# RECONSTRUCTION OF CRIMINAL LAW ENFORCEMENT AGAINST VIOLATIONS OF INDONESIAN BUSINESS COMPETITION LAW AFTER THE KPPU DECISION HAS ENTERED FIXTURE

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***Keywords:***

First keyword: Criminal Law Enforcement
Second keyword: Business Competition
Third keyword: KPPU
Fourth keyword: Ultimum Remedium
Fifth keyword: Criminal Policy

***Article History:***

Received: 2025-08-26
Accepted: 2025-09-23
Published: 2025-09-30

## ABSTRACT

The legal standing of KPPU decisions and criminal policies in the enforcement of Indonesian competition criminal law after the enactment of the Job Creation Law. Using normative legal research methods with a conceptual and legislative approach, this study examines the structural problems in the implementation of the ultimum remedy mechanism in business competition law. The results of the study indicate that although Article 44 paragraph (5) of Law Number 5 of 1999 provides a special position for KPPU decisions as "sufficient initial evidence" for investigators, empirical reality reveals that business actors ignore KPPU decisions that have permanent legal force but not a single case has been submitted to investigators. This study concludes that there is a fundamental dysfunction in the design of criminal competition law policy, requiring comprehensive reconstruction to ensure the effectiveness of fair competition protection in Indonesia.



## 1. INTRODUCTION

The proclamation of Indonesian independence on August 17, 1945, marked the beginning of the nation's journey to build an independent national and state order. The preamble to the 1945 Constitution mandates the national goals of protecting all Indonesians, advancing the general welfare, improving the nation's intellectual life, and participating in establishing a world order based on freedom, lasting peace, and social justice. [1]This constitutional mandate requires the state to play an active role in building a just national economy. Economic development is the primary instrument for realizing the general welfare, as a goal of independence. State involvement in the economic sector is a manifestation of its constitutional responsibility to advance the welfare of the people.[2]

The dynamics of the global economy have integrated Indonesia into the international trade system through membership in the World Trade Organization under Law Number 7 of 1994. Economic globalization presents both opportunities and challenges for domestic businesses facing increasingly fierce competition. Market openness allows for the entry of foreign investment and modern technology, which drive national economic growth. Global competition demands efficiency and innovation from local businesses to maintain competitiveness. Global economic integration also presents the risk of monopolistic practices and unfair business competition that can harm national interests. [3]The government needs to anticipate the negative impacts of globalization through appropriate regulations to protect the domestic market from detrimental trade practices.

In such a situation, competition law plays a crucial role in preventing unfair business competition and maintaining market economic balance. Every business actor must have equal opportunities in the market. Therefore, the existence of laws governing competition is expected to guarantee this. This

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[1]Jazim Hamidi, *Indonesian Legal Revolution: The Meaning, Position, and Legal Implications of the Proclamation Text of August 17, 1945 in the Indonesian Constitutional System* , Konstitusi Press, Jakarta, 2006, p. 243.

[2]Adi Sulistiyono, *Indonesian Economic Law Reform* , UNS Educational Development Institute (LPP) and UNS Publishing and Printing Unit (UNS Press), Surakarta, 2007, p. 1.

[3]Dorodjatun Kuntjoro-Jakti, *National Economic Planning Facing Global Challenges* , Inaugural Speech of Professor of Economic Planning at the Faculty of Economics, University of Indonesia on June 17, 1995, published in Yanto Bashri (editor), *Where is Indonesian Economic Development Going: Prism of Thought of Prof. Dr. Dorodjatun Kuntjoro-Jakti* , Prenada, Jakarta, 2003, p. 18.

will create a competitive business atmosphere in accordance with market mechanisms and prevent economic centralization in the hands of certain individuals or groups. The legal framework for competition in Indonesia is regulated by Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, which serves as a protective instrument for free market mechanisms and prevents business practices that could harm consumers and the national economy. [4]In some cases, competition also has negative aspects, one of which is when competition is carried out by dishonest economic actors, which is contrary to the public interest.

The government's response to the demands for economic reform in this law aims to create a conducive business climate by regulating fair competition and preventing monopolistic practices that are detrimental to the public interest. The establishment of the Business Competition Supervisory Commission (KPPU) as an independent institution marks the state's commitment to enforcing competition law. The KPPU's authority includes investigations, examinations, and the imposition of administrative sanctions on business actors who violate competition provisions. The criminal sanctions provisions in this law demonstrate the state's seriousness in eradicating monopolistic practices and unfair business competition. The combination of administrative and criminal sanctions is intended to provide an optimal deterrent effect for violators.

