritized or displayed more frequently to consumers. This algorithmic ranking system, often presented as neutral or efficiency-oriented, can in practice embed preferential treatment toward certain sellers, such as large-scale vendors, strategic partners, or those participating in paid advertising programs. As a result, smaller businesses and micro-entrepreneurs are systematically disadvantaged in terms of digital visibility and transaction volume, even in the absence of explicit price or entry barriers.

Such algorithmic governance enables platforms to subtly manipulate market outcomes under the guise of technical optimization, creating what some scholars refer to as "*code-based market dominance*." In the context of Indonesia, this presents a significant regulatory challenge because the current legal framework—particularly Law No. 5 of 1999—was designed for traditional market settings and lacks explicit provisions addressing algorithmic decision-making or data-driven market control.

Legally, such practices can be interpreted as a violation of the fair competition principle stipulated under Article 25(1)(a) of Law No. 5 of 1999, which prohibits business actors from abusing a dominant position to manipulate market mechanisms or restrict competition.

58 A. Capobianco and P. Nyoike, "Competition Policy in Digital Markets: Balancing Efficiency and Fairness," 2021.

The unilateral control exercised by platforms through data analytics and algorithmic design effectively constitutes a modern form of market manipulation, where visibility becomes the new competitive currency. Therefore, regulatory authorities such as the KPPU should consider integrating algorithmic accountability and data governance principles into competition assessments. By doing so, Indonesia can align its enforcement framework with emerging global standards that recognize algorithmic bias and data asymmetry as central threats to fair competition in digital markets.

According from Fox,⁵⁹ emphasizes that competition law in developing countries, including Indonesia, should not merely imitate neoliberal logic centered solely on consumer efficiency. Given that Indonesia's economic structure is still dominated by local micro- and small-scale enterprises within imperfectly competitive markets, competition law should function as an *instrument of fairness* to prevent economic exploitation by dominant market players, including global digital corporations. This reasoning is consistent with the *inclusive competition policy* approach introduced by UNCTAD,⁶⁰ which considers market sustainability and economic inclusion as equally vital dimensions. Therefore, Indonesia's competition law must maintain a balance between consumer interests and the welfare of small businesses, rather than prioritizing low prices as the sole indicator of societal welfare.

Economic efficiency achieved through discriminatory practices also risks creating *long-term market harm*. Research from Petit and Teece,⁶¹ in *Industrial and Corporate Change* note that when a single platform dominates digital value chains, apparent surface-level efficiency often conceals a decline in *dynamic efficiency*. In Shopee's case, promotional incentives and closed algorithmic systems may foster dependency among small businesses on the Shopee ecosystem for survival. Consequently, when promotional incentives diminish, these small businesses struggle to adapt outside the platform. Similar phenomena have been observed in India and Brazil, where dominant platforms create concentrated market structures despite appearing competitive on the surface.⁶²

From a normative standpoint, Article 33(4) of the 1945 Constitution provides a constitutional framework stating that the economy is organized based on economic democracy, emphasizing togetherness, efficiency with justice, and sustainability. Thus, Indonesia's competition law should not be interpreted solely within the framework of free-market economics but should also function as an instrument to realize social justice and equitable distribution of economic opportunities. Regulatory oversight of platforms like Shopee is therefore not anti-innovation; rather, it is a means to ensure that digital economic growth remains inclusive and does not create new inequalities in market access.

59 Fox, *Antitrust and Global Capitalism: The Quest for Inclusive Competition Policy*.

60 UNCTAD, "Model Law on Competition. United Nations Conference on Trade and Development," 2021.

61 Petit and Teece, "Dynamic Efficiency and Competition Policy in Digital Markets."

62 K. Meagher, "Digital Platform Power and Competition Policy in Emerging Economies," *Journal of Competition Law & Economics* 19, no. 1 (2023): 89-110.

The principle of balance between efficiency and fairness is also reflected in European practice through the *Digital Markets Act* (DMA), which regulates “gatekeepers.” This approach illustrates that market fairness cannot be overlooked in the name of efficiency. Such a regulatory model can serve as a reference for Indonesia in formulating specific guidelines on *fair digital competition*, particularly regarding algorithmic transparency, prohibition of self-preferencing, and obligations for proportional data access. As Lianos argues,⁶³ fairness in digital markets requires *procedural fairness* to ensure that businesses dependent on digital infrastructures are not marginalized by internal platform policies.⁶⁴

In conclusion, Shopee’s contribution to economic efficiency should be acknowledged as a form of technological and organizational innovation that enhances productivity, market connectivity, and consumer convenience. However, such efficiency must not evolve into an instrument of monopolization, data domination, or exclusionary pricing. Within the paradigm of fair competition law, the central challenge lies in reconciling dynamic efficiency with structural fairness—ensuring that gains from digital innovation are equitably distributed and that competition remains open and contestable.

D. Conclusion

The study of competition law in the digital economy particularly concerning Shopee’s business model demonstrates that platform-based economic transformation poses serious challenges to Indonesia’s competition law framework. Shopee, through cross-subsidization strategies, massive promotions, and user data integration, has generated significant economic efficiency, particularly by expanding market access for small-scale entrepreneurs. However, such efficiency carries risks of price distortion and potential abuse of dominant position, leading to imbalanced market structures. Normatively, Articles 20 and 25 of Law No. 5 of 1999 already provide legal grounds for addressing *predatory pricing* and *abuse of dominance*. Nevertheless, the complexity of digital business models necessitates reinterpretation of these provisions to address emerging forms of competition based on algorithms, data, and digital ecosystem control. In this context, competition law must not only safeguard economic efficiency but also ensure market fairness and the sustainability of long-term competition. International cases, such as the European Commission’s investigation into Amazon’s *self-preferencing* practices, highlight the urgency for Indonesia to develop more responsive legal instruments to address non-traditional dominance and to strengthen data protection authorities to prevent market power abuse by major digital firms. For instance, between 2020 and 2023, Shopee consistently offered cross-subsidized pricing and free shipping programs that undercut market prices. Several small enterprises also reported revenue declines due to prolonged discount campaigns, which indicate potential

63 I. Lianos, “Competition Law as Social Policy,” *Current Legal Problems* 72, no. 1 (2019): 1–39.

64 I. Lianos, “Contestability and Fairness in Digital Markets: The DMA and Beyond,” *Competition Law International Review* 19, no. 1 (2023): 33–58.

predatory pricing behavior in the Indonesian e-commerce market. In the context of Shopee and similar digital platforms, adaptive regulation grounded in algorithmic transparency and accountability principles is essential to ensure that competition law remains relevant and effective in promoting equitable digital economic growth.

Bibliography

A. Books

- Abbott, Alden, and Satya Marrar. "Is Data Really a Barrier to Entry? Rethinking Competition Regulation in Generative AI." Arlington, 2025.
- Capobianco, A., and P. Nyoike. "Competition Policy in Digital Markets: Balancing Efficiency and Fairness," 2021.
- Crémer, J., Y.-A. de Montjoye, and H. Schweitzer. *Competition Policy for the Digital Era*. European Commission Report, 2019.
- European Commission. "Google Search (Shopping) Case AT.39740." Brussels, 2017.
- Ezrachi, A., and M. E. Stucke. *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy*. Harvard University Press, 2016.
- Fox, E. M. *Antitrust and Global Capitalism: The Quest for Inclusive Competition Policy*. Oxford University Press, 2019.
- Google, and Temasek. "E-Conomy SEA 2018 Southeast Asia's Internet Economy Hit Inflection Point." Singapura, 2018.
- Marzuki, P. M. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2017.
- Miles, Matthew B., and A. Michael Huberman. *Qualitative Data Analysis: A Methods Sourcebook*. 3rd ed. Arizona State University: SAGE Publications, 1994.
- Moleong, L. J. *Metodologi Penelitian Kualitatif*. Bandung: Remaja Rosdakarya, 2019.
- Motta, M. *Competition Policy: Theory and Practice*. Cambridge University Press, 2018.
- OECD. "Digital Economy Outlook 2023," 2023.
- Soekanto, S., and S. Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajawali Press, 2015.
- UNCTAD. "Model Law on Competition. United Nations Conference on Trade and Development," 2021.
- Whish, R., and D. Bailey. *Competition Law: Tenth Edition*. Oxford: Oxford University Press, 2021.
- . *Competition Law*. 10th ed. Oxford University Press, 2021.

