Dialogia Iuridica Law Journal
Volume 14 Nomor 1, November 2022, p. 095-123
ISSN: 2085-9945 | e-ISSN: 2579-3520

ARE THE INTERESTS OF BUSINESS ACTORS AND CONSUMERS BALANCED IN THE INDONESIAN COMPETITION LAW?

Moch. Zairul Alam [1], Kukuh Tejomurti [2]

[1]*Faculty of Law, Universitas Brawijaya, Jalan MT. Haryono No.169 Malang, Jawa Timur 65145*

[2]*Faculty of Law, Universitas Sebelas Maret, Jalan Ir. Sutami Nomor 36A, Kentingan, Surakarta 57126*

[1]zairulalam@ub.ac.id, [2]kukuhmurtifhuns@staff.uns.ac.id

Submitted: 2022-07-18 | Reviewed: 2022-09-26 | Accepted: 2022-11-14

How to cite: Moch. Zairul Alam and Kukuh Tejomurti. "Are The Interests of Business Actors and Consumers' Interests Balanced in The Indonesian Business Competition Law?". *Dialogia Iuridica: Jurnal Hukum*, Vol. 14, No. 1, (2022), 095-123.

DOI: https://doi.org/10.28932/di.v13i2.5231

ABSTRACT

This paper aims to provide a critical analysis to the relations between economic efficiency and justice as the objectives of business competition law in Indonesia within the framework of legal philosophy. Philosophical aspects explores view on equal opportunities for every citizen in their business behavior, relation between the principles of justice and efficiency considering that in the Law 5 of 1999 there is no any word "justice" mentioned. Several related schools of legal philosophy will use to analyse the problems, such as, Utilitarianism in dissecting the phrase "public interest and welfare", John Stuart Mill's theory of liberty in examining "equal opportunities for citizens", The article uses the legal research by emphasising the critical analysis on economic efficiency and justice principles in Indonesian competition law and compare FTC. Article 3 of Law Number 5 of 1999 aims to improve economic efficiency as one of the efforts to improve people's welfare. From a philosophical point of view, people's welfare law is closely related to the

"greatest benefit for the greatest people" (Jeremy Bentham). However, if we look at the interests between business actors and consumers, this condition can still be seen that the interest in efficiency still prioritizes the interests of business actors. Fulfilment of consumer justice is only placed as an "object" rather than a subject whose rights must be protected due to violations of business competition

Keywords: Competition Law, Efficiency, Justice

I. INTRODUCTION

Development in the world of business and economy, and the increasingly diverse interactions in the trade sector have resulted in more fair legal arrangements. One of the determining factors in accelerating the country's economic growth rate is by ensuring that all policies related to the trade, industry, business opportunities, business actors, consumers and public interest have been regulated in an adequate policy on business competition. The interaction of interests between business actors and consumers as an effort to gain profits is regulated within the framework of a healthy market mechanism, where the formulated price is a reflection of the existing supply and demand sides. The results of a healthy market mechanism are reflected in a wide selection of competitive products, prices and services.

The presence of free will, either from business actors or from individuals as consumers, will shape and influence the market, where from the side of business actors who have the power or domination of economic resources, it will lead to market exploitation and distortion. The tendency of business actors to always seek for maximum profits and avoid competition will have a serious economic impact on the market. Indonesia in this case has experienced an economic recession where one of the main causes is the concentration of economic power which is centered on conglomerates, during which time the conglomerates control various industrial sectors with low levels of competition.

In the context of regulation in Indonesia, the urgency to the existence of business competition law has begun since 1989 through various discussions and studies

that have been carried out, mainly focusing on the impact of economic regulation since the 1980s which brought unhealthy economic conditions. During these decades, the Indonesian economy relied on state revenues from high oil prices, but on the other hand, on the micro-side of the market economy, many were dominated by conglomerates from certain families who deliberately made efforts to influence policymakers on the economy to make policies that favor their own business interests. Cartels of Cement, timber and other industrial sectors that focused on certain business actors are reflecting on how a healthy market economy is not going well.[1]

As is known, in 1998 Indonesia experienced an economic crisis, forcing Indonesia to request financial assistance from the IMF (International Monetary Fund), where on January 15, 1998 Indonesia signed an agreement with the IMF for assistance of US $ 43 billion, aimed at overcoming the economic crisis on condition that Indonesia should execute economic reforms and also reforming certain economic laws. The Intellectual Property Rights Law, Corporate Law, Bankruptcy Law and obviously the Business Competition Law were formed between 1999 and 2000s, as a consequence to IMF assistance.

In the plenary session of the House of Representatives/DPR on February 18, 1999, the Bill concerning business competition law was approved and became Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. This law is also the output of the MPR-RI (Indonesia People's Assembly) Decree No. X/MPR/1998 concerning the Principles of Development Reform in the Framework of Saving and Normalizing National Life.

The use of the phrase economic democracy as one of the important elements in the principle of business competition in Indonesia means that fair business competition must be within the framework of economic democracy characterized by the involvement of all members of society for the benefit of society (*gotong royong*). The state must make any needed measures to carry out the goals of economic democracy and as consequences, the system of "free fight liberalism", etatism and the concentration of

[1] Rachmadi Usman, *Hukum Persaingan Usaha di Indonesia*, Jakarta: Sinar Grafika, 2013, hlm. 53-54.

monopolistic power and monopolistic practices must not be the character of economic development in Indonesia.

The stipulated anti-monopoly provisions are not aimed at protecting business competition for the sake of competition itself, but according to the point of consideration in section b, it is stated that "democracy in economic field requires equal opportunity for every citizen to participate in the process of production and distribution of goods and/or services, in a healthy, effective and efficient business climate so as to promote economic growth and the operation of a fair market economy."

Article 3 also implies the secondary objectives of the law on the prohibition of monopolistic practices, namely to achieve people's welfare and to create an efficient economic system that leads to the optimal provision of goods and services for consumers. From the description of objectives in the existence of a law regarding the prohibition of monopolistic practices and unfair business competition, it is necessary to discuss in depth several philosophical issues that arise, such as how the philosophy views the principles of people's welfare? How do philosophical aspects view equal opportunities for every citizen in their business behavior? What is the relation between the principles of justice and efficiency considering that in the Law 5 of 1999 there is no word "fair" mentioned? Can this be interpreted that the aspects of justice are sidelined?

This research aims to deeply discuss the objectives of competition law from the perspective of several related schools of legal philosophy such as, Utilitarianism in dissecting the phrase "public interest and welfare", John Stuart Mill's theory of liberty in examining "equal opportunities for citizens", the schools of Analysis Economic of Law in examining in depth the meaning of "efficiency", and the last is the relations to the theory of justice.