The KPPU's performance since its establishment in 2000 has demonstrated significant productivity in handling competition cases. According to the KPPU's 2023 annual report, as of December 31, 2023, it had issued 223 legally binding decisions, with total fines exceeding one trillion rupiah. [5]Non-Tax State Revenues successfully deposited into the state treasury reached Rp772,331,484,865, or approximately 72.67% of the total legally binding fines. [6]This achievement demonstrates the KPPU's significant contribution to enforcing competition law and increasing state revenue. The

[4]Tulung, SV, & Yusuf, H. (2024). Analysis of Commercial Law Regulations on Business Competition in E-Commerce in the Digital Era. *Indonesian Intellectual and Scholars Journal* , *1* (2), p. 1266.

[5] KPPU Annual Report 2023, in https://kppu.go.id/wp-content/uploads/2024/05/Laporan-Tahunan-2023.pdf , accessed November 16, 2023.

[6] *Ibid*

cases handled by the KPPU encompass various strategic economic sectors, from telecommunications and banking to food commodities. This diversification of case handling demonstrates the relevance of competition law in various aspects of society's economic life.


| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|
| Putusan Inkracht | 131 | 149 | 188 | 197 | 214 | 218 |
| Belum Dilaksanakan | 77 | 90 | 100 | 111 | 110 | 113 |
| Persentase yang Belum Dilaksanakan | 58,7% | 60,4% | 53,2% | 58,7% | 51,4% | 51,8% |

Source: KPPU Annual Report 2023, in https://kppu.go.id/wp-content/uploads/2024/05/Laporan-Tahunan-2023.pdf , accessed November 16, 2023.

A worrying phenomenon is revealed in data on business actors' compliance with KPPU decisions that have become legally binding. A total of 113 decisions, or approximately 50.67% of the total 223 decisions that have become legally binding, have not been implemented by the relevant business actors. The value of uncollected fines reaches Rp290,511,040,136, or nearly 30% of the total amount of fines that have been imposed. [7]The level of business actor compliance in the last five years (2018-2023) has consistently been below 50%, indicating a systematic pattern of non-compliance with decisions of law enforcement agencies. [8]This low level of compliance indicates structural weaknesses in Indonesia's competition law enforcement system. This empirical data questions the effectiveness of administrative

[7] *Ibid*

[8] KPPU Five-Year Report 2018 https://kppu.go.id/wp-content/uploads/2024/01/Laporan-Lima-Tahun-KPPU-2018-2023.pdf , accessed November 16, 2023.

sanctions, which have been the mainstay in eradicating monopolistic practices and unfair business competition.

The contradiction in the implementation of the criminal provisions of Law Number 5 of 1999 is evident in the fact that the KPPU has not submitted any cases to investigators despite a very high level of non-compliance. For example, Article 41 paragraphs (2) and (3), which regulate obstruction of justice against the KPPU's law enforcement process, has not been implemented for more than two decades. Article 44 paragraphs (4) and (5), which authorize the KPPU to submit cases to investigators when business actors fail to comply with decisions, has also never been used. The KPPU's reluctance or inability to use criminal law instruments indicates a systemic problem in the design of law enforcement policies. This condition raises fundamental questions about the function and effectiveness of criminal provisions in the competition law. This gap between regulation and implementation requires an in-depth evaluation of the criminal policies implemented to date.

The KPPU's reluctance to exercise its authority under Article 44 paragraph (4) reflects a fundamental problem in its institutional design, which is inconsistent with criminal policy theory. An analysis of the KPPU's organizational structure shows that it was designed as a *quasi-judicial institution* with an administrative orientation, rather than as a law enforcement agency in the true sense. The competence and mindset of KPPU members, who come from economics and civil law backgrounds, create internal resistance to the use of criminal instruments that require a thorough understanding of criminal procedure. The absence of clear standard operating procedures for handing over cases to investigators indicates that the ultimum remedium mechanism in this law is more of a normative symbolism than an operational instrument ready for implementation.

Changes to criminal provisions through Law Number 6 of 2023 concerning Job Creation have created confusion in the enforcement of criminal competition law. Article 118 of the Job Creation Law amends Article 48 of Law Number 5 of 1999 by removing the threat of criminal penalties for business actors who do not implement KPPU decisions. This change creates an inconsistency between the KPPU's authority to refer cases to investigators and the absence of applicable criminal penalties. This ambiguity has the potential to weaken the effectiveness of competition law enforcement in

 

Indonesia. The ambiguous normative conditions require in-depth study to understand their legal and practical implications. The urgency of reconstructing criminal law enforcement policies is an urgent need to ensure the effectiveness of competition protection. The legal standing of KPPU decisions as "sufficient preliminary evidence" according to Article 44 paragraph (5) raises theoretical problems in the relationship between administrative and criminal sanctions.

The concept of ultimum remedium in criminal law requires the use of criminal sanctions as a last resort after administrative sanctions are ineffective. [9]Competition law enforcement practices demonstrate that the KPPU's administrative sanctions have not been able to create an adequate deterrent effect on violators. Criminal policy theory teaches that effective law enforcement requires synchronization between various types of sanctions. [10]This issue requires a comprehensive theoretical analysis to understand the position and function of each type of sanction. Reconstruction of criminal law enforcement policy must be based on a thorough understanding of the characteristics and limitations of each law enforcement instrument.