B. Articles

- Adzkie, Iqta, Elisatris Gultom, and Deviana Yuanitasari. "Analisis Dugaan Monopoli Sistem Pembayaran Oleh Shopee Di Indonesia, Mencakup Dampaknya Terhadap Persaingan Usaha, Penegakkan Hukum, Dan Implikasi Hukum Dalam Ekosistem E-Commerce Digital." *Jihhp* 5, no. 5 (2025): 1–10. <https://dinastirev.org/DOI:https://doi.org/10.38035/jihhp.v5i5https://creativecommons.org/licenses/by/4.0/>.
- Asih, Endah Mustika. "Analisis Pada Shopee Sebagai E-Commerce Terpopuler Di Indonesia." *Jurnal Ekonomi Bisnis Antartika* 2, no. 1 (2024): 73–79. <https://doi.org/10.70052/jeba.v2i1.299>.
- Aziz, Febrian Al, and Mahlil Adriaman. "Ancaman Shop Tokopedia Dalam Praktek Monopoli Perdagangan Dan Persaingan Usaha Tidak Sehat Terhadap Keberlangsungan UMKM Di Kota Bukittinggi." *Bhirawa Law Journal* 5, no. 2 (2024): 1–11. <http://jurnal.unmer.ac.id/index.php/blj/>.

- Bania, N. "Data Power and Antitrust: The Emerging Intersection of Competition and Privacy Law." *Stanford Technology Law Review* 25, no. 1 (2022): 115–47.
- Deng, F., D. Geradin, and C. Riefa. "Algorithmic Collusion and Antitrust Enforcement Challenges." *Journal of Antitrust Enforcement* 10, no. 3 (2022): 472–99.
- Devita, Mela, Zuhrinal M Nawawi Nawawi, and Nuri Aslami. "E-Commerce Shopee Marketing Strategy in International Business." *Journal of Social Research* 1, no. 12 (2022): 491–97. <https://doi.org/10.55324/josr.v1i12.350>.
- Fletcher, A., and I. Lianos. "Reassessing Predation in Digital Markets." *Competition Policy International* 17, no. 2 (2021): 45–62.
- Fu, Qi, and Gaoyan Lyu. "Competition Between Two-Sided Platforms With Quality-Based Subsidization." *International Journal of Electronic Commerce* 26, no. 4 (2022): 526–51.
- Gal, M. S., and D. L. Rubinfeld. "The Hidden Costs of Free Digital Services. Oxford." *Journal of Legal Studies* 39, no. 3 (2019): 517–51.
- Gambaro, Marco. "Big Data Competition and Market Power." *Market and Competition Law Review* 2, no. 2 (2019): 99–122.
- Ganesh, Anush. "Predatory Pricing in Platform Markets: A Modified Test for Firms within the Scope of Article 3 of the DMA and Super-Dominant Platform Firms under Article 102 TFEU." *European Competition Journal*, 2025, 1–37. <https://doi.org/10.1080/17441056.2024.2428032>.
- Hardani, Nur Hikmatul Auliya, Helmina Andriani, Roushandy Asri Fardani, Jumari Ustiawaty, Evi Fatmi Utami, Dhika Juliana Sukmana, and Ria Rahmatul Istiqomah. *Metode Penelitian Kualitatif Dan Kuantitatif*, 2020.
- Humairah, Lutfiyah Al. "Strategi Ekspansi Shopee Di Indonesia: Respon Dan Kebijakan Indonesia Dalam Perspektif Ekonomi Politik Internasional." *Dialogika: Jurnal Penelitian Komunikasi Dan Sosialisasi* 1, no. 3 (2025): 53–61.
- Iacobucci, E., and F. Ducci. "Self-Preferencing and the Digital Economy: Legal and Economic Perspectives." *Antitrust Law Journal* 89, no. 1 (2022): 123–68.
- Khan, L. "Amazon's Antitrust Paradox." *Yale Law Journal* 126, no. 3 (2018): 710–805.
- Kristanto, F. H., H. Wimanda Rahma, and M. Nahrowi. "Factors Affecting E-Commerce Customer Loyalty In Indonesia." *Jurnal Syntax Transformation* 39, no. 3 (2022): 1150–64. <https://doi.org/https://doi.org/10.46799/jst.v3i09.613>.
- Leslie, Christopher R. "Predatory Pricing Algorithms." *New York University Law Review* 98, no. 1 (2023): 49–111.
- Lestari, Kinanti Putri Kusumah, Kurnia Khafidhatur Rafiah, and Muhammad Rifqi Arviansyah. "Live Shopping and Consumers' Purchase Intention in E-Commerce: A Systematic Literature Review." *Airlangga Journal of Innovation Management* 6, no. 1 (2025): 171–83. <https://doi.org/10.20473/ajim.v6i1.70707>.
- Lianos, I. "Competition Law as Social Policy." *Current Legal Problems* 72, no. 1 (2019): 1–39.
- . "Contestability and Fairness in Digital Markets: The DMA and Beyond." *Competition Law International Review* 19, no. 1 (2023): 33–58.
- Meagher, K. "Digital Platform Power and Competition Policy in Emerging Economies." *Journal of Competition Law & Economics* 19, no. 1 (2023): 89–110.

- Olifiani, Laras Putri, Moh Talabul Amal, and Fany Anggun Abadi. "Pengaruh E-Commerce Shopee Terhadap Ekonomi Indonesia Di Masa Pandemi." *Jurnal Komunikasi Peradaban* 3, no. 2 (2025): 1–13.
- Peitz, Martin. "The Prohibition of Self-Preferencing in the DMA." *CERRE Issue Paper*, 2022.
- Petit, N., and D. Teece. "Dynamic Efficiency and Competition Policy in Digital Markets." *Industrial and Corporate Change* 31, no. 5 (2022): 987–1009.
- Sari, Diah Rukmana, and Nasrudin Nasrudin. "Constructing Indonesian Digital Economy Index in Determining Economic Policy Priorities amidst the Covid-19 Pandemic." *Economics and Finance in Indonesia* 68, no. 1 (2022): 62–74. <https://doi.org/10.47291/efi.2022.05>.
- Shaikh, Sufiya M. "Law Through a Multidisciplinary Lens: Insights From Social, Economic, Technological and Historical Frameworks." *Indian Journal of Law and Legal Research* VII, no. III (2025): 6556–66.
- Waerdt, Peter J. van de. "Reinforcing Data Protection and Competition through Art. 6(2) of the Digital Markets Act." *International Review of Law and Economics* 82, no. 106265 (2025): 1–17. <https://doi.org/10.1016/j.irl.2025.106265>.
- Wicaksono, Rianto Anugerah. "E-Commerce Market Saturation in Indonesia: The Dynamics of Price Competition from Islamic Economic Perspective." *Jurnal Ekonomika Dan Bisnis Islam* 8 (2025): 1–19. <https://doi.org/10.26740/jekobi.v8n1.p1-19>.
- Xing-hong, Q., S. Qiang, and H. Zhi-sheng. "Competitive and Cooperative Strategies for Online Shopping Logistics Service Supply Chain Considering Customer Expectations and Quality Cost." *Journal of Industrial Engineering and Engineering Management* 33, no. 3 (2019): 136–46. <https://doi.org/https://doi.org/10.13587/j.cnki.jjeem.2019.03.016>.
- Zeng, M., and F. Li. "Digital Platform Ecosystems in Southeast Asia: The Case of Shopee." *Asia Pacific Business Review* 28, no. 4 (2022): 521–538.
- Zhou, Xiaohui, and Xin Tian. "Impact of Live Streamer Characteristics and Customer Response on Live-Streaming Performance: Empirical Evidence from e-Commerce Platform." *Procedia Computer Science* 214, no. C (2022): 1277–84. <https://doi.org/10.1016/j.procs.2022.11.306>.

C. Internet

- Kompas.com. "Persaingan E-Commerce Ketat, Shopee Unggul Dalam Jumlah Kunjungan Pelanggan." Kompas.com, 2021. Accessed November 5, 2025. <https://money.kompas.com/read/2021/10/08/145757126/persaingan-e-commerce-ketat-shopee-unggul-dalam-jumlah-kunjungan-pelanggan?page=all>.
- KPPU. "Indonesia: Closed KPPU Investigation into Shopee and Shopee Express for Alleged Abuse of Market Power." digitalpolicyalert.org, 2024. Accessed November 5, 2025. <https://digitalpolicyalert.org/event/24371-closed-kppu-investigation-into-shopee-and-shopee-express-for-alleged-abuse-of-market-power?html>.
- Muhamad, Nabilah. "Shopee Dominasi Pasar E-Commerce Asia Tenggara Pada 2023." databoks.katadata.co.id, 2024. Accessed November 5, 2025. [https://databoks.katadata.co.id/teknologi-telekomunikasi/statistik/66989de7b7168/shopee-dominasi-pasar-e-commerce-asia-tenggara-pada-2023#:~:text=Langsung baca artikel "Shopee Dominasi,pembayaran masih dalam proses aktivasi.&text=Berdasarkan laporan Momen](https://databoks.katadata.co.id/teknologi-telekomunikasi/statistik/66989de7b7168/shopee-dominasi-pasar-e-commerce-asia-tenggara-pada-2023#:~:text=Langsung baca artikel \).
- Reuters. "E-Commerce Firm Shopee to Adjust Services in Indonesia after Antitrust Violation." Reuters.com, 2024. Accessed November 5, 2025. <https://www.reuters.com/business/retail-consumer/indonesia-says-e-commerce-firm-shopee-admits-violating-monopoly-rule-2024-06-26/html>.