Economic efficiency is a description that illustrates efforts to achieve the goal of maximum welfare[2] or steps to get maximum value[3] from limited community resources and against business actors who lose in the market. Still, competition is considered an appropriate mechanism in the economy to achieve prosperity through the maximum

[2] Timothy Besley, Nicola Fontana, and Nicola Limodio, "Antitrust Policies and Profitability in Nontradable Sectors," *American Economic Review: Insights*, Volume 3 No. 2, 2021, hlm. 251–265.
[3] Joseph E Harrington, "Developing Competition Law For Collusion By Autonomous Artificial Agents," *Journal of Competition Law & Economics*, Volume 14 No. 3, 2018, hlm. 331–363.

allocation of resources.[4] Business actors can influence the market and cause the need to be distorted because of their behaviour. Alfred Marshall proposed that the term competition be replaced with "economic freedom" in illustrating or supporting the positive goals of business competition.[5] The relevance of efficiency considerations to competition policy is that inefficient use of resources will result in high prices, low output, lack of innovation, and wasteful use of resources. The principle of "Efficiency" is also recorded in Article 33, paragraph 5 of the 1945 Constitution of the Republic of Indonesia, namely the principle of "Just Efficiency". The perspective of every business actor is to provide the greatest prosperity for consumers by creating efficient goods and services.

This paper is expected to be able to provide a critical analysis to the relations between the objectives of business competition law in Indonesia within the framework of legal philosophy. This article uses the legal research method by emphasising the critical analysis on economic efficiency and justice principles in Indonesian competition law according to Act No. 5 of 1999 concerning Anti Monopoly and Unfair Business Practices, and several Competition Law of ASEAN countries.

II. DISCUSSION

1. The objectives of the Indonesian Competition Law

The objectives of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition can be found in Chapter II Principles and Objectives in article 2 and article 3 as follows:

Article 2

Business actors in Indonesia carry out their business activities based on economic democracy by taking into account the balance between the interests of business actors and public interest.

Article 3

[4] O. Odudu, "The Wider Concerns of Competition Law," *Oxford Journal of Legal Studies*, Volume 30 No. 3, 2010, hlm. 599–613.

[5] Elias Mossialos and Julia Lear, "Balancing Economic Freedom against Social Policy Principles: EC Competition Law and National Health Systems," *Health Policy*, Volume 106 No. 2, 2012, hlm. 127–137.

The objectives in the enactment of this law are to:

a. safeguarding public interests and improving the efficiency of national economy as an effort to improve people's welfare;
b. creating a conducive business climate by regulating an equal busines competition for large business actors, medium business actors and small business actors;
c. prevent monopolistic practices and/or unfair business competition performed by business actors and;
d. creating effectiveness and efficiency in business activities

From various developments in competition law, at first, business competition is seen as more dominated by the application of economic principles (microeconomics) and has not fully considered the legal approach.[6] In general, there are at least several main objectives of business competition law, namely:

a. Economic welfare by considering the interests of consumers, social/public interests, and total welfare;
b. Economic efficiency in terms of resource allocation efficiency, efficiency;
c. Free and Fair Competition;

Various countries regulating business competition law also have various objectives in regulating business competition law, with different focus of objectives. Some examples of the objectives of competition law in various countries in Asia can be explained in the following table:

[6] B Sufrin Jones, *EU Competition Law*, United Kingdom: Oxford University Press, 2011, hlm. 101-105.

Country	Description of Objectives	Keywords (Objectives)
Indonesia[7]	a. safeguarding public interests and improving the efficiency of national economy as an effort to improve people's welfare b. creating a conducive business climate by regulating an equal business competition for large business actors, medium business actors and small business actors c. prevent monopolistic practices and/or unfair business competition performed by business actors and d. creating effectiveness and efficiency in business activities	**Public Interest** **Fair Business Competition** Equal Business Opportunity **Efficiency** and effectiveness in business activity
Jepang[8]	The purpose of this Law is to prohibit private monopolies, unjustified trade barriers and fraudulent trading practices by preventing excessive concentration of economic power and by removing all obstacles in production, sales, prices, technology, etc, and any unfair obstacles in trade activities in the form of combinations and agreements. To promote fair and free competition to encourage creative proposals from entrepreneurs, encourage trade activities, advance the level of employment so that in the end promote democracy and develop the country by taking into account the interests of consumers in general.	**Free and Fair Competition** Entrepreneurship Employment and national revenue Democratic Development **Consumer's Welfare**
Korea Selatan[9]	The purpose of this law is to stimulate the creative behavior of business actors, to protect consumers and to provide a balanced development of the national economy by promoting free and fair competition by preventing the abuse of dominant position and the concentration of economic power of business actors through the implementation of regulations to prevent fraudulent trading behavior.	Entrepreneurship **Consumer Protection** Balanced Development **Fair Business Competition**

[7] The house of Representative of the Republic of Indonesia, "Law Number 5 of 1999 Concerning Prohibition on the Practice of Monopoly and Unfair Business Competition" (1999).

[8] hideaki Kobayashi, "Competition Policy Objectives -- A Japanese View : Japan Fair Trade Commission," *https://www.jftc.go.jp/en/policy_enforcement/speeches/1997/97_0613.html*, accessed on 26 September 2022.

Malaysia[10]	This law aims at economic development through actions to promote and protect competitive activities/processes so as to have an impact on consumer protection, and also aims to provide rules relating to related issues. A healthy competition process will encourage efficiency, innovation and entrepreneurship which will have an impact on competitive prices, improvements in the quality of goods and services and wider choices for consumers.	Economic Development **Fair Competition Process** **Consumer Welfare** **Efficiency**
Singapore[11]	The objective of competition law is to promote the efficiency function of the market with the aim of making Singapore's economy more competitive. In assessing whether an action/behavior is anti- competitive, the authorities also consider whether the behavior/action promotes innovation, productivity or in the long run increases economic efficiency. The Authority will ensure that it does not obstruct any innovative actions and vigorous endeavors.	**Efficiency** Competitive Economy
Vietnam[12]	The Vietnam Competition Authority is a body set up under the Ministry of Industry and Trade with a mandate to manage fair competition, consumer protection and all measures aimed at protecting Vietnam's interests in importation.	Managing **Fair Competition** **Consumer Protection** Protection on Domestic market due to import

[9] Ministerial-level central administrative organization under the authority of the Prime Minister functions as a quasi-judiciary body, "Competition Laws - Fair Trade Commission", *https://www.ftc.go.kr/eng/cop/bbs/selectBoardList.do?key=2835&bbsId=BBSMSTR_000000003631&bbsTyCode=BBST11*, accessed on 26 September 2022.