A theoretical perspective in understanding the problems of criminal competition law enforcement requires a holistic approach through the integration of several conceptual frameworks. The welfare state theory provides a philosophical foundation for state involvement in regulating and supervising economic activities to achieve general welfare. [11]Criminal policy theory also offers an analytical framework for understanding how the state uses criminal law instruments as part of its strategy to combat economic crime. The integration of these two theories provides a comprehensive perspective for analyzing the legal standing of KPPU decisions within the criminal law enforcement system. This theoretical relevance is key to understanding the dynamic relationship between administrative sanctions and criminal sanctions in the context of business competition.

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[9]Saputri, AS, & Sulastri, L. (2025). Application of the Ultimum Remedium Principle in Criminalizing Money Laundering Crimes. *Journal of Mandalika Literature* , *6* (1), 244-250.

[10]Ismanto, D., Alavi, IN, & Lubis, F. (2024). Criminal Law Policy/Penal Policy. *Innovative: Journal of Social Science Research* , *4* (4), 16351-16361.

[11]Nasir, M., Khoiriyah, E., Pamungkas, BP, Hardianti, I., & Zildjianda, R. (2023). Legal Position in Realizing Justice and Welfare in Indonesia. *Al-Manhaj: Journal of Islamic Law and Social Institutions* , *5* (1), 241-254.

Therefore, the mechanism for handing over cases from the KPPU to investigators will uncover structural issues that hinder the effectiveness of criminal law enforcement. A study of the application of the ultimum remedium principle in the context of business competition will provide insight into when and how criminal sanctions should be applied. An evaluation of the impact of changes to criminal provisions through the Job Creation Law will identify the legal and practical implications for the law enforcement system. This research is expected to contribute scientifically to the development of theory and practice of criminal competition law enforcement. The research findings will form the basis for efforts to reconstruct more effective and equitable law enforcement policies.

## 2. LITERATURE REVIEW

### 2. 1 Welfare State Theory

The concept of a welfare state based on the rule of law is an evolution of classical thinking on the role of the state in social life that developed after World War II. The development of this concept began with criticism of the concepts of *Rechtsstaat* and *Rule of Law*. which is considered to be too restrictive in the economic and social spheres of the state. [12]Muhammad Tahir Azhary identified five main concepts of the rule of law, namely:[13]

a. *Rechtsstaat* , *Rule of Law.*
b. *Socialist Legality.*
c. Islamic Nomocracy.
d. Pancasila State of Law.

Each has distinct characteristics and approaches to the role of the state. Immanuel Kant's concept *of Rechtsstaat emphasizes the state's role as a passive guardian of order, or Nachtwaker staat* , while Albert Venn-Dicey's *Rule of Law* focuses on the supremacy of law, equality before the law, and a constitution based on individual rights. [14]The transformation toward a welfare

[12]Muhammad Tahir Azhary, *The State of Law, A Study of Its Principles Viewed from the Perspective of Islamic Law, Its Implementation in the Medina State Period and the Present* , Kencana, Jakarta, 2004, pp. 90-91.

[13] *Ibid*

[14]Majda El-Muhtaj, *Human Rights in the Indonesian Constitution, From the 1945 Constitution to the 2002 Amendment to the 1945 Constitution* , Kencana, Jakarta, 2007, p. 23

state occurs when society recognizes the need for an active role for the state in realizing social and economic justice.

A welfare state based on law requires the active involvement of the state in regulating and overseeing economic activities to achieve a just distribution of welfare. Miriam Budiardjo explains that this paradigm shift occurred due to the excesses of industrialization and the capitalist system, which gave rise to significant socioeconomic inequality. [15]The principles of a welfare state based on law include constitutional protection, an independent judiciary, free elections, freedom of expression, freedom of association, and civic education. [16]The evolution of this concept demonstrates the recognition that the rule of law cannot be separated from the state's responsibility to realize social welfare.

The theoretical relevance of the welfare state law in the economic system shows that state intervention through business competition regulation is a manifestation of constitutional responsibility. Bambang Poernomo explains that economic regulatory policies are tailored to the goals to be achieved by the state, where capitalist states use regulations to protect liberal economic growth, socialist states to prevent individual economic domination, and mixed states to determine clear boundaries between the private and public economy. [17]The enactment of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is a concrete manifestation of the application of the welfare state law concept in regulating economic activities. This theory provides theoretical legitimacy for state involvement in supervising and controlling business practices that can harm the public interest through administrative and criminal legal instruments.

## 2. 2 Criminal Policy Theory

Criminal policy theory developed in response to the limitations of conventional criminal law approaches in addressing increasingly complex

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[15] *Ibid.* Page 58.