D. Regulations

Peraturan Menteri Perdagangan Republik Indonesia Nomor 31 Tahun 2023 Tentang Perizinan Berusaha, Periklanan, Pembinaan, dan Pengawasan Pelaku Usaha Dalam Perdagangan Melalui Sistem Elektronik

Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

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

Curriculum Vitae of Author

Cahyoko Edi Tando is a lecturer and practitioner at Politeknik Pengayoman Indonesia. He is currently affiliated with the Community Guidance Study Program and has also been serving as a tutor at Universitas Terbuka in the Public Administration Program since 2023. His research focuses on governance, public administration, and public sector management, with a methodological emphasis on literature review, which offers significant advantages in research. In addition, he is actively involved in several interdisciplinary research projects, contributing to the advancement of scientific knowledge.

COMPETITION LAW IN INDONESIA: SOCIO-LEGAL APPROACH

Pascalis Dani K. Wibowo

Politeknik Pengayoman Indonesia, Ministry of Law, Indonesia

Author's e-mail: pascalisw1993@gmail.com

ABSTRACT

This paper aims to analyze the relationship between competition law, the principle of economic efficiency, and social justice within the framework of the Indonesian legal system. The study employs a normative legal research method by examining relevant primary, secondary, and tertiary legal sources, including Law No. 5 of 1999, decisions of the Indonesian Competition Commission (KPPU), and various relevant academic articles. The study finds that although economic efficiency serves as a fundamental principle in the enforcement of competition law in many countries, its implementation in Indonesia must take into account the dimension of social justice as mandated by the Constitution. Indonesia's competition law should strive to strike a balance between the freedom to conduct business and social responsibility in order to ensure a fair, competitive, and equitable market environment.

Keywords: competition law; economic efficiency; Indonesia; KPPU; social justice

A. Introduction

Business competition is one of the essential elements in the modern economic system, aiming to foster innovation, enhance efficiency, create employment opportunities,¹ and improve societal welfare.² In Indonesia, Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition,³ represents a significant milestone in the development of the modern economic system, particularly in the post-crisis period of the late 1990s reform era.⁴ This legislation symbolizes a crucial transition from a conglomerate-centered economy to a more open and competitive structure within Indonesia's contemporary economic landscape.⁵

1 Asril Sitompul, *Praktek Monopoli Dan Persaingan Usaha Tidak Sehat* (Jakarta: PT Citra Aditya Bakti, 2019).

2 Ayup Suran Ningsih, "Implikasi Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat Pada Pelaku Usaha Mikro Kecil Dan Menengah (UMKM)," *Jurnal Penelitian Hukum De Jure*, 2019, 210.

3 "Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat" (n.d.).

4 Uray Allysa Putri and Muhammad Sodiq Qamal, "Analisis Implementasi Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat Terhadap Penyelesaian Hukum Atas Pengembalian Kerugian Konsumen," *Tanjungpura Legal Review*, 2022, 30-41.

5 Mustafa Kamal Rokan, *Hukum Persaingan Usaha: Teori Dan Praktiknya Di Indonesia*, 2nd ed. (Jakarta: RajaGrafindo Persada, 2012).

However, the purpose of competition law extends beyond achieving economic efficiency. It must also embody the values of social justice as enshrined in Article 33 of the 1945 Constitution, which stipulates that the national economy shall be organized as a collective endeavor based on the principles of kinship. Consequently, Indonesia's competition law possesses a distinct character compared to the pure free-market system of liberal countries such as the United States, as it incorporates a strong social dimension.⁶

Efficiency is a key concept in the *law and economics* analysis.⁷ According to Posner asserts that the primary objective of law is to maximize economic efficiency defined as the allocation of resources that yields the highest level of social welfare.⁸ This approach is grounded in the theories of Pareto efficiency and Kaldor–Hicks efficiency. Pareto efficiency is achieved when a change benefits at least one party without making others worse off, whereas Kaldor–Hicks efficiency allows for some losses as long as the overall gains outweigh the losses.⁹

In the context of competition law, efficiency can be manifested through three dimensions: allocative efficiency, where prices and output optimally reflect supply and demand; productive efficiency, where goods and services are produced at the lowest possible cost; and dynamic efficiency, which drives innovation and long-term economic growth. Nevertheless, this economically driven perspective has been criticized by proponents of progressive legal thought. Explain from Rahardjo argues, that efficiency often neglects the moral and justice dimensions of law.¹⁰ Therefore, efficiency should be understood as a means rather than an end of the legal system.

In the United States, *antitrust law* operates under the paradigm of economic efficiency and the *consumer welfare standard*, as articulated by the Chicago School of Law and Economics.¹¹ In practice, however, the pursuit of economic efficiency often contradicts the ideals of social justice. Oligopolistic behavior, vertical restraints, and cartel-based price fixing can distort markets and disadvantage small businesses and consumers. In this regard, the Indonesia Competition Commission (KPPU) plays a central role in maintaining equilibrium between market efficiency and equitable economic distribution.¹²

6 Rachmadi Usman, *Hukum Persaingan Usaha Di Indonesia* (Banjarmasin: Sinar Grafika, 2013).

7 R. A. Posner, "The Chicago School of Antitrust Analysis," *University of Pennsylvania Law Review* 127, no. 4 (1979): 925–48.

8 R. A. Posner, *Economic Analysis of Law*, 5th ed., vol. 127 (Aspen Publishers, 2001).

9 Posner, "The Chicago School of Antitrust Analysis."

10 S. Rahardjo, *Hukum Dalam Jagat Ketertiban* (UKI Press, 2006).

11 R. H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (New York: Free Press, 1993).

12 Ratih Agustin Wulandari et al., "Pengaruh Hukum Persaingan Usaha Terhadap Pertumbuhan Ekonomi Nasional," *Jurnal Dimensi Hukum* 9, no. 1 (2025): 56–63.

The *OECD Peer Review on Competition Law and Policy in Indonesia* indicates that several sectors in Indonesia exhibit high market concentration, with the five largest firms controlling more than 70% of total market share.¹³ Such concentration may inhibit innovation, weaken price competition, and exacerbate economic inequality. Within this context, the KPPU plays a pivotal role not only as a law enforcement agency but also as a policy advisor to the government in formulating regulations that promote fair competition.¹⁴ The KPPU is mandated to ensure that market structures are not dominated by a small number of firms and that economic freedom does not lead to inequality.¹⁵

However, in reality, the objectives of efficiency and social justice have not yet been fully harmonized. Despite the normative intent of Law No. 5 of 1999, various sectors—especially the digital marketplace dominated by platforms such as Shopee—illustrate that market freedom often outweighs social responsibility. Small and medium-sized enterprises remain dependent on large digital intermediaries, facing unequal visibility and bargaining power. This condition reflects a tangible gap between *das Sein* (what is) and *das Sollen* (what ought to be), where the implementation of competition law still falls short of realizing the constitutional vision of an economy organized on kinship and collective welfare. Highlighting this discrepancy is crucial to underscore the urgency and relevance of reassessing Indonesia's competition law in the context of the digital economy.

The KPPU's integrative approach, which balances economic efficiency and social justice, demonstrates the hybrid nature of Indonesia's competition law combining an *economic-based competition policy* with a strong normative orientation toward social welfare. This concept represents a manifestation of the national objective to establish an economy that is both efficient and equitable, as enshrined in the 1945 Constitution.¹⁶

The concept of social justice itself has deep roots in classical philosophy. Aristotle distinguished between distributive justice and corrective justice, where distributive justice concerns the proportional allocation of resources, while corrective justice focuses on restoring balance following a legal violation. Later, Rawls introduced the theory of *justice as fairness*,¹⁷ emphasizing two main principles: equal liberty for all and that economic inequalities are justifiable only if they benefit the least advantaged members of society. This principle aligns with the fifth principle of *Pancasila*, the Indonesian state ideology social justice for all the people of Indonesia.

13 OECD, "Digital Economy Outlook 2023," 2023.

14 Abdurrahman Saidi, "Mengatasi Tantangan Besar: KPPU Dan Strategi Penegakan Hukum Untuk Pelanggaran Tender," *Iuris Studia: Jurnal Kajian Hukum* 6, no. 1 (2025): 114–22, <https://doi.org/10.55357/is.v6i1.839>.

15 Alston Chandra and Sari Murti Widiyastuti, "Peran Komisi Pengawas Persaingan Usaha (KPPU) Dalam Mendorong Iklim Persaingan Usaha Yang Sehat Di Sektor Perunggasan," *Justitia Et Pax Jurnal Hukum* 33 (2017): 1–11.

16 J. Asshiddiqie, *Konstitusi Ekonomi* (Jakarta: Rajawali Pers, 2015).

17 J. Rawls, *A Theory of Justice* (Harvard University Press, 1971).

In the context of economic law, social justice requires that legal mechanisms not only regulate market operations but also ensure balance between large and small business actors. Efficiency without justice risks widening social inequality.¹⁸ Therefore, Indonesia's economic law must function as an instrument for redistributing economic power to achieve collective welfare.