[10] Cassey Lee, "Competition Law Enforcement in Malaysia: Some Recent Developments," *Malaysian Journal of Economic Studies*, Volume 51, 2014, hlm. 77-78.

[11] Competition & Consumer Commission Singapore, "Competition and Consumer Commission of Singapore," *https://www.cccs.gov.sg/about-cccs/what-we-do/cccs-and-the-competition- act*, accessed on 28 September 2022.

[12] Vietnam-Lao Industry and Trade Relations, "Relevant Laws and Regulations", *http://www.vietlaotrade.com/cat/relevant-laws-and-regulations.html*, accessed on 26 September 2022.

Thailand[13]	Objectives and Policy on competition are meant to enforce laws, to set rules, and to control business for the benefit of producers and consumers. Thus, entrepreneurs and the public will benefit from free and fair business competition for every sector in Thailand.	**Free and Fair Business Competition Protection on Business and actors and consumer**

Table 1. Comparison of Objectives of Regulations on Non-Competition

From the above comparison, it can be seen that there are at least 3 important concepts in the objectives of business competition law: **social welfare**, both in general and those appointed regarding consumers, a process of **free and fair competition**, and the last is **efficiency**.

In analyzing the concept of welfare, the law of utilitarianism has a very strong influence, where Jeremy Bentham put forward one of his opinions: "the greatest happiness of the greatest number" which resulted to one principle known as the "principle of utility", which says:

> *"By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, **according to the tendency** which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, **to promote or to oppose that happiness**. I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government."*[14]

Since Bentham's time, utilitarianism has developed into different branches, such as action utilitarianism, rule utilitarianism, two-tier utilitarianism, and negative utilitarianism. Utilitarianism is often described by the expression "the greatest good for the greatest number of people." This phrase is somewhat ambiguous, and mathematically implausible. However, different forms of utilitarianism have developed different interpretations of the principle. The key concept of utilitarianism is happiness or pleasure on the one hand, and pain and suffering on the other. The utilitarian goal is

[13] Trade Competition Commission Thailand, "สำนักงานคณะกรรมการการแข่งขันทางการค้า," *https://www.tcct.or.th/view/1/Home/TH-TH*., accessed on 26 September 2022.

[14] Ross Harrison, *Jeremy Bentham*, Oxford, UK: Blackwell Publishing Ltd, 2017, hlm. 259.

to maximize happiness and pleasure, and minimize pain and suffering - although the latter is not always spelled out but implied. The different branches of utilitarianism take different approaches to achieve, but the basic principles remain the same.

The frequently used terms to reflect "happiness" or "pleasure" is useful. Utility is achieved through the satisfaction of human needs or preferences, and is seen as the ultimate goal for each individual. This makes utilitarianism an individualist theory, which means that individual welfare is the only morally relevant measure

As the aforementioned Bentham's opinion, the principle of utility is one of the important indicators to assess whether the objectives of business competition law lead to the desired effect (people's welfare) or not. The purpose of business competition law can also be seen from whether the substance of the competition law advances/supports or even hinders the happiness of as many as of the people.

The existence of healthy business competition is reflected in the existing market structure (perfect competition market, monopolistic market or oligopoly market), and in each market structure the behavior patterns of dominant business actors in that market can be predicted. In a monopolistic market, the market is dominated by one or a few business actors who have the tendency to perform "abuse" action with their dominant position in the market.

The abuse of a business actor's monopolistic position can be in the form of selling product prices by taking a high profit margin which is possible due to the absence of substitute products, preventing other business actors from entering the market (entry barrier), and also applying favorable trade terms. If the above conditions occur, it will have an impact on consumers who have to buy products from the dominant business actor at uncompetitive prices, so that in the end this will affect the achievement of the desired goals for the people's welfare.

Utilitarian theory is included in the school of consequentialism as opposed to the deontological school which presents two conflicting ideas about the objectives of competition law. Consequentialist is a normative teleological ethical theory that argues that the consequences of a person's behavior are the final basis for any judgment about the right or wrong of that behavior. Therefore, from a consequentialist point of view,

morally rightful action (or inaction) is one that will produce a good outcome. In the context of business competition, this understanding of consequentialism will affect the application of an article in a competition case that is more of a "rule of reason" in nature.

The prohibition of cartels (whether price cartels, production cartels or regional cartels) must be implemented per se illegally, this shows that cartel behavior is inherently[15] a crime against the essence of fair business competition, even though i n practice this practice brings benefits to some large number of consumers (with a lower product price as a result of a price fixing agreement / price cartel).

The main difference between these two approaches is summarized according to Oles Andriychuk[16] as a result-oriented perspective on the role of competition between consumer welfare or total well-being from a utilitarian perspective, whereas the perception of competition as an independent social value is considered deontological. The utilitarian approach to competition law that is based on the utilitarian ethical approach developed by Bentham, which is oriented to create the greatest happiness for most people, is an appropriate act or justification for a particular end. In competition law, this approach is principally concerned with the greatest benefits for consumers and society as a whole.

Deontological approach towards competition argues that competition should be protected and encouraged without direct subordination to the end result but as an essential element of fair competition. Previous theories justify competition as a means to an end, whereas deontology justifies competition as an end itself.

Several examples of unfair business competition cases were detected and resolved by KPPU. Not only does the KPPU's decision impose sanctions on the payment of compensation, but it also provides maximum welfare for the consumers as:[17] (a) KPPU dismantled the cartel practice carried out by six cellular companies during 2004-2008,

[15] John Sanghyun Lee, *Strategies to Achieve a Binding International Agreement on Regulating Cartels*, Singapore: Springer Nature Singapore, 2016, hlm. 336.
[16] Oles Andriychuk, "Rediscovering the Spirit of Competition: On the Normative Value of the Competitive Process," *European Competition Journal*, Volume 6 No.. 3, 2010, hlm. 575–610.
[17] Veri Antoni, "Penegakan Hukum Atas Perkara Kartel di Luar Persekongkolan Tender di Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, Volume 31 No. 1, 2019, hlm. 95.