[16]Constitution, M. (2016). Legal State and Democracy Education Module. *Jakarta: Center for Pancasila and Constitutional Education, Constitutional Court of the Republic of Indonesia* .

[17]Dewi, NMT (2025). Reactualization of Pancasila Values in National Legal Development in the Era of Globalization. *IJOLARES: Indonesian Journal of Law Research* , *3* (1), 1-10.

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crimes. Herbert L. Packer, in his book, *The Limits of Criminal Sanction,* questioned the effectiveness of using criminal law as an instrument to control crime and antisocial behavior in society. [18]Marc Ancel emphasized that crime is a human and social problem that cannot be resolved through the formulation of laws alone. [19]G. Peter Hoefnagels defined criminal policy as the rational organization of social reactions to crime, encompassing various approaches ranging from the application of criminal law, non-criminal prevention, to the formation of public opinion through the mass media. [20]The scope of criminal policy encompasses all efforts to combat crime that can be pursued through penal and non-penal means. The development of this theory demonstrates a new paradigm in understanding crime as a social phenomenon that requires a multidimensional approach.

Sudarto defines criminal policy as a rational societal effort to combat crime, involving the choice and evaluation of various policy alternatives. [21]The characteristics of this policy demonstrate that there is no absoluteness in this field, as it involves consideration of diverse values and social contexts. Barda Nawawi Arief explains that criminal policy is an integral part of social policy, which consists of social welfare policy and community protection policy. [22]Therefore, the relationship between criminal policy and social policy demonstrates that crime prevention cannot be separated from efforts to create conducive social conditions. This integral approach requires integration between preventive and repressive efforts in addressing crime problems.

The implementation of criminal policy through non-penal efforts holds a strategic position because it is preventative in nature and covers a very broad field. Barda Nawawi Arief emphasized that non-penal efforts are aimed at improving social conditions that can influence the emergence of crime, so that

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[18]Herbert L. Packer, *The Limits of Criminal Sanction* , Stanford University Press, California, 1968, p. 4.

[19]Marc Ancel, *Social Defence A Modern Approach to Criminal Problems* , (translated and revised from the French : *La Nouvelle Defence Sociale* ), Routledge & Kegan'Paul, London, 1965, pp. 99-100.

[20]Quoted from Barda Nawawi Arief, *Anthology of Criminal Law Policy* , PT Citra Aditya Bakti, Bandung, 2002, p. 2. See also in Paulus Hadisuprapto, *Juvenile Delinquency: Understanding and Overcoming It* , PT Citra Aditya Bakti, Bandung, 1997, pp. 72, 74.

[21] Sudarto, *Law and Criminal Law* , Alumni, Bandung, 1986, pp. 30, 153.

[22]Barda Nawawi Arief, *Op.cit* .

failure in this aspect will have fatal consequences for crime prevention as a whole. [23]Criminal policy through penal efforts is implemented through criminal law policies that include three stages: formulation by the legislature, application by the judiciary, and execution by implementing officials. The effectiveness of criminal policy depends heavily on the quality of the formulation of criminal provisions and the synchronization between the various stages of implementation.

The limited approach imposes an absolute prohibition on certain practices without considering their impacts, while the unlimited approach requires an analysis of economic benefits before determining violations. The correlation between criminal policy theory and this research lies in the understanding that the enforcement of criminal competition law must be placed within a broader criminal policy framework, where criminal sanctions serve as *the ultimum remedium* when administrative sanctions are unable to provide an adequate deterrent effect for perpetrators of competition violations.

**2. 3 Previous Research**

Academic studies of competition law in Indonesia have produced various research perspectives that contribute to the development of science. M. Udin Silalahi conducted doctoral research at Friedrich Alexander University Erlangen Nuernberg focusing on the supervision of company mergers based on Indonesian, German, and European competition law. [24]Johny Ibrahim examines the philosophy, theory, and implications of the application of competition law through the approach of market mechanisms and the need for legal regulation. AM Tri Anggraini examines the per se illegal and rule of reason approaches in the prohibition of monopolistic practices and unfair business competition. These studies provide important contributions to understanding the substantive aspects of competition law but have not yet addressed the problems of criminal law enforcement in depth.

Subsequent studies explored specific aspects of competition law implementation using diverse approaches. Ningrum Natasya Sirait analyzed the role of business associations in the context of unfair business competition, while Lucius Budi Kagramanto examined tender rigging from a competition

[23] *Ibid*

[24]M. Udin Silalahi, in Sekapur Sirih in *the Company, Mutually Deadly & Colluding How to Win?*, Elex Media Komputindo, Jakarta, 2007, p. xvii.

law perspective. These studies enrich the body of knowledge on competition law but still focus on substantive and procedural administrative aspects. This study analyzes the legal standing of KPPU decisions as sufficient preliminary evidence and the mechanism for handing over cases to investigators when business actors fail to comply with the decision. The study of criminal competition policy and the impact of changes to criminal provisions through the Job Creation Law presents aspects that have not been previously researched. This research provides a new contribution to understanding the structural problems of criminal competition law enforcement in Indonesia. The theoretical approach, which integrates the theory of the welfare state and criminal policy, provides a perspective that differs from previous studies.