Accordingly, this study formulates two main research questions: (RQ1) How is the principle of economic efficiency applied in Indonesia's competition law? and (RQ2) How can the value of social justice be integrated as a corrective to the orientation toward economic efficiency?. The purpose of this study is to critically examine the extent to which Indonesia's competition law reflects a balanced integration between efficiency and social justice, and to identify the normative and institutional challenges in realizing such equilibrium. Through a legal literature review approach, this article analyzes the interrelation between economic law theory and the principle of social justice in the implementation of competition law in Indonesia.

B. Research Method

This study employs a legal literature review method, also known as normative legal research, which examines law as a set of norms operating within the positive legal system rather than as a social phenomenon. Law is thus analyzed as an autonomous and logical system of norms. The primary focus of this approach lies in doctrinal and conceptual analyses of legislation, judicial decisions, and legal doctrines. This method was chosen because the research aims to analyze economic efficiency and social justice within Indonesia's competition law issues that are normative and conceptual in nature within the domain of modern economic law.

According to Marzuki,¹⁹ normative legal research does not require the collection of empirical data from the field but is instead conducted through library-based research using relevant legal materials. Its objective is to identify legal principles, concepts, and norms that can be used to explain and evaluate how Indonesia's competition law governs the relationship between market freedom and economic equity. To achieve these objectives, the study applies three complementary legal approaches:

The first Statutory Approach, this approach involves examining laws and regulations governing business competition, particularly Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, along with its implementing regulations such as Government Regulations, KPPU (Indonesia Competition Commission) Regulations, and Supreme Court decisions related to competition cases. The purpose

18 A. Sen, *The Idea of Justice* (Harvard University Press, 2009).

19 P. M. Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2017).

is to understand the substance, principles, and objectives of competition law within the constitutional and national economic framework. As Marzuki emphasizes,²⁰ the statutory approach is essential for interpreting the content and meaning of positive legal norms systematically and consistently with the governing principles of law.

The second, Conceptual Approach, this approach is used to examine theoretical concepts relevant to the research topic, namely the theories of economic efficiency and social justice in economic law. Through this approach, the study analyzes the views of scholars such as Posner,²¹ and Bork,²² who emphasize efficiency as the primary goal of competition law, and Sen,²³ and Rawls,²⁴ who advocate for distributive justice within economic systems. This approach therefore serves to construct a conceptual framework that bridges the objectives of efficiency and justice within Indonesia's competition law, grounded in the values of *Pancasila* and Article 33 of the 1945 Constitution.

The third is Comparative Approach, this approach compares Indonesia's competition law enforcement model with that of other jurisdictions, such as the United States and the European Union. The U.S. model emphasizes the *consumer welfare standard* and *economic efficiency*, whereas the EU model prioritizes *fair competition* and the protection of market structures. By drawing such comparisons, the study seeks to identify the ideal position for Indonesia's competition law in integrating economic efficiency with social justice. As argued by Zweigert and Kötz,²⁵ the comparative approach is crucial for broadening legal understanding and enriching legal reasoning in developing systems suited to national socio-economic conditions.

The legal materials used in this research are categorized into three types: (1) Primary legal materials, consisting of legislation and judicial decisions that form the analytical foundation, including the 1945 Constitution particularly Article 33; Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition; KPPU regulations; and Supreme Court decisions. (2) Secondary legal materials, comprising previous research, books, scholarly articles, and relevant international institutional reports, used to reinforce the study's conceptual and analytical arguments. (3) Tertiary legal materials, including supporting materials such as legal dictionaries, legal encyclopedias, annual institutional reports, and guides to law and economics terminology, which provide additional explanations for technical terms and theoretical contexts.

20 Marzuki.

21 Posner, *Economic Analysis of Law*.

22 Bork, *The Antitrust Paradox: A Policy at War with Itself*.

23 Sen, *The Idea of Justice*.

24 Rawls, *A Theory of Justice*.

25 K. Zweigert and H. Kötz, *An Introduction to Comparative Law*, 3rd ed. (Oxford: Clarendon Press, 1998).

The analytical technique applied in this study is descriptive qualitative analysis, aiming to explain and interpret the interaction between economic efficiency and social justice within Indonesia's competition law framework. This method involves systematic, grammatical, and teleological interpretation of legal texts and KPPU decisions, alongside conceptual analysis of economic law theories. The research proceeds through several stages: identifying legal norms and principles governing competition, examining the normative relationship between market freedom and social justice, interpreting the alignment between law enforcement practices and national socio-economic goals, and drawing normative conclusions to formulate an ideal competition law policy based on *Pancasila*-oriented economic ideology.

This descriptive qualitative method aligns with Moleong,²⁶ assertion that a qualitative approach in normative legal research enables the researcher to uncover the meaning behind legal norms and the interplay of values embedded within them.

C. Discussions

This study will discuss the context relevant to the research questions. The detailed analysis is presented below:

1. Economic Efficiency in Indonesia Competition Law

Referring to Article 3 of Law No. 5 of 1999,²⁷ one of the main objectives of competition law in Indonesia is to enhance national economic efficiency.²⁸ This article establishes a foundational legal mandate that links competition policy to the broader goal of strengthening the national economy. However, the meaning of "efficiency" within Indonesia's socio-legal context cannot be equated simply with *market efficiency* as understood in liberal economic systems, where efficiency primarily refers to maximizing output and minimizing costs through market competition.²⁹ Instead, it must be understood in relation to the ideals of social justice and public welfare as enshrined in the Indonesian Constitution.³⁰ Rather, in Indonesia, efficiency is inherently linked to the ideals of social justice, collective welfare, and economic democracy as enshrined in Article 33 of the 1945 Constitution, which emphasizes that the economy must be organized as a collective enterprise based on the principles of kinship.

26 L. J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2019).

27 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat.

28 Kuntunugroho Adnan, "Fungsi Hukum Pembangunan Ekonomi Dalam Persaingan Usaha Yang Sehat," *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 4 (2024): 238–58, <https://doi.org/10.62383/terang.v1i4.649>.

29 Malse Yulivestra, "Neo-Liberalism and Global Economic Crises (The Changing of the State-Market Relations in Indonesia)," *Andalas Journal of International Studies Volume* 1, no. 1 (2012): 55–69.

30 Inaya Rakhmani and Zulfa Sakhiyya, "The Cultural Political Economy of Knowledge in Neo-Liberal Indonesia," *Journal of Contemporary Asia* 55, no. 3 (May 27, 2025): 388–404, <https://doi.org/10.1080/00472336.2023.2298449>.

According to Nasution,³¹ economic efficiency in the Indonesian legal framework extends beyond allocative efficiency concerned with cost reduction and output maximization to encompass *social efficiency*, which considers the equitable distribution of opportunities and the social impact of economic activities. Thus, efficiency is not merely a technical measure to avoid resource redundancy, but an instrument to realize collective prosperity and balance within the national economic structure.

From an economic law perspective, Posner views efficiency as an objective parameter in evaluating antitrust policies,³² arguing that efficiency ultimately generates total welfare. However, this approach is often criticized for neglecting the dimension of distributive justice. In contrast, Rahardjo asserts that Indonesian economic law cannot be separated from moral and social dimensions,³³ as it is deeply rooted in *Pancasila* values, which reject absolute economic domination and exploitation, while emphasizing distributive justice.³⁴

In this context, national economic efficiency as stated in Article 3 of Law No. 5 of 1999 must be interpreted as *inclusive efficiency* that is, efficiency that ensures market sustainability and fair access for small and medium enterprises. Therefore, competition law enforcement should not only assess market power from the standpoint of production efficiency but also consider the equitable distribution of opportunities and public welfare.

A notable example is KPPU Decision No. 26/KPPU-L/2007 (the tobacco case), where the Commission found that price coordination among major firms had created an oligopolistic structure detrimental to market fairness. In this decision, KPPU not only applied formal legal provisions but also examined economic evidence to measure the broader market impact on consumers and small producers. This approach demonstrates that KPPU's enforcement reflects Indonesia's dual commitment to efficiency and justice—ensuring that economic liberalization does not evolve into market domination.³⁵

For example, in Decision No. 26/KPPU-L/2007 (the *tobacco cartel case*), the Komisi Pengawas Persaingan Usaha (KPPU) found that several dominant cigarette producers had coordinated their pricing strategies in a manner that restricted market competition and established an oligopolistic market structure. The Commission's investigation revealed evidence of price parallelism and production quota alignment, both of which are indicative of concerted practices prohibited under Article 5 of Law No. 5 of 1999. To substantiate its

31 A. Nasution, *Hukum Ekonomi Dan Efisiensi Sosial Dalam Persaingan Usaha Di Indonesia* (Jakarta: RajaGrafindo Persada, 2014).