which set a price conspiracy for SMS tariffs of Rp. 350/SMS, causing consumers to suffer losses of Rp. 2.827 trillion. The six cellular operators, including PT Excelcomindo Pratama Tbk (XL), PT Telkomsel, PT Telkom, PT Bakrie Telecom Tbk, PT Mobile-8 Telecom Tbk and PT Smart Telecom, have been fined by the KPPU. (b) KPPU successfully dismantled the salt cartel practice. The practice of the salt supply cartel in North Sumatra began to be uncovered in 2005. The method of the salt cartel occurs when only a few players supply raw materials for salt in Sumatra. (c) Based on KPPU's Decision No. 24/KPPU-I/2009, issued on May 4, 2010, it was decided that there was price parallelism in the price of packaged and bulk cooking oil. 20 Cooking Oil Producers reported during April-December 2008 carried out a price cartel and harmed the public by at least Rp 1.27 trillion for branded packaged migraine products and Rp 374.3 billion for bulk migraine products. (d) The KPPU stated that PT Pfizer Indonesia and PT Dexa Medica were guilty of committing a cartel by punishing each member of the Prizer business group who was reported to pay a fine of Rp. 25 billion. Meanwhile, Dexa Medica was found guilty of carrying out a price-fixing cartel and sentenced to pay a fine of Rp. A national pharmaceutical company ordered 20 billion to lower the price of tensivask by 60% from the net cost of pharmacies.

2. Free and Fair Competition

One of the characteristics of the objectives of business competition law is the manifestation of free and fair business competition. This state requires several conditions, among others:[18] the absence of barriers to entry into the market, which is illustrated by the existence of freedom or discretion for business actors to enter or leave in a market for certain goods and or services. This condition requires fair and equal rights in doing business, which is a form of freedom to interact between people in economic activities.

Classics perspective on competition states that certain business agreements and practices can become obstacles that will affect the freedom of business actors in

[18] Chaehyeon Lee et al., "Toward Detecting Illegal Transactions on Bitcoin Using Machine-Learning Methods," *International Conference on Blockchain and Trustworthy Systems*, Singapore: Springer, 2019, hlm. 520–533.

carrying out their livelihoods. The regulation of trade barriers can only be allowed because of the Court's decision which assesses in certain cases where this will affect the concentration of economic power in certain parties. Adam Smith in his book Wealth of Nation[19] argues that:

> *"A monopoly granted either to an individual or to a trading company has the same effect as a secret in trade or manufactures. The monopolists, by keeping the market constantly under-stocked, by never fully supplying the effectual demand, sell their commodities much above the natural price, and raise their emoluments, whether they consist in wages or profit, greatly above their natural rate."*

Adam Smith argues that the impact of monopolistic practices has resulted in soaring prices over the natural price and also a tendency to reduce production (under-stocked) so that this will result in losses for the society. It is realized that this monopolistic behavior or practice is due to the absence of competition (unless the business actor has a competitive advantage over competitors). This absence is due to the absence of substitute products produced by other business actors in the relevant market.

Adam Smith also clearly distinguishes between "virtue of justice" and "virtue of moral" where failure to comply with moral values will only lead to disappointment and rejection. It is different to where a person cannot obey the law that contains the substance of justice.[20]

In his book *On Liberty*, John Stuart Mill argues that freedom is an expression of balance between individual and the state interests, where there are certain limits for the government not to interfere with someone's behavior. Government interference in a person's behavior can be justified if the will of the individual cannot be justified.

According to Mills, society is formed not because of a "social contract", however, community members who feel the benefits of being part of society have a social obligation to perform certain obligations or sacrifices. In the context of business competition law, there are many debates that color how a country can intervene in the market, whether the intervention can be justified in the sense that it will bring healthier business competition or the opposite. State interference from Mills's perspective can be

[19] Adam Smith, *The Wealth of Nations in Spain*, New York: Routledge, 2022, hlm. 1777-1773.

[20] Knud Haakonssen, "Adam Smith: The Theory of Moral Sentiments - PhilPapers", *https://philpapers.org/rec/HAAAST-2*, accessed on 27 September 2022.

permitted or justified if the behavior of community members causes harm. The Deontology school argues that as long as the competitive behavior is still in the corridor of healthy competition, the results of the behavior of parties in the market are irrelevant to be considered, in other words the state must guarantee the freedom for individuals to do business in the market.

This deontology school has 2 branches, namely: Ordoliberal School[21] and Austrian School, where the two schools agree that the main objective of business competition law is to organize a plural market structure where freedom of competition is the ultimate goal. The Ordoliberal School has a pessimistic tendency that the market will be able to determine optimal results and reflect fair business competition without state regulation and control on the pretext that the competition is very weak and fragile.

This is marked by the market's inability to protect itself from the presence of dominant business actors who tend to behave in an anti-competitive manner.

The right of individuals to compete in the market remains a necessity and they argue that monopolies and cartels must be organized to create the most equitable environment for each competing subject, especially for competitors, small and medium enterprises. For the collective interest, free competition provides benefits to society as a whole by taking into account the interests of society through legislation and institutional controls. The philosophical premise is that there is a need to redistribute wealth in society.

The Austrian School has a more cynical view towards state control and they believe that markets have to be self-sufficient. Such competition is best sustained when the state is only minimally involved in the market. The market has to guide itself and thus will create a business/entrepreneurial spirit to be of the greatest benefit.

The Austrian School supports monopolistic practices and cartels because they see it as a natural result of great economic decisions. Individual companies have the opportunity to compete in the market, but it is only if they are efficient, or more efficient, than other companies in the market. Otherwise, there is no reason why the company should stay in the market. The Austrian school believed that unregulated

[21] Massimiliano Vatiero, "The Ordoliberal Notion of Market Power: An Institutionalist Reassessment," *European Competition Journal*, Volume 6 No. 3, 2010, hlm. 689–707.

markets created incentives for individuals to engage in economic activity which ultimately benefited the society.

According to John Stuart Mill, he argues that an obstacle in a person to trade, produce and consume goods and services should be based on the principle of liberty, so that any other forms of experienced obstacle is a crime (evil).

Again, trade is a social act. Whoever undertakes to sell any description of goods *to the public, does what affects the interest of other persons, and of society in general; and thus his conduct, in principle, comes within the jurisdiction of society... both the cheapness and the good quality of commodities are most effectually provided for by* ***leaving the producers and sellers perfectly free****, under the sole check of* ***equal freedom*** *to the buyers for supplying themselves elsewhere. This is the so-called doctrine of Free Trade, which rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this Essay.* ***Restrictions on trade, or on production for purposes of trade, are indeed restraints; and all restraint, qua restraint, is an evil****...*[22]

From the above explanation, it appears that Mills desires freedom (liberty) from individuals to carry out business activities in the market as a form of expression of freedom but at the same time opposes any obstacles in competition (trade) , which ensures that the market must be free and fair (free and fair trade).