## 3. RESEARCH METHODS

This study applies a normative legal methodology known as library research, with an emphasis on the study of the principles and systematics of law contained in regulations and the rules governing social behavior. The normative approach in this study emphasizes the interpretation and analysis of statutory provisions ( *law in books* ) which serve as normative references in determining the parameters of acceptable behavior in society .[25] The nature of this library research facilitates a comprehensive analysis of the theoretical dimensions of law, where legal material is understood through the formal regulatory framework and applicable normative principles. This normative [26]research also supports a holistic understanding of the philosophical and conceptual aspects of the legal system that regulates the enforcement of criminal competition law as part of the national economic legal structure . The focus of the study is the legal principles and legal systematics related to the formulation of criminal provisions in Law Number 5 of 1999 and how criminal law enforcement should be carried out.

The discussion in this study is conducted in a juridical-normative manner through a statutory approach , namely reviewing and analyzing Law Number 5 of 1999 as amended by the Job Creation Law and other laws and regulations related to the study in this study. Meanwhile, a conceptual

[25]Amiruddin & Zainal A . (2006). *Introduction to Legal Research Methods* . Jakarta: Raja Grafindo Persada, 2006, p. 118

[26]Ibid

approach is also used *related* to the views and doctrines that have developed regarding business competition law, especially criminal provisions that regulate the prohibition of monopolistic practices and unfair business competition. This study uses primary legal materials that include the Preamble and Body of the 1945 Constitution, laws and regulations related to the prohibition of monopolistic practices and unfair business competition and criminal law enforcement, secondary legal materials in the form of legal expert literature, journals, research results, and opinions of KPPU officials, as well as tertiary legal materials such as legal dictionaries and encyclopedias obtained through library research. Data analysis was conducted through a qualitative approach by examining three layers of legal science, namely legal dogmatics to understand the technical legal meaning, legal theory to analyze the principles and theories of criminal law, and legal philosophy for fundamental evaluation of criminal law policies in administrative law.[27]

## 4. RESULTS AND DISCUSSION

### 4. 1 Legal Status of KPPU Decisions in Enforcing Criminal Law on Business Competition

The era of economic globalization has established the market economy as the dominant mechanism for organizing national economic activities. This market economy provides businesses with complete freedom to determine production, distribution, and consumption strategies in accordance with the dynamics of supply and demand in the market. Business competition within this system is a crucial instrument for encouraging innovation, creating price uniformity that benefits consumers, and increasing national economic growth. [28]This economic freedom allows businesses to compete to create added value by increasing operational efficiency and developing more competitive products. However, market mechanisms that are allowed to operate without adequate regulation have the potential to give rise to

[27] *Ibid*

[28]Sudiarto. (2021). *Introduction to Competition Law in Indonesia* . Jakarta: Prenada Media. Pp. 209-210.

monopolistic practices and unfair business competition that can harm the public interest and hinder the creation of equitable prosperity.[29]

Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition was enacted as a response to the need to regulate business competition within a healthy market economy. The considerations in letter a of this law affirm that "economic development must be directed towards realizing the welfare of the people based on Pancasila and the 1945 Constitution." This philosophy demonstrates that competition regulation is not merely to regulate market mechanisms, but rather as an instrument for realizing the constitutional ideal of general welfare. [30]As formulated in Article 3, comprehensive objectives include safeguarding the public interest and increasing the efficiency of the national economy, creating a conducive business climate through regulating healthy competition, preventing monopolistic practices and unfair business competition, and creating effectiveness and efficiency in business activities. This normative framework serves as the foundation for determining prohibited acts and the sanctions that can be imposed on violators.

The establishment of the Business Competition Supervisory Commission as an independent institution with *quasi-judicial authority* represents a policy choice to create an efficient and responsive law enforcement system to market dynamics. [31]The KPPU's substantive authority in the competition law enforcement process is manifested through three key authorities stipulated in Article 36 of Law Number 5 of 1999, as follows:

" *Article 36:*

*j. decide whether or not there is a loss on the part of other business actors or the community;*

*k. notify business actors suspected of carrying out monopolistic practices and/or unfair business competition of the Commission's decision;*

l. *impose sanctions in the form of administrative action on business actors who violate the provisions of this Law* ."

[29] *Ibid*

[30]Usman, R. (2004). *Competition law in Indonesia* .

[31]Dewi, R., Et.al. (2024). The Role of the Business Competition Supervisory Commission as a Referee and Judge in Economics. *Collegium Studiosum Journal* , *7* (2), 481-496.