32 Posner, "The Chicago School of Antitrust Analysis."

33 Rahardjo, *Hukum Dalam Jagat Ketertiban*.

34 Putri Novi Tria et al., "Implementasi Pancasila Dalam Bidang Ekonomi Di Era Globalisasi," *Jurnal Gema Keadilan* 9, no. 3 (2022): 1–9, <https://doi.org/10.14710/gk.2022.16456>.

35 Rosdalina Bukido and Laila F Bamatraf, "Peranan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Menegakan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," *Jurnal Ilmiah Al-Syir'ah* 15, no. 1 (2017): 56–73, <https://doi.org/10.30984/as.v15i1.474>.

findings, KPPU employed several quantitative analytical tools, including price-cost margin analysis to measure abnormal profitability levels, market concentration ratios (CR4 and CR8) to assess the degree of dominance by top firms, and barrier-to-entry evaluations to determine whether new entrants faced structural disadvantages due to incumbents' control of distribution channels and brand loyalty.

The decision's significance lies in the methodological shift it represents: KPPU's approach transcended formal legal interpretation and incorporated an *economic-effects doctrine*—evaluating not merely whether a legal violation occurred, but also how the firms' conduct distorted price mechanisms, limited consumer choice, and harmed smaller producers. By integrating these analytical dimensions, KPPU demonstrated that competition law enforcement in Indonesia functions not as a rigid textual instrument, but as a dynamic regulatory mechanism aimed at maintaining both productive efficiency and market fairness. This dual consideration ensures that efficiency gains derived from economies of scale do not evolve into exclusionary efficiency, where dominant firms leverage cost advantages to eliminate competitors and consolidate market power.

Furthermore, in merger and acquisition (M&A) assessments, KPPU consistently applies an efficiency test to balance potential welfare gains against risks of market concentration. Under Government Regulation No. 57 of 2010 concerning M&A Notification, transactions that result in a combined market share exceeding 50% must be reviewed for anti-competitive potential. In practice, KPPU's evaluation examines whether the merger leads to allocative and productive efficiency, such as cost reduction and technological synergy, and whether such gains outweigh potential losses from reduced competition. Importantly, the Commission also assesses the social efficiency dimension, analyzing the distributional consequences on suppliers, micro-, small-, and medium-sized enterprises (MSMEs), and consumer welfare. This framework reflects the Indonesian principle that efficiency must be inclusive and redistributive, not simply concentrated in the hands of large corporations.

From a jurisprudential standpoint, the study finds that the concept of efficiency in Indonesian competition law is instrumental rather than teleological. In other words, efficiency serves as a means to achieve higher normative goals—namely, economic justice and public welfare—rather than as an ultimate end of the legal system. This interpretation is consistent with the constitutional vision articulated in Article 33 of the 1945 Constitution, where economic activity is directed toward collective prosperity and social balance. It also resonates with John Rawls' difference principle, which asserts that economic inequalities are only justifiable if they improve the welfare of the least advantaged groups.

In the Indonesian context, this philosophical alignment is manifested in competition policy and industrial regulation, where the state seeks to prevent excessive concentration of market power while still encouraging innovation and efficiency. For instance, government

interventions in sectors such as telecommunications, energy, and digital marketplaces reflect an understanding that unregulated market freedom can generate asymmetrical power structures detrimental to public welfare. Hence, the balance sought by KPPU and related authorities represents a normative synthesis between market-driven efficiency and the social justice imperative embedded in the nation's constitutional and ideological foundations.

Therefore, although competition law recognizes the importance of efficiency for enhancing national competitiveness, such efficiency must align with the principles of social justice and protection of small businesses and consumers. This model of efficiency referred to as *equitable efficiency* has become a distinctive feature of Indonesia's competition law system. In conclusion, law enforcement practices demonstrate that economic efficiency in Indonesian competition law is *normatively progressive*, meaning that efficiency is understood socially rather than merely technically. KPPU integrates economic analysis in assessing market actors while maintaining a justice-oriented perspective. Ultimately, the goal of efficiency is collective welfare and market stability, not the pursuit of individual or group profit. Thus, Indonesia's competition law not only promotes efficient market competition but also functions as a form of social engineering aimed at creating an inclusive and just economic structure consistent with *Pancasila* values and the constitutional mandate of the national economy.

2. Social Justice in the Enforcement of Competition Law

The concept of social justice within Indonesian competition law represents a normative dimension that distinguishes it from liberal competition law paradigms in jurisdictions such as the European Union and the United States. Whereas the U.S. system is primarily oriented toward *consumer welfare* and *economic efficiency*, the Indonesian legal system places *social justice* as a moral and constitutional principle underlying every economic policy. This principle aligns with Article 33 of the 1945 Constitution, which stipulates that the national economy shall be organized as a collective endeavor based on the principle of kinship to achieve the prosperity of the people.³⁶ Within this framework, competition law in Indonesia does not function merely as a regulatory mechanism to ensure market efficiency, but also as an instrument for economic redistribution and the protection of public interests.³⁷

36 Marlina Widiyanti, Febrian Febrian, and Annalisa Yahanan, "Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Terkait Persetujuan Perpanjangan Kontrak Pengadaan Give Away Oleh PT. Garuda Indonesia (Studi Kasus Putusan Perkara Nomor: 23/Kppu-l/2010)," *Lex LATA* 2, no. 2 (2022): 556-77, <https://doi.org/10.28946/lexl.v2i2.830>.

37 Alum Petronella Simbolon, "Komisi Pengawas Persaingan Usaha Dalam Penegakan Hukum Persaingan Usaha," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 20, no. 3 (2008): 459, <https://doi.org/10.22146/jmh.16288>.

Rawls' theory of justice posits that economic justice must ensure equal access for the most vulnerable members of society.³⁸ This notion parallels the *inclusive competition policy* approach increasingly recognized in global economic law literature. According to Gerber,³⁹ competition law systems in developing countries, including Indonesia, tend to adopt a *development-oriented competition law* model that integrates economic growth objectives with social justice goals. This view reinforces the understanding that competition law enforcement in countries such as Indonesia cannot rely solely on market efficiency but must also ensure that the outcomes of competition do not exacerbate structural inequality.

In practice, the KPPU operationalizes the principle of social justice through policies designed to protect small and medium enterprises (SMEs) from exclusionary practices by dominant firms. A clear example can be found in KPPU Decision No. 02/KPPU-1/2018 concerning food distribution, where the Commission emphasized that vertical integration by large corporations could create *barriers to entry* and restrict access for smaller firms to national or global markets. In its reasoning, KPPU asserted that competition law enforcement must take into account fair market structures rather than focusing solely on production efficiency. This demonstrates KPPU's incorporation of social justice dimensions into its enforcement practices, consistent with the theory of *equitable market governance*, which seeks to balance economic freedom and redistribution.⁴⁰

International legal literature reveals a growing consensus that competition law in the Global South including Indonesia should prioritize *inclusive growth* and *social equity*.⁴¹ This perspective underscores that competition policy should not only preserve competition but also correct structural economic imbalances. From Khan further argues, that digital platforms and mega-conglomerates have become both new market players and significant contributors to social inequality.⁴² In Indonesia, such dynamics are evident in the digital and food sectors, where major firms exert substantial control over prices and distribution. Hence, social justice in competition law is not only a moral imperative but also a strategic necessity in addressing the challenges of the digital economy and globalization, both of which generate new forms of inequality.

The social justice approach offers a critical corrective to the conventional efficiency-based interpretation of competition law. While traditional economic analysis views law primarily as an instrument to minimize costs and maximize productivity, the capability approach introduced by Amartya Sen extends the meaning of economic justice beyond

38 Rawls, *A Theory of Justice*.

39 D. J. Gerber, *Global Competition: Law, Markets, and Globalization* (Oxford: Oxford University Press, 2012).

40 E. M. Fox, "Inclusive and Sustainable Competition Policy for Development," *Antitrust Law Journal* 77, no. 2 (2012): 191-214.

41 S. J. Evenett, "Tackling Market Concentration: Competition Policy and Social Equity in Developing Economies," *World Competition Journal* 43, no. 2 (2020): 121-45.

42 L. Khan, "Amazon's Antitrust Paradox," *Yale Law Journal* 126, no. 3 (2018): 710-805.

mere market outcomes. Sen argues that justice should be measured by the real freedoms and capabilities individuals possess to participate meaningfully in economic life. In this sense, economic development is not only about increasing aggregate welfare but also about expanding the substantive freedoms of individuals to achieve well-being.

Within the framework of competition law, this philosophical shift implies that the law must not only regulate anti-competitive behavior but also actively ensure that small and medium-sized enterprises (SMEs) have equal access to markets, resources, and technology. Equal access to digital infrastructure, fair visibility in platform algorithms, and transparent market information are part of these “capabilities.” Thus, competition law becomes not merely a *mechanism for preventing monopolies* but a *tool of empowerment* that enables marginalized business actors to compete with dignity and fairness. In the context of Indonesia’s digital economy—where dominant platforms such as Shopee or Tokopedia control algorithmic visibility and pricing—this approach gains particular importance, as it ensures that competition policy contributes to inclusive market participation rather than reinforcing concentration of power.