3. The Relevance of Efficiency Considerations for Competition Policy

Efficiency is related to the use of resources, in the context of current or future use. Efficient production today means that the use of production factors in the form of human resources, tools and machines, sources of raw materials and other materials are used in such a way as to produce the largest output that can be produced. Inputs are not wasted or in vain. Today's efficiency also means that the products and services produced are the goods and services that are valued the most by consumers for which their choices are not distorted. Future efficiency is derived from incentives for innovation that results in product and service improvements as well as improvements in

[22] Joseph Hamburger, *John Stuart Mill on Liberty and Control*, United Kingdom: Princeton University Press, 2001, hlm. 23-24.

future production processes. Increased production at lower prices, as well as innovations that result in new products and better services in the future, will increase the overall surplus.[23]

The relevance of efficiency considerations for competition policy is that inefficient use of resources, in other words, will result in high prices, low output, lack of innovation and wasteful use of resources. When companies compete with each other to identify consumer needs, produce what consumers need at the lowest price, they can produce and continuously seek to improve and innovate to increase sales, resources will be used more productively and consumers get what they need.[24]

The more productive use of existing resources will result in greater output and then result in greater economic growth and wealth for the country. A lower price will give consumers higher income to spend on other purchases, investments or for savings. The total surplus or profits from consumers or producers will increase. Therefore, a competition policy that reduces barriers to competition will help businesses achieve goals that are beneficial to society.

Efficiency can be presented as an important consideration in the reviews of merger, vertical agreements, and abuse of dominant positions. Mostly, efficiency is associated with welfare in such a way that pursuing efficiency results in maximizing welfare and vice versa.

However, experts argue that efficiency does not necessarily mean the maximization of welfare. To delve deeper into this debate, it is worth discussing the different types of efficiency (allocative, productive, and dynamic) and what is the correlation between these types of efficiency.

Allocative efficiency is achieved when goods and services are produced and distributed to consumers who provide the highest value for these goods and services. Allocative efficiency technically is also a marginal cost pricing.

---

[23] Andi Fahmi Lubis, *et. al*, *Hukum Persaingan Usaha (Buku Teks)*, Jakarta: Komisi Pengawas Persaingan Usaha, 2017, hlm. 36.

[24] Cassey Lee, Lee, and Cassey, "The Objectives of Competition Law", *https://econpapers.repec.org/RePEc:era:wpaper:dp-2015-54*., accessed on 28 September 2022.

Productive efficiency is related to minimal costs, both allocative efficiency and productive efficiency are also considered to be static efficiency. **Static efficiency** is a 'one-time' advantage from an increase in resource allocation given that no technological change has occurred. To some extent, these concepts are associated with general equilibrium theory, which essentially is fixed. Both social welfare and total well-being are maximized by a competitive marketplace. Thus, for such a market - theoretically at least - efficiency coincides with the maximization of welfare. The third type is **dynamic efficiency** resulting from technological advances. The time span over which the technology is present becomes important because the efficiency gains from technological change take place over time. These benefits can be in the form of improvements to the production process and/or new products and/ or services. Compared to allocative and productive efficiency, it is very challenging to estimate dynamic efficiency. Part of this difficulty arises from the fact that it is difficult to determine after a certain period of time whether an innovation activity such as research and development (R&D) will result in actual innovation. The school of legal philosophy associated with the study of efficiency is the Economic Analysis of Law. In general, one of the branches in the school of Economic Analysis of Law is Law and Economics where the figures are Ronald Coase, Guido Calabresi and Henry Manne who focus their studies on the efficiency of common law law related to ownership (property) and legal barriers (nuisance). One of the dominant figures in this philosophical approach is Richard Posner.

The school of Law and Economics is essentially more positivistic as opposition to normative, where this school tries to explain law as it is from an economic perspective rather than explaining how the law should be (ought to be). This school does not attempt to explain to judges how the law should be made, but explains the relative cost of existing laws and other legal alternatives.[25] From the perspective of business competition law, a phenomenon of the high number of cases of violation on fair business competition provisions related to tenders and notification of mergers can be explained. According to the Commissioner of Business Competition Monitoring (KPPU) Annual Report in 2019,[26] of the 149 decisions that achieved permanent legal

[25] Suri Ratnapala, *Jurisprudence*, United Kingdom: Cambridge University Press, 2019, hlm. 32-33.
[26] Andi Fahmi Lubis, *et. al*, *op. cit.*, hlm. 33-35.

decision, 54.5% were cases of tender conspiracy, 36.5% related to merger and acquisition notification violations, 6% cartel cases and 3% monopoly cases.

Tender conspiracy cases indicate the existence of 2 important things: first, anti-competitive behavior and secondly economic inefficiency (particularly efficiency of allocation and production). Anti-competitive behavior in the form of tender conspiracy is a case that for more than 5 years has been the most type of case examined at KPPU. This should have been anticipated by KPPU from the perspective of economic analysis of law, by providing a more stringent and complete regulation on tender cases (both government and private tenders).

The problem that may arise from tender conspiracy cases is the efficiency of allocation, where production factors cannot be used optimally, because in tender conspiracy cases there is a tendency to reduce the specifications or standards of production factors, resulting to mismatch between the issued value of investment (budget) with the expected quality of the products or services. Production efficiency is also an important issue in tender conspiracy due to the implementation of a legal process that will interfere with the production of the expected goods or services, or in other words, the expected product or service will not last long (optimum).

The case of delays in notification of mergers and acquisitions indicates inefficiency from the side of the business actor (due to large fines for every day of delay of 1 billion rupiah). From the state side, the obtained fines were quite massive, but from the side of business actors it was the same. This comes from the notification of mergers or acquisitions in the provisions of anti-monopoly law which adhere to the Post Notification system.

As a consequence of the notification arrangement in the form of a post notification system, companies that have carried out a merger or acquisition are required to report their corporate actions to the KPPU's authority. There are 2 possible risks, those are the delays in reporting and cancellation of mergers and acquisitions since there are indications of abuse of their dominant position or the potential to engage in monopoly practice.

In the draft of the new Anti-Monopoly Law Bill, there is a proposed change from notification in the nature of Post to Pre Notification as a condition for conducting mergers or acquisitions from companies. Changes in regulations regarding this notification from the perspective of economic law are expected to provide economic efficiency for business actors.