This article broadly positions the KPPU as an institution with punitive authority. However, this broad authority faces structural limitations in the execution aspect because, based on Article 46 paragraph (2), KPPU decisions require an execution order from the District Court to be enforced. This limitation indicates that although the KPPU has comprehensive quasi-judicial authority, the effective implementation of its decisions still depends on the general court system, which can affect the speed and effectiveness of competition law enforcement. [32]This integration of material and formal provisions creates a comprehensive competition law system but also creates complexity in its relationship with the national criminal law system, particularly regarding the position of KPPU decisions in the context of criminal law enforcement.

The legal standing of the KPPU's decisions within the competition law enforcement system exhibits unique characteristics that differentiate it from judicial institutions in general. As an independent institution, the KPPU has quasi-judicial authority that allows it to conduct investigations, examinations, and impose administrative sanctions on business actors who violate competition provisions. This authority is granted through Article 36 letter l of Law Number 5 of 1999, which states that the KPPU has the authority to "impose sanctions in the form of administrative measures on business actors who violate the provisions of this Law." The granting of quasi-judicial authority to the KPPU reflects the need for swift and effective handling of competition violations, which are often complex and require in-depth technical understanding. This legal construction allows the KPPU to act as a 'first instance court' in enforcing competition law before cases have the potential to be transferred to the criminal realm.[33]

The KPPU decision which has permanent legal force has significant legal implications in the Indonesian legal system as regulated in Law Number 5 of 1999, which states:

Article 46 paragraph (1)

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[32]Paparang, JA (2019). Duties and Authorities of the Business Competition Supervisory Commission (KPPU) in Handling Violations of Business Competition Law According to Law Number 5 of 1999. *Lex Privatum* , *7* (7).

[33]Quddus, MS, & Aji, AD (2025). The Urgency of Strengthening the KPPU's Authority to Enforce the Law on Unfair Business Competition Crimes. *SAPIENTIA ET VIRTUS* , *10* (1), 512-529.

" *If there are no objections, the Commission's decision as intended in Article 43 paragraph (3) has permanent legal force* ."

Article 44 paragraph (5)

" *The Commission's decision as referred to in Article 43 paragraph (4) constitutes sufficient initial evidence for investigators to conduct an investigation* ."

KPPU decisions that have permanent legal force have significant legal implications in the Indonesian legal system. Based on Article 46 paragraph (1) of Law Number 5 of 1999, this permanent legal force provides legal certainty that business competition violations have been legally proven. Decisions that have become *inkracht* have the same binding force as court decisions in terms of proving violations, thus becoming a strong legal foundation for further law enforcement steps when business actors do not comply with the decision.

The special position of the KPPU's decision in the criminal law evidentiary system by placing it as sufficient preliminary evidence for investigators to conduct an investigation. [34]This legal formulation places the KPPU's decision in a strategic position as a gateway to the enforcement of criminal competition law, providing strong legal legitimacy for investigators to continue the law enforcement process without the need to re-investigate the substance of the violation that has been decided by the KPPU. This legal construction reflects the efficiency of the judicial system by avoiding duplication of examination of the same facts.

Law No. 8 of 1981 concerning Criminal Procedure Code (KUHAP) provides a limited explanation regarding the concept of "sufficient preliminary evidence" only through the explanation of Article 17 which states that this is preliminary evidence to suspect the existence of a crime in accordance with Article 1 number 14 of the KUHAP. The lawmaker leaves the assessment regarding the sufficiency of preliminary evidence entirely to the investigator, so that without sufficient preliminary evidence, the investigator cannot make an arrest. A similar concept is also found in the phrase "sufficient evidence" as a condition for coercive detention under Article 21 paragraph (1) of the KUHAP. However, the KUHAP does not

[34]See Article 44 paragraph (5) of Law Number 5 of 1999

 

provide further regulations or explanations regarding these two phrases. [35]In the practice of the Indonesian criminal justice system, "sufficient evidence" refers to the results of the investigation received by the public prosecutor as the basis for an indictment in court. [36]Thus, "sufficient evidence" only determines whether or not a person can be brought before the court.

The use of the concepts of "sufficient preliminary evidence" and "sufficient evidence" in the Criminal Procedure Code (KUHAP) are two separate concepts placed in the pre-adjudication stage with different functions. The KUHAP does not provide an explicit definition of these two phrases, even though their use is crucial because they constitute a requirement for actions that can deprive a person of their liberty. [37]The lack of adequate explanation regarding the standards and criteria for sufficient preliminary evidence creates wide room for interpretation for law enforcement. This creates potential inconsistencies in application, particularly when the preliminary evidence originates from a decision by a *quasi-judicial institution* such as the KPPU. Therefore, a thorough understanding of the status of KPPU decisions as preliminary evidence is crucial in the context of enforcing competition criminal law. This legal construction requires clear criteria and standards that can ensure fairness and legal certainty in the judicial process.