Normatively, the integration of social justice values into competition law reveals the dual function of Indonesia’s economic legal framework. On the one hand, it aims to promote efficiency and competitiveness to strengthen national productivity; on the other hand, it must prevent market distortions that could marginalize small producers and consumers. This dual orientation reflects Indonesia’s constitutional mandate under Article 33 of the 1945 Constitution, which grounds the national economy on the principles of kinship and collective welfare (*kesejahteraan bersama*). The enforcement of competition law, therefore, becomes a balancing act between economic dynamism and distributive equity—ensuring that growth does not lead to structural exclusion.

Normatively, the integration of social justice values into competition law demonstrates the dual function of Indonesian economic law: on one hand, it promotes efficiency and national competitiveness; on the other, it ensures that economic outcomes are not concentrated among a small number of powerful enterprises. This model aligns with the concept of *law for inclusive development* proposed by Sokol and Cheng,⁴³ who emphasize the role of competition law in supporting inclusive and equitable economic development.

In conclusion, the enforcement of competition law in Indonesia reflects a strong social orientation, embedding justice as a substantive dimension in regulatory and judicial decision-making. This integration underscores the distinctive identity of Indonesian competition law, which transcends Western efficiency models by incorporating constitutional and moral imperatives of fairness, inclusion, and equality. Consequently, social justice in Indonesia’s

43 D. D. Sokol and T. K. Cheng, “Law and Development: Building Capabilities through Competition Policy,” *Journal of Competition Law & Economics* 15, no. 3 (2019): 517–43.

competition law is not an auxiliary principle—it is the core essence of the national economic legal philosophy, ensuring that efficiency serves humanity and not the reverse.

3. Synthesis Between Economic Efficiency and Social Justice in Indonesia Competition Law

The relationship between economic efficiency and social justice in Indonesian competition law is dialectical and mutually reinforcing. Economic efficiency focuses on enhancing productivity and national competitiveness, whereas social justice emphasizes the equitable distribution of economic benefits and the protection of small enterprises and consumers. These two dimensions are not opposing forces to be balanced but are complementary elements within a sustainable economic development framework. In the Indonesian legal context, this synthesis manifests as a normative approach in which efficiency serves as a means to achieve social justice, rather than the other way around.

This integrative approach can be explained through Dabbah's concept of a "balanced competition policy," which highlights that competition policy should not merely pursue market efficiency but must also consider social context, industrial structure, and national development objectives.⁴⁴ Dabbah further argues that in developing countries, competition law should facilitate economic transformation and reduce structural inequalities. This principle aligns with the orientation of Indonesia's competition law, which situates economic efficiency within a framework of distributive justice.

Furthermore, this synthesis reflects what Akman and Kassim describe as "contextual competition policy," wherein competition regulation is adapted to the socio-economic realities of a country.⁴⁵ Their research indicates that antitrust policies in Asian economies such as Malaysia, Indonesia, and South Korea tend to balance market efficiency with social objectives, including the protection of small businesses and consumer price stability. Accordingly, competition law in such contexts not only enforces market discipline but also functions as a social corrective instrument to address economic inequality.

The balance between efficiency and social justice also resonates with the theory of inclusive efficiency, which incorporates the broader social distribution of economic benefits. From Kaplow and Shapiro,⁴⁶ argue that economic efficiency devoid of fair benefit distribution can lead to allocative failure at the societal level. Hence, the enforcement of competition law must consider its implications for vulnerable groups, particularly within asymmetric power relations between large and small firms. This concept gains further importance in the

44 M. M. Dabbah, "Competition Law and Policy in Developing Countries: A Critical Assessment," *Cambridge Journal of International and Comparative Law* 59, no. 4 (2010): 879–905.

45 P. Akman and H. Kassim, "Contextualizing Competition Policy in Developing Economies," *World Competition Journal* 37, no. 1 (2014): 5–29.

46 L. Kaplow and C. Shapiro, "Antitrust, Innovation, and the Balance between Efficiency and Fairness," *Harvard Law Review* 120, no. 6 (2007): 1265–1312.

digital economy era, where market concentration creates new forms of economic inequality that traditional efficiency models fail to capture.

In this regard, Indonesia's KPPU plays a crucial role in operationalizing the synthesis between efficiency and equity. Through its oversight of mergers and acquisitions, KPPU evaluates not only the efficiency gains of corporate consolidation but also the social impacts on market structure and small business sustainability. This practice echoes Jenny,⁴⁷ argument that competition authorities in developing countries should adopt a multi-objective competition policy, integrating economic efficiency with broader national and developmental goals.

Moreover, the integration of these values reflects the essence of Pancasila economic law, which combines entrepreneurial freedom with social responsibility. This approach diverges from neoliberal models that treat efficiency as the sole measure of success in global markets. Instead, Indonesian competition law embraces the paradigm of embedded markets, as described by Rodrik, wherein markets are embedded within social and institutional values that ensure justice and inclusivity.⁴⁸ Consequently, Indonesia's competition law system can be classified as a hybrid model, merging economic rationality with social morality as its normative foundation.

From a global perspective, this synthesis between efficiency and social justice is increasingly recognized as a more sustainable approach to modern competition policy. According from Bonakele,⁴⁹ observe that experiences from several Asian and African countries demonstrate how socially oriented competition policies can strengthen economic stability and expand market access for small enterprises. This underscores that competition law can serve not only as a regulatory mechanism for market dynamics but also as an instrument of inclusive development.

In conclusion, Indonesian competition law represents a model of "equitable efficiency" an efficiency grounded in social values and constitutional principles. The law thus performs a dual function: creating a competitive and efficient market while ensuring equitable distribution of economic gains. This synthesis exemplifies the evolution of Indonesian competition law from a mere economic instrument into a tool for social engineering and just national development.

47 F. Jenny, "Competition Law and Economic Development: Reconciling Efficiency and Equity," *Concurrences Review* 2, no. 21 (2021): 15–27.

48 D. Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (New York: W.W. Norton & Company, 2011).

49 T. Bonakele, E. M. Fox, and K. McNabb, "Competition Policy for Inclusive Growth in Developing Economies," *Journal of Antitrust Enforcement* 5, no. 3 (2017): 221–45.

4. Landmark KPPU Cases in Indonesia

Several landmark cases handled by the KPPU illustrate the evolution of competition law enforcement in Indonesia. These include: (1) decisions on modern retail expansion involving Alfamart and Indomaret, (2) the airline ticket price cartel case involving several carriers under Decision No. 15/KPPU-I/2019, and (3) the Grab–TPI case concerning discriminatory practices and vertical integration in the digital transportation platform business (Decision No. 13/KPPU-I/2019). The analysis of these cases combines the law and economics framework (market definition, barriers to entry, foreclosure, tying/discrimination) with the social justice dimension (distributive impact, access for small enterprises).

The first case concerns modern retail expansion, particularly the Decision No. 03/KPPU-L-I/2001 and subsequent rulings related to the growth of modern retail chains. The core issue involved the aggressive expansion of Alfamart and Indomaret into traditional market areas, which led to market dominance and exclusionary effects detrimental to small traders, thereby violating Law No. 5 of 1999 and the principle of fair competition. Judicial and academic analyses indicated that such expansion strategies, facilitated through vertical integration and preferential supply chain access, distorted market balance and required corrective measures.⁵⁰

From a law and economics perspective, the penetration of modern retail chains initially enhanced product efficiency and lowered consumer prices in certain areas. However, dynamic and structural effects emerged when these chains restricted access to independent suppliers or imposed exclusive purchasing conditions, resulting in buyer power and vertical foreclosure, raising entry barriers for small retailers and weakening long-term competition. OECD and EU literature affirm that unchecked supermarket penetration often shifts market concentration and erodes supplier diversity when adequate oversight mechanisms are absent.⁵¹ Thus, price-based assessments alone are insufficient; long-term impacts on market structure and welfare distribution must also be considered.

From a social justice and policy perspective, KPPU's decision to limit or caution against excessive modern retail expansion functions as a tool to preserve opportunities for small enterprises. Nonetheless, enforcement instruments must avoid turning into protectionism that stifles genuine productive efficiency. Comparative studies from the EU and developing economies highlight that systematic market studies, remedy-based interventions, and coordinative policy approaches rather than absolute prohibitions are more effective in preserving efficiency while mitigating social harms.⁵²

50 hukum online, "Indomaret Diperintahkan Hentikan Ekspansi Usaha," 2001, <https://www.hukumonline.com/berita/a/indomaret-diperintahkan-hentikan-ekspansi-usaha-hol3092/>.