4. John Rawls' Concept of Fairness, Criticism and Its Relevance

John Rawls, a social and political legal philosopher, in his view on the theory of justice, considers justice as fairness. Justice is a major virtue in social institutions, as is truth in systems of thought. Everyone has honor based on justice so that even the whole society cannot cancel it. Justice does not allow the sacrifices imposed on the few to be exacerbated by the greatest benefits enjoyed by many. Therefore, in a just society, the freedom of citizens is considered established, the rights guaranteed by justice are not subject to political bargaining or social interest calculations.[27]

This is expressed in John Rawls's book, A Theory of Justice where there are 2 concepts of justice, namely: (a) "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all", and (b) "Social and economic inequalities are to be arranged so that they are both: (i) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (ii) attached to offices and positions open to all under conditions of fair equality of opportunity.

John Rawls then put forward two basic principles of justice, which together form the concept of *justice as fairness*, namely: the *Basic Liberty principle* and the *Difference principle*. Rawls argues that these principles must be adopted if an agreement is to be based on the concept of *justice as fairness*. (a) *Basic Liberty principle*: The principle of basic freedom has two claims, namely: First, every individual must be given fair and equal rights to exercise freedom in society, such as the right to make decisions or determine what is good for his life. Second, the systems of freedom in society must be

[27] Pan Mohamad Faiz, "Teori Keadilan John Rawls (John Rawls' Theory of Justice)," *SSRN Electronic Journal*, Volume 6 No. 1, 2009, hlm. 135.

open as wide as possible for all parties to obtain the basic social benefits that exist i n society for self- development. So, this first principle requires that a collective agreement be made that applies equally to everyone to use their basic freedoms. The provisions of this standard exist to protect common civil and political rights. The further consequence of this affirmation is that all individuals in society must be given the opportunity to get what is best in life together, or everyone must be given social primary goods, namely basic social needs. Thus, according to this principle, equal justice can be achieved if all parties in society are given the same rights or equal opportunities, for example the right to life, the right to express opinions, the opportunity to obtain education, the right to obtain correct information, and so on, which is basic human freedom or basic liberty. (b) *The difference principle*: The difference principle focuses on John Rawls's main concept of justice as balance. Justice for John Rawls means that no one can be harmed or otherwise benefited, only because of a different social background, education level, religion, ethnicity, color or gender. In the context of business competition law objectives, John Rawls' opinion deals with 2 important aspects, namely the freedom to determine the best choices. Individuals are given the same freedom and rights in carrying out social interactions in business activities, because this right falls into the basic category of liberty. This is consistent with the objectives of business competition law in Indonesia, especially in the framework of creating a conducive business climate through the same business competition arrangements for large, medium and small business actors.

The second concept of Rawls's theory of justice is the existence of "*greatest benefit of the least advantaged*". The level of business actors distinguished from large, medium and small business actors should be regulated in such a way so that they still pay attention to the interests of small and medium enterprises as regulated in *Perkom No.4 of 2016 on the Guidelines for Using the Competition Policy Checklist.*

This partiality in the form of an exception reflects the value of justice, which aims to prevent small and medium business actors from becoming the disadvantaged party for their competition with business actors who have stronger economic power.[28]

[28] John Rawls, *Justice as Fairness*, London: Palgrave Macmillan, 1991, hlm. 10-11.

5. Are the interests of business actors and consumers' interests balanced in the Indonesian Business Competition Law?

Consumer protection and competition are two things that are interrelated and mutually supportive. Low prices, high quality and good service are the three things that are fundamental for consumers, and competition is the best way to guarantee it. Therefore, the competition law must be in line with or support the consumer protection law. Economic efficiency increases wealth, including consumer wealth, consumers in the broadest sense are society through better use of resources.[29]

Article 3 of Law Number 5 of 1999 aims to safeguard the public interest and increase national economic efficiency as one of the efforts to improve welfare.[30] In developed countries, consumer protection is a fairly prominent issue in business competition law and has received special attention during the last two decades.[31] One of the main objectives of business competition law worldwide is to protect consumers (protection of consumers).

The vision of the *KPPU* is "The realization of a healthy business competition climate in encouraging an efficient and just national economy to improve people's welfare." and Become an Equivalent Business Competition Oversight Agency with Developed Countries." With this vision, KPPU must also have the main objective of protecting consumers like other developed countries.

In general, efficiency (public economics) and efficiency (policy objectives) are ideal for managing competition in interest-bearing countries. It turns out that these two important elements are also part of the purpose of the enactment of Law No. 5 of 1999."[32] The Article 3 letter of Law Number 5 of 1999 states that "maintaining the public interest and increasing national efficiency as a common cause." This condition

[29] Sukarmi, et. al., *Buku Teks Hukum Persaingan Usaha Edisi Kedua*, Jakarta: Komisi Pengawas Persaingan Usaha Republik Indonesia, 2017, hlm 37.
[30] Mashur Malaka, "Praktek Monopoli dan Persaingan Usaha", *Al-'Adl*, Volume 7 No. 2, 2014, hlm. 39-42.
[31] Desi Apriani, "Tinjauan Terhadap Hukum Persaingan Usaha Di Indonesia Dari Perspektif Hukum Perlindungan Konsumen", *Jurnal Panorama Hukum*, Volume 4 No. 1, 2019, hlm. 19-21.
[32] I Made Sarjana, "Analisis Pendekatan Ekonomi Dalam Hukum Persaingan Usaha", *Rechtidee*, Volume 8 No. 2, 2013, hlm. 176-179.

means to improve the welfare of the people from the perspective of healthy business competition, so the efforts that will be made are by "maintaining general efficiency."

The term "take care" means protecting or guarding against bad things. It is worth paying attention to the form "bad things" means. From the background and basis of Law Number 5 of 1999, it is possible that the "bad thing" meant "the interests of the perpetrators/a handful of perpetrators." The payment of compensation suffered by the consumer, if the consumer's loss occurs, the *KPPU* must decide and determine the loss caused by the consumer. The *KPPU's* investigative authority is based on Article 36 letter j of Law Number 5 of 1999 to decide and determine the loss suffered by the consumer, whether it is in the mechanism of the *KPPU's* arbitrariness of claims for damages.

Gustav Radbruch reaches justice, benefit, and legal certainty, the three basic ideas of law or the three basic values of law.[33] This condition means that it can be equated with legal principles. A legal principle automatically places this as a good first reference in regulatory arrangements and various consumer-related activities.[34] However, the explanation of Law Number 5 of 1999 does not follow KPPU's Regulation Number 4 of 2009 concerning Guidelines for Administrative Actions based on Article 47 of Law Number 5 of 1999.