The concept of "sufficient preliminary evidence" in the context of KPPU decisions has a complex theoretical dimension in relation to the principles of proof in criminal law. Sufficient preliminary evidence is conceptually different from proof in court, which must meet the standard of "legally and convincingly proven" as stipulated in Article 183 of the Criminal Procedure Code. [38]A KPPU decision as preliminary evidence provides a strong indication ( *prima facie evidence* ) that a violation of competition law has occurred that is criminally accountable. [39]This position allows investigators to focus directly on the aspects of criminal liability and proof of subjective elements without the need to re-prove the existence of the unlawful

[35]Hamzah, CM (2014). Legal Explanation (Restatement) Regarding Sufficient Initial Evidence. Jakarta: Center for Indonesian Law and Policy Studies. Pp. 22-25.

[36] *Ibid*

[37] *Ibid.* Page 27.

[38]Rozi, F. (2018). Evidence System in the Trial Process in Criminal Cases. *Unaja Juridical Journal* , *1* (2), 19-33.

[39]Huda, M. (2020). The right to obtain legal certainty from a business competition perspective through an examination of indirect evidence. *Jurnal Ham* , *11* (2), 255.

act. This legal construction creates a logical continuity between the administrative and criminal phases in the enforcement of competition law. The effectiveness of this system depends on the quality of the KPPU's examination and the suitability of the evidentiary standards between the two phases.

The legal implications of the KPPU's decision as sufficient preliminary evidence create a legal presumption of the existence of a competition violation. This presumption shifts the burden of proof in criminal proceedings, eliminating the need for investigators to initially prove the existence of monopolistic practices or unfair business competition. A final KPPU decision *creates* legally binding evidence in the criminal investigation process. Investigators can immediately focus on proving other criminal elements such as intent, damages, and corporate liability. This legal construction provides significant procedural efficiency in handling competition criminal cases, which are inherently complex and require lengthy investigations. This special position also reflects lawmakers' recognition of the KPPU's expertise and competence in assessing competition violations.

The transition mechanism from the KPPU's administrative decision to a criminal investigation is specifically regulated in Article 44 paragraph (4) which states that

> " *If the provisions as referred to in paragraph (1) and paragraph (2) are not implemented by the business actor, the Commission will submit the decision to investigators to carry out an investigation in accordance with the provisions of applicable laws and regulations* ."

This provision creates an automatic escalation mechanism from administrative sanctions to criminal sanctions in the event of non-compliance. Referring a case to investigators is not a matter of the KPPU's discretion, but rather a legal obligation that must be implemented when a business actor fails to comply with a decision. [40]This legal construction demonstrates that criminal sanctions serve as an ultimum remedium, automatically activated when administrative sanctions are ineffective. This mechanism provides legal

[40]Sidauruk, GD (2021). Legal Certainty of Business Competition Supervisory Commission Decisions in Enforcing Business Competition Law. *Lex Renaissance* , *6* (1), 132-151.

certainty that any competition violations determined by the KPPU will be fully resolved through available channels.[41]

The amendment to Article 48 through the Job Creation Law has created a fundamental contradiction that undermines the architecture of Indonesia's competition law policy. The elimination of criminal penalties for business actors who fail to implement KPPU decisions without the revocation of KPPU's authority in Article 44 paragraph (4) *creates a legal vacuum* that contradicts *the lex certa principle* in criminal law. [42]This inconsistency results in a conflict where the KPPU has a legal obligation to submit cases to investigators but there are no applicable criminal norms, thus violating the basic principle of *nullum crimen sine lege* in the criminal law system. [43]This ambiguous normative condition has the potential to create a crisis of excess criminality as warned by Muladi, where unenforceable criminal provisions will damage the credibility of the legal system as a whole. [44]This incomprehensive legislative change also demonstrates the legislators' lack of understanding of the complex relationship between administrative and criminal sanctions in criminal policy theory, resulting in regulations that are technically inoperable.

The relationship between administrative and criminal sanctions in the competition law enforcement system reflects the complexity of implementing criminal policy theory in the context of economic violations. The KPPU's reparatory administrative sanctions aim to stop violations and restore market conditions to a competitive state, while criminal sanctions serve as retributive instruments that provide a deterrent effect to violators. [45]G. Peter Hoefnagels' criminal policy theory identifies that crime prevention requires a combination of penal and non-penal approaches to achieve optimal effectiveness. [46]In practice, the KPPU's administrative sanctions have shown limitations in

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[41] *Ibid*

[42]Habib, M., Hadiarlamsyah, A., Sunardi, LWP, & Chesar, W. (2023). Developments in business competition law after the enactment of the Job Creation Regulation. *USM Law Review Journal* , *6* (1), 125-140.

[43] *Ibid*

[44] Muladi, *Selected Chapters on the Criminal Justice System* , Diponegoro University Publishing Agency, Semarang, 1995, p. 8.