51 OECD, "Market Structure, Growth and Competition in the Supermarket Sector in Latin America" (Jamaica, 2015).

52 European Union, "Competition in the Food Retail Sector Proceedings of the Workshop" (Brussels, 2016),

The second case involves the airline ticket price cartel, where KPPU found that several airlines (e.g., Garuda Group, Lion Air, Batik Air, Wings Air, Citilink, Sriwijaya Air, and Nam Air) engaged in coordinated pricing behavior by restricting the sale of low-fare ticket subclasses. The KPPU ruled against the airlines in Decision No. 15/KPPU-I/2019, a verdict later upheld in part by the Supreme Court of Indonesia (*Mahkamah Agung*). This decision highlighted collective market conduct that reduced consumer choice and price competition.⁵³

Economically, this case represents a classic cartel scenario that diminishes consumer welfare and allocative efficiency, forcing higher prices and limited options. Many jurisdictions treat price-fixing agreements as per se illegal due to their inherent harm. However, modern competition law emphasizes effects-based analysis, requiring proof of actual market impact. The KPPU applied this approach by identifying both explicit and behavioral evidence of coordination. Experiences from the U.S. and EU show that the aviation sector has unique characteristics such as route specificity, network effects, and international alliances requiring nuanced enforcement that balances potential efficiency justifications with protection against consumer harm. For Indonesia, the case underscores the need for clear evidentiary standards and ex-post monitoring of pricing behavior in sensitive routes.

From a social justice and institutional perspective, this decision holds particular relevance because airfares directly affect public mobility and economic access, especially for lower- and middle-income groups. OECD recommendations emphasize combining strong cartel enforcement with pricing transparency mechanisms and institutional coordination to prevent recurrence. This precedent affirms that operational efficiency cannot justify price coordination that undermines consumer access.

The third case, Grab–TPI, concerns platform-based discrimination and vertical integration. KPPU found that Grab Indonesia, in collaboration with TPI (*Teknologi Pengangkutan Indonesia*), engaged in discriminatory practices that provided undue competitive advantages such as exclusive incentives, order prioritization, and premium service programs to selected partners. These actions restricted access for other drivers and distorted fair competition, leading KPPU to impose substantial fines, despite ongoing litigation in civil and cassation courts.⁵⁴

From a law and economics perspective, this case highlights the intersection between traditional competition issues and new challenges arising from algorithmic governance, network effects, multi-sided markets, and platform control over data access. OECD studies

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578981/IPOL_STU\(2016\)578981_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578981/IPOL_STU(2016)578981_EN.pdf).

53 Andi Saputra, "MA Menangkan KPPU Soal Kartel Tiket Pesawat, Ini Isi Putusannya," *detik.News*, 2023, <https://news.detik.com/berita/d-6844010/ma-menangkan-kppu-soal-kartel-tiket-pesawat-ini-isi-putusannya?html>.

54 CNN Indonesia, "Kronologi Kasus Grab Hingga Denda Rp30 M Oleh KPPU," *CNN Indonesia*, 2020, <https://www.cnnindonesia.com/ekonomi/20200703074627-92-520318/kronologi-kasus-grab-hingga-denda-rp30-m-oleh-kppu?html>.

on ride-sourcing platforms emphasize that while digital platforms can generate substantial efficiency gains, they also risk competitor exclusion through exclusive contracts, preferential treatment, or data lock-ins, which ultimately affect income distribution among drivers and consumer access. Efficiency justifications may be accepted if they demonstrably enhance total welfare without harming weaker participants; however, algorithmic discrimination that subordinates the majority of partners violates social justice principles and requires corrective measures. Moreover, defining the relevant market becomes increasingly complex, as platform services operate across multiple user groups, necessitating cross-side externality analysis.

In terms of policy learning and regulatory development, OECD experiences show the emergence of dual-track regulatory strategies, combining traditional antitrust enforcement for clear anti-competitive conduct with ex-ante frameworks specifically designed for digital platforms, as ex-post enforcement often lags behind rapid technological change. OECD recommends integrating competition enforcement with regulatory sandboxes, data monitoring systems, and cross-agency collaboration among competition authorities, transport regulators, and labor bodies to address distributive impacts on platform partners. For KPPU, these lessons imply the need to strengthen data analytics capacity, digital market expertise, and institutional cooperation in managing complex platform cases.

5. Practical Implications

The implementation of competition law in Indonesia carries significant practical implications for national economic policy, market economy governance, and institutional law enforcement strategies. These implications primarily relate to how economic efficiency and social justice values are simultaneously operationalized within a legal system oriented toward public welfare.

From a public policy formulation perspective, competition law must be integrated into national economic development strategies that promote equitable distribution among the population. As argued by Gerber,⁵⁵ competition law in developing countries should not operate independently of industrial and social policies but should instead form part of a government's integrated economic policy framework. This integration requires close coordination between institutions such as KPPU, the Ministry of Trade, and the Ministry of Cooperatives, ensuring that efficient market policies do not lead to economic power concentration that disadvantages small businesses. Thus, the principle of efficiency must be evaluated not only through market output, but also through the extent of equitable economic participation.

In terms of law enforcement, strengthening KPPU's institutional capacity is essential

55 Gerber, *Global Competition: Law, Markets, and Globalization*.

for adopting an evidence-based competition enforcement model. According to Motta and de Streef,⁵⁶ modern competition authorities must integrate economic analysis with social policy considerations when assessing cases, particularly in mergers and market dominance investigations. The application of quantitative impact assessments on consumer welfare, income distribution, and effects on small and medium enterprises (SMEs) can serve as innovative enforcement tools in the Indonesian context.

Third, in terms of SME empowerment, competition law can function as an affirmative policy instrument to promote structural equality. Fox and Healey argue,⁵⁷ that competition policy in developing economies should not merely enforce market rules but also encourage inclusive participation by reducing barriers to entry and regulating dominant corporate behavior. In Indonesia, this means enhancing KPPU's role in assessing exclusive distribution arrangements, vertical integration, and strategic alliances to ensure fair local competition.

Finally, legal education and public awareness represent an essential dimension of effective competition governance. As Whish and Bailey assert,⁵⁸ the effectiveness of competition law depends not only on institutional strength but also on the development of a competition culture within society. Public education on the principles of fair competition and its contribution to social welfare can enhance public legitimacy for KPPU and foster voluntary compliance among businesses.

In conclusion, these practical implications demonstrate that competition law in Indonesia should not be understood narrowly as a mere economic regulatory instrument. Rather, it should function as a tool of social engineering, harmonizing efficiency with equity and strengthening the foundations of an inclusive and just national economic system.

D. Conclusion

Competition law in Indonesia serves as a strategic legal instrument for managing the dynamics of a national economy that aspires to balance efficiency and social justice. Based on the normative and conceptual analysis of Law No. 5 of 1999, it can be concluded that Indonesia's competition law does not adopt a market-fundamentalist orientation as found in liberal economies. Rather, it is anchored in a constitutional vision that treats economic efficiency not as an ultimate end, but as a means to achieve equitable distribution, social welfare, and collective prosperity, consistent with the principles of Article 33 of the 1945 Constitution. This study further reveals that Indonesia's competition law possesses a distinctive socio-normative character, combining economic rationality with moral and

56 M. Motta and A. de Streef, "Digital Platforms and the New Rules of Competition," *Competition Policy International* 17, no. 2 (2021): 45–67.

57 E. M. Fox and D. Healey, "When the State Harms Competition — The Role for Competition Law," *Antitrust Law Journal* 79, no. 2 (2014): 769–814.

58 R. Whish and D. Bailey, *Competition Law: Tenth Edition* (Oxford: Oxford University Press, 2021).

distributive dimensions derived from Pancasila-based economic philosophy. Within this framework, the KPPU assumes a pivotal role as both a law enforcer and a policy institution tasked with harmonizing efficiency-oriented policies with the imperatives of fairness and inclusion. Through contextual economic analysis, KPPU ensures that the pursuit of market efficiency does not erode market diversity or marginalize smaller enterprises. The findings reaffirm that the Indonesian model of competition law embodies the paradigm of “equitable efficiency”, wherein efficiency is pursued within the boundaries of justice, inclusivity, and public welfare. This paradigm redefines the purpose of competition law—not merely as a mechanism for disciplining market behavior—but as a form of social engineering (*rekayasa sosial*) designed to maintain structural balance, reduce inequality, and realize economic justice in accordance with national values. Practically, this legal framework must continue to evolve and synergize with industrial policy, business ethics, and digital economy governance. In particular, as digital platforms and algorithmic markets reshape competition, Indonesia’s competition law must strengthen its analytical tools to capture new forms of dominance—such as data control and platform dependency—while ensuring that innovation remains inclusive and sustainable. Anchored in constitutional ideals and the human-centered economic philosophy of Pancasila, Indonesia’s competition law ultimately aspires to maintain a delicate equilibrium between competitiveness and humanity, ensuring that market progress serves not only the few but the collective welfare of the entire nation.