Preparing guidelines for administrative action sanctions is a form of implementing KPPU's duties in accordance with Article 35 letter f of Law Number 5 of 1999. This guideline aims to provide explanations to related parties regarding KPPU's considerations for imposing administrative sanctions. This guideline should provide legal certainty to the business world and increase the rationality of business actors not to practice monopolistic practices and unfair business competition.[35] KPPU will apply the principle of determining compensation following civil law where the burden of proof is

[33] Gustav Radbruch, "Five minutes of legal philosophy (1945)", *Oxford Journal of Legal Studies*, Volume 26 No. 1, 2006, hlm. 13-15.

[34] Max Huffman. "Bridging the divide? Theories for integrating competition law and consumer protection", *European Competition Journal*, Volume 6 No. 1, 2010, hlm. 7-10.

[35] Peraturan Komisi Pengawas Persaingan Usaha Nomor 4 Tahun 2009 tentang Pedoman Tindakan Administratif Sesuai Ketentuan Pasal 47 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat, hlm 1.

on the business actor who asks for compensation.[36] In imposing sanctions for administrative actions, KPPU needs to consider the economic losses from the decline in welfare due to the competitive action.[37]

The author will compare the settings of the United States and Indonesia. The following is a comparison table of regulations regarding the provision of compensation to consumers due to anti-competitive actions. (Table 2)

USA	**Indonesia**
The purpose of the FTC Act is to protect consumers and competition by preventing anti-competitive, harmful, and unfair practices through law enforcement, advocacy, and education without unduly burdening legitimate competitive activities.	The purpose of KPPU is to safeguard the public interest and improve the efficiency of the national economy for the people's welfare; create a conducive business climate through the regulation of fair business competition for equal business opportunities for large, medium and small business actors; prevent monopolistic practices caused by business actors; and the creation of effectiveness and efficiency in business activities.
Federal Trade Commission Act Incorporating U.S. Safe Web Act amendements of 2006 bagian *§* 57b. *Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices (Sec.* 19*)*	Provision of compensation in Article 47 paragraph (2) letter f of Law Number 5 of 1999 concerning the prohibition of Monopoly Practices and Unfair Business Competition.

[36] Peraturan Komisi Pengawas Persaingan Usaha Nomor 4 Tahun 2009 tentang Pedoman Tindakan Administratif Sesuai Ketentuan Pasal 47 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat, hlm 7.

[37] Peraturan Komisi Pengawas Persaingan Usaha Nomor 4 Tahun 2009 tentang Pedoman Tindakan Administratif Sesuai Ketentuan Pasal 47 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat, hlm 1.

The FTC has a Consumer Protection Bureau that protects consumers from unfair, deceptive or dishonest practices.	KPPU does not have a bureau dedicated to protecting consumers from unfair, deceptive, or dishonest practices.
The FTC regulates the notification of compensation to consumers.	Indonesian Competition Law does not regulate the provision of compensation to consumers.
Determination of compensation through several settlement mechanisms.	The determination of compensation is only based on the KPPU's decision.
The FTC institutionalizes the provision of compensation to consumers.	The provision of compensation to consumers is not institutionalized by KPPU.
Legal basis for indemnification FTC Act.	The legal basis for giving compensation is Law Number 5 of 1999 and Law Number 8 of 1999.

Table 2. Comparison of Regulations

The relevance of the regulation of providing compensation to consumers due to anti-competitive actions in Indonesia, the authors include a provision for payment owned by the FTC. Giving compensation to consumers is not supportive because there are no regulations regarding providing balance to consumers. FTC regulations have regulated the provision of consumer compensation with various mechanisms that consumers can take.[38] Consumers can contact business actors directly voluntarily where business actors create their dispute resolution platform or through consumer protection agencies; legally with regulations that provide consumers with specific dispute resolution provisions regarding compensation; and with the judicial process through class action or alternative dispute resolution.

[38] Joshua D. Wright, "Are state consumer protection acts really little-FTC acts", *Florida Law Review*, Volume 63, 2011, hlm. 163.

In the FTC Act Incorporating U.S. Safe Web act amendements of 2006 part 57b. Section 19 in point B explains the nature of the assistance deemed necessary to repair the loss to consumers and other people resulting from the violation of regulations.[39] Regarding the regulations regarding providing compensation to consumers due to anti-competitive actions, if the existing rules in the United States are reviewed, they can be applied in Indonesia. By implementing FTC regulations, the KPPU can sanction administrative actions after the investigation has "reasons for believing". The KPPU's law enforcement actions should be to stop illegal practices and get refunds to the public or lost consumers. The lawsuit will be used to pay the money ordered by the court to be returned to consumers who have been harmed. Furthermore, KPPU must cooperate with various institutions that protect consumers so that the work they can do well.

In enforcing these regulations, the KPPU may apply several mechanisms to consumers if consumers want to sue for compensation from business actors. First, consumers must be able to be made a party by the KPPU in reporting. If consumers can be made as parties, they will find it easier to fulfil their rights to get compensation. However, consumers will be weak in doing the proof, in contrast to business actors directly involved in anti-competitive actions..

Second, consumers can use aid agencies to resolve the case. These institutions are the Indonesian Consumers Foundation (YLKI), the Society for Self-Sufficiency Consumer Protection (LPKSM), the National Consumer Protection Agency (BPKN), and consumer protection agencies. Article 3 of the Government Regulation of the Republic of Indonesia Number 59 of 2001 concerning Community Self-Sufficiency Consumer Protection Institutions explains the duties of consumer protection agencies.

Third, consumers can use a class action lawsuit. A class action lawsuit is a lawsuit that contains a claim through a court process that is filed by one or several people acting as a group. In filling the case, it is not necessary to mention individually the identity of the members of the group represented, and the important thing is that the group represented can be identified as specific. Using class action will make it easier to arrange the resolution of cases involving many people that can not submit their claims individually. Based on the explanation above, for consumer rights to be effective, it

[39] Federal Trade Commission Act Incorporating U.S. Safe Web Act amendements of 2006.

needs to be enforced, and any losses suffered by consumers must be protectedAccess to consumer justice in business competition is also related to the KPPU's responsibility to receive and follow up on consumer complaints by facilitating the provision of compensation to consumers. Indonesia should be able to review the regulations regarding the provision of compensation applied by the FTC. The author concludes that the law is something relevant if used in Indonesia.