[45] Philipus M. Hadjon et.al., *Introduction to the Indonesian Administrative Law* , Seventh Edition, Gadjah Mada University Press, Yogyakarta, 2001, p. 247.

[46]Barda Nawawi Arief, *Op.cit* .

creating an adequate deterrent effect, as evidenced by the almost 50% rate of non-compliance by business actors with legally binding decisions. This situation indicates that although administrative sanctions can theoretically function as a preventive instrument, their implementation in the context of Indonesian competition has not been able to achieve the desired law enforcement objectives.

The limited effectiveness of administrative sanctions in the practice of enforcing competition law reinforces the relevance of the application of the ultimum remedium principle as a fundamental principle in criminal policy. The ultimum remedium principle requires that criminal sanctions only be applied when administrative sanctions are proven ineffective in preventing or stopping violations of the law. Herbert L. Packer emphasized that the use of criminal sanctions must be based on rational considerations regarding offense, guilt, and punishment tailored to the characteristics of the violation. In the context of business competition, the high rate of non-compliance with KPPU decisions indicates that administrative sanctions are unable to provide an adequate deterrent effect. Empirical data shows that business actors tend to ignore administrative sanctions because of the cost-benefit calculation that is advantageous for them to continue committing violations. This condition theoretically fulfills the requirements to activate the ultimum remedium mechanism through the application of criminal sanctions as a last resort in law enforcement.

The perspective of the welfare state theory provides theoretical legitimacy for the use of criminal sanctions in enforcing competition law when administrative sanctions fail to protect the public interest. Sri Redjeki Hartono explained that state intervention in economic activities aims to protect the interests of all parties from practices that could be detrimental. [47]When administrative sanctions are unable to prevent monopolistic practices and unfair business competition, the state has a constitutional obligation to use stronger instruments to protect the public interest. If monopolistic practices and unfair business competition are allowed to continue, they will create a concentration of economic power that contradicts the principle of social justice. The use of criminal sanctions in this context is not merely a

[47] Sri Redjeki Hartono, *Capita Selecta Economic Law* , Mandar Maju, Bandung, 2000, p. 13-15.

punitive instrument, but rather a manifestation of the state's responsibility to ensure the creation of a just economic system.[48]

Effective criminal law policy requires synchronization between the formulation, application, and execution stages within the criminal justice system. The formulation stage has been realized through the formulation of criminal provisions in Law Number 5 of 1999, which regulates the transition mechanism from administrative sanctions to criminal sanctions. However, the application stage faces systemic obstacles because the Commission for the Compensation of Criminal Investigation (KPPU) never uses its authority to refer cases to investigators despite a very high level of non-compliance. The execution stage becomes dysfunctional because no criminal competition cases are processed by the criminal justice system. This misalignment creates a gap between legislative policy and law enforcement practices, potentially leading to a crisis of excess criminality, as Muladi argued.

The misalignment between the theory and practice of competition law enforcement is revealed by the low level of implementation of the KPPU's case transfer mechanism to investigators. Empirical data shows that although the level of non-compliance by business actors with KPPU decisions reaches almost 50%, no cases have ever been handed over to investigators for criminal proceedings. [49]This phenomenon indicates a gap between the criminal policy design enshrined in law and its practical implementation in the field. Criminal policy theory teaches that effective law enforcement requires synchronization between various types of sanctions and implementation stages. The failure to operationalize the ultimum remedium mechanism demonstrates a systemic weakness in the design of competition criminal law policy.

The dysfunction of the ultimum remedium mechanism in Indonesia's competition law enforcement system reveals structural weaknesses that contradict the principles of a welfare state based on the rule of law, as proposed by Sri Redjeki Hartono. The fragmentation of authority between the KPPU (Commission for Compliance with the Indonesian Election Commission) and the criminal justice system creates an institutional *gap* that hinders the continuity of law enforcement. The absence of a binding

[48]Retnani, DS, Muna, K., Wardhani, PK, & Martitah, M. (2024). Renewal of the National Legal System in the Execution of Tax Crime Perpetrators: A Philosophical Review. *Law and Politics in Various Perspectives , 3* .

[49] KPPU Annual Report 2023

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coordination protocol between the KPPU and the Prosecutor's Office and the Police leads to procedural uncertainty in the transfer of cases from the administrative to the criminal realm. The limited capacity of criminal law enforcement institutions to understand the economic complexities of competition creates a reluctance to accept and process cases submitted by the KPPU. This situation is exacerbated by the absence of a dedicated unit within the Prosecutor's Office specifically handling economic crimes, resulting in a lack of adequate expertise to handle competition cases.[50]

The legal standing of KPPU decisions as sufficient preliminary evidence in the competition law enforcement system reflects legislators' efforts to create logical continuity between the administrative and criminal phases of law enforcement. This legal construction provides procedural efficiency by avoiding duplication of examinations of the substance of violations already decided by the KPPU. However, the effectiveness of this special position depends on the system's ability to operationalize the transition mechanism