Bibliography

A. Books

- Asshiddiqie, J. *Konstitusi Ekonomi*. Jakarta: Rajawali Pers, 2015.
- Bork, R. H. *The Antitrust Paradox: A Policy at War with Itself*. New York: Free Press, 1993.
- Gerber, D. J. *Global Competition: Law, Markets, and Globalization*. Oxford: Oxford University Press, 2012.
- Marzuki, P. M. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2017.
- Moleong, L. J. *Metodologi Penelitian Kualitatif*. Bandung: Remaja Rosdakarya, 2019.
- OECD. "Digital Economy Outlook 2023," 2023.
- . "Market Structure, Growth and Competition in the Supermarket Sector in Latin America." Jamaica, 2015.
- Posner, R. A. *Economic Analysis of Law*. 5th ed. Vol. 127. Aspen Publishers, 2001.
- Rahardjo, S. *Hukum Dalam Jagat Ketertiban*. UKI Press, 2006.
- Rawls, J. *A Theory of Justice*. Harvard University Press, 1971.
- Rodrik, D. *The Globalization Paradox: Democracy and the Future of the World Economy*. New York: W.W. Norton & Company, 2011.
- Rokan, Mustafa Kamal. *Hukum Persaingan Usaha: Teori Dan Praktiknya Di Indonesia*. 2nd ed. Jakarta: RajaGrafindo Persada, 2012.
- Sen, A. *The Idea of Justice*. Harvard University Press, 2009.
- Sitompul, Asril. *Praktek Monopoli Dan Persaingan Usaha Tidak Sehat*. Jakarta: PT Citra Aditya Bakti, 2019.
- Usman, Rachmadi. *Hukum Persaingan Usaha Di Indonesia*. Banjarmasin: Sinar Grafika, 2013.
- Whish, R., and D. Bailey. *Competition Law: Tenth Edition*. Oxford: Oxford University Press, 2021.
- Zweigert, K., and H. Kötz. *An Introduction to Comparative Law*. 3rd ed. Oxford: Clarendon Press, 1998.

B. Articles

- Adnan, Kuntonugroho. "Fungsi Hukum Pembangunan Ekonomi Dalam Persaingan Usaha Yang Sehat." *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 4 (2024): 238–58. <https://doi.org/10.62383/terang.v1i4.649>.
- Akman, P., and H. Kassim. "Contextualizing Competition Policy in Developing Economies." *World Competition Journal* 37, no. 1 (2014): 5–29.
- Bonakele, T., E. M. Fox, and K. McNabb. "Competition Policy for Inclusive Growth in Developing Economies." *Journal of Antitrust Enforcement* 5, no. 3 (2017): 221–45.
- Bukido, Rosdalina, and Laila F Bamatraf. "Peranan Komisi Pengawas Persaingan Usaha (KPPU) Dalam Menegakan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat." *Jurnal Ilmiah Al-Syir'ah* 15, no. 1 (2017): 56–73. <https://doi.org/10.30984/as.v15i1.474>.

- Chandra, Alston, and Sari Murti Widiyastuti. "Peran Komisi Pengawas Persaingan Usaha (KPPU) Dalam Mendorong Iklim Persaingan Usaha Yang Sehat Di Sektor Perunggasan." *Justitia Et Pax Jurnal Hukum* 33 (2017): 1–11.
- Dabbah, M. M. "Competition Law and Policy in Developing Countries: A Critical Assessment." *Cambridge Journal of International and Comparative Law* 59, no. 4 (2010): 879–905.
- European Union. "Competition in the Food Retail Sector Proceedings of the Workshop." Brussels, 2016. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578981/IPOL_STU\(2016\)578981_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578981/IPOL_STU(2016)578981_EN.pdf).
- Evenett, S. J. "Tackling Market Concentration: Competition Policy and Social Equity in Developing Economies." *World Competition Journal* 43, no. 2 (2020): 121–45.
- Fox, E. M. "Inclusive and Sustainable Competition Policy for Development." *Antitrust Law Journal* 77, no. 2 (2012): 191–214.
- Fox, E. M., and D. Healey. "When the State Harms Competition — The Role for Competition Law." *Antitrust Law Journal* 79, no. 2 (2014): 769–814.
- Jenny, F. "Competition Law and Economic Development: Reconciling Efficiency and Equity." *Concurrences Review* 2, no. 21 (2021): 15–27.
- Kaplow, L., and C. Shapiro. "Antitrust, Innovation, and the Balance between Efficiency and Fairness." *Harvard Law Review* 120, no. 6 (2007): 1265–1312.
- Khan, L. "Amazon's Antitrust Paradox." *Yale Law Journal* 126, no. 3 (2018): 710–805.
- Motta, M., and A. de Stree. "Digital Platforms and the New Rules of Competition." *Competition Policy International* 17, no. 2 (2021): 45–67.
- Nasution, A. *Hukum Ekonomi Dan Efisiensi Sosial Dalam Persaingan Usaha Di Indonesia*. Jakarta: RajaGrafindo Persada, 2014.
- Ningsih, Ayup Suran. "Implikasi Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat Pada Pelaku Usaha Mikro Kecil Dan Menengah (UMKM)." *Jurnal Penelitian Hukum De Jure*, 2019, 210.
- Posner, R. A. "The Chicago School of Antitrust Analysis." *University of Pennsylvania Law Review* 127, no. 4 (1979): 925–48.
- Putri, Uray Allysa, and Muhammad Sodik Qamal. "Analisis Implementasi Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat Terhadap Penyelesaian Hukum Atas Pengembalian Kerugian Konsumen." *Tanjungpura Legal Review*, 2022, 30–41.
- Rakhmani, Inaya, and Zulfa Sakhiyya. "The Cultural Political Economy of Knowledge in Neo-Liberal Indonesia." *Journal of Contemporary Asia* 55, no. 3 (May 27, 2025): 388–404. <https://doi.org/10.1080/00472336.2023.2298449>.
- Saidi, Abdurrahman. "Mengatasi Tantangan Besar: KPPU Dan Strategi Penegakan Hukum Untuk Pelanggaran Tender." *Iuris Studia: Jurnal Kajian Hukum* 6, no. 1 (2025): 114–22. <https://doi.org/10.55357/is.v6i1.839>.
- Simbolon, Alum Petronella. "Komisi Pengawas Persaingan Usaha Dalam Penegakan Hukum Persaingan Usaha." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 20, no. 3 (2008): 459. <https://doi.org/10.22146/jmh.16288>.
- Sokol, D. D., and T. K. Cheng. "Law and Development: Building Capabilities through Competition Policy." *Journal of Competition Law & Economics* 15, no. 3 (2019): 517–43.

- Tria, Putri Novi, Finkky Fati'ah Cahyaningsih, Risma Ayu Suwandi, and Riska Andi Fitriono. "Implementasi Pancasila Dalam Bidang Ekonomi Di Era Globalisasi." *Jurnal Gema Keadilan* 9, no. 3 (2022): 1–9. <https://doi.org/10.14710/gk.2022.16456>.
- Widiyanti, Marlina, Febrian Febrian, and Annalisa Yahanan. "Praktik Monopoli Dan Persaingan Usaha Tidak Sehat Terkait Persetujuan Perpanjangan Kontrak Pengadaan Give Away Oleh PT. Garuda Indonesia (Studi Kasus Putusan Perkara Nomor: 23/Kppu-l/2010)." *Lex LATA* 2, no. 2 (2022): 556–77. <https://doi.org/10.28946/lexl.v2i2.830>.
- Wulandari, Ratih Agustin, Dewi Pramita, Sefra Divo, and Onky Febri Naldi. "Pengaruh Hukum Persaingan Usaha Terhadap Pertumbuhan Ekonomi Nasional." *Jurnal Dimensi Hukum* 9, no. 1 (2025): 56–63.
- Yulivestra, Malse. "Neo-Liberalism and Global Economic Crises (The Changing of the State-Market Relations in Indonesia)." *Andalas Journal of International Studies Volume 1*, no. 1 (2012): 55–69.

C. Internet

- CNN Indonesia. "Kronologi Kasus Grab Hingga Denda Rp30 M Oleh KPPU." CNN Indonesia, 2020. Accessed October 9, 2025. <https://www.cnnindonesia.com/ekonomi/20200703074627-92-520318/kronologi-kasus-grab-hingga-denda-rp30-m-oleh-kppu.html>.
- hukum online. "Indomaret Diperintahkan Hentikan Ekspansi Usaha," 2001. Accessed October 9, 2025. <https://www.hukumonline.com/berita/a/indomaret-diperintahkan-hentikan-ekspansi-usaha-hol3092/>.
- Saputra, Andi. "MA Menangkan KPPU Soal Kartel Tiket Pesawat, Ini Isi Putusannya." detik. News, 2023. Accessed October 9, 2025. <https://news.detik.com/berita/d-6844010/ma-menangkan-kppu-soal-kartel-tiket-pesawat-ini-isi-putusannya.html>.

D. Regulations

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

Curriculum Vitae of Author

Pascalis Dani K. Wibowo, now a Lecturer at Politeknik Pengayoman Indonesia. His interest on writing article especially for regional development, regional finance, policy, and critical economic issues leading toward social justice and local government problems.

AUTHOR GUIDELINES

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P-ISSN: 1907-8463
E-ISSN: 2772-8568