III. CLOSING

Article 3 of Law Number 5 of 1999 aims to improve economic efficiency as one of the efforts to improve people's welfare. From a philosophical point of view, people's welfare law is closely related to the "greatest benefit for the greatest people" (Jeremy Bentham). However, if we look at the interests between business actors and consumers, this condition can still be seen that the interest in efficiency still prioritizes the interests of business actors. It is proven that Law Number 5 of 1999 does not regulate the right of consumers to demand justice (compensation) for actions that violate antitrust provisions. Fulfilment of consumer justice is only placed as an "object" rather than a subject whose rights must be protected due to violations of business competition. Consumers can not act as parties receiving direct compensation due to breaches of anti-monopoly provisions. This condition proves that the objectives of the Business Competition Law are normatively in line with the objectives of the 1945 Constitution, but states need balance and political choice of business competition law in realizing harmony with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and with maintaining the balance of progress and national economic unity.

BIBLIOGRAPHY

Books

Adam Smith, *The Wealth of Nations in Spain*, New York: Routledge, 2022.

Andi Fahmi Lubis, et. al., *Hukum Persaingan Usaha (Buku Teks)*, Jakarta: Komisi Pengawas Persaingan Usaha, 2017.

B Sufrin Jones, *EU Competition Law,* United Kingdom: Oxford University Press, 2011.

Chaehyeon Lee, et al., "Toward Detecting Illegal Transactions on Bitcoin Using Machine-Learning Methods," *International Conference on Blockchain and Trustworthy Systems,* Singapore: Springer, 2019.

John Rawls, *Justice as Fairness*, London: Palgrave Macmillan, 1991.

John Sanghyun Lee, *Strategies to Achieve a Binding International Agreement on Regulating Cartels,* Singapore: Springer Nature Singapore, 2016.

Joseph Hamburger, *John Stuart Mill on Liberty and Control,* United Kingdom: Princeton University Press, 2001.

Rachmadi Usman, *Hukum Persaingan Usaha di Indonesia*, Jakarta: Sinar Grafika, 2013.

Ross Harrison, *Jeremy Bentham*, Oxford, UK: Blackwell Publishing Ltd, 2017.

Sukarmi, et. al., *Buku Teks Hukum Persaingan Usaha Edisi Kedua*, Jakarta: Komisi Pengawas Persaingan Usaha Republik Indonesia, 2017.

Suri Ratnapala, *Jurisprudence,* United Kingdom: Cambridge University Press, 2019.

Journals

Cassey Lee, "Competition Law Enforcement in Malaysia: Some Recent Developments", *Malaysian Journal of Economic Studies*, Volume 51, 2014.

Desi Apriani, "Tinjauan Terhadap Hukum Persaingan Usaha di Indonesia Dari Perspektif Hukum Perlindungan Konsumen", *Jurnal Panorama Hukum*, Volume 4 No. 1, 2019.

Elias Mossialos and Julia Lear, "Balancing Economic Freedom against Social Policy Principles: EC Competition Law and National Health Systems", *Health Policy*, Volume 106 No. 2, 2012.

Gustav Radbruch, "Five minutes of legal philosophy (1945)", *Oxford Journal of Legal Studies*, Volume 26 No. 1, 2006.

I Made Sarjana, "Analisis Pendekatan Ekonomi Dalam Hukum Persaingan Usaha", *Rechtidee*, Volume 8 No. 2, 2013.

Joseph E Harrington, "Developing Competition Law for Collusion by Autonomous Artificial Agents", *Journal of Competition Law & Economics*, Volume 14 No. 3, 2018.

Joshua D. Wright, "Are state consumer protection acts really little-FTC acts", *Florida Law Review*, Volume 63, 2011.

Max Huffman, "Bridging the divide? Theories for integrating competition law and consumer protection", *European Competition Journal*, Volume 6 No. 1, 2010.

Mashur Malaka, "Praktek Monopoli dan Persaingan Usaha", *Al-'Adl*, Volume 7 No. 2, 2014.

Massimiliano Vatiero, "The Ordoliberal Notion of Market Power: An Institutionalist Reassessment", *European Competition Journal*, Volume 6 No. 3, 2010.

Oles Andriychuk, "Rediscovering the Spirit of Competition: On the Normative Value of the Competitive Process," *European Competition Journal*, Volume 6 No. 3, 2010.

O. Odudu, "The Wider Concerns of Competition Law", *Oxford Journal of Legal Studies*, Volume 30 No. 3, 2010.

Pan Mohamad Faiz, "Teori Keadilan John Rawls (John Rawls' Theory of Justice)", *SSRN Electronic Journal*, Volume 6 No. 1, 2009.

Timothy Besley, "Antitrust Policies and Profitability in Nontradable Sectors," *American Economic Review: Insights*, Volume 3, No. 2, 2021.

Veri Antoni, "Penegakan Hukum Atas Perkara Kartel Di Luar Persekongkolan Tender di Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, Volume 31 No. 1, 2019.

Laws

Federal Trade Commission Act

Peraturan Komisi Pengawas Persaingan Usaha Nomor 4 Tahun 2009 tentang Pedoman Tindakan Administratif Sesuai Ketentuan Pasal 47 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat

The House of Representatives of the Republic of Indonesia. Law Number 5 of 1999 concerning Prohibition on the Practice of Monopoly and Unfair Business Competition (1999).

Websites

Cassey Lee, Lee, and Cassey, *The Objectives of Competition Law*, https://econpapers.repec.org/RePEc:era:wpaper:dp-2015-54., accessed on 28 September 2022.

Competition & Consumer Commission Singapore, *Competition and Consumer Commission of Singapore*, https://www.cccs.gov.sg/about-cccs/what-we-do/cccs-and-the-competition- act, accessed on 28 September 2022.

Hideaki Kobayashi, *Competition Policy Objectives -- A Japanese View: Japan Fair Trade Commission*, https://www.jftc.go.jp/en/policy_enforcement/speeches/1997/97_0613.html, accessed on 26 September 2022.

Knud Haakonssen, *Adam Smith: The Theory of Moral Sentiments - PhilPapers*, PhilPapers, 2002, https://philpapers.org/rec/HAAAST-2, accessed on 27 September 2022.

Ministerial-level central administrative organization under the authority of the Prime Minister functions as a quasi-judiciary body, *Competition Laws - Fair Trade Commission*, https://www.ftc.go.kr/eng/cop/bbs/selectBoardList.do?key=2835&bbsId=BBSMSTR_000000003631&bb sTyCode=BBST11, accessed on 26 September 2022.

Trade Competition Commission Thailand, *สำนักงานคณะกรรมการการแข่งขันทางการค้า*, https://www.tcct.or.th/view/1/Home/TH-TH., accessed on 26 September 2022.

Vietnam-Lao Industry and Trade Relations, *Relevant Laws and Regulations*, http://www.vietlaotrade.com/cat/relevant-laws-and-regulations.html, accessed on 26 September 2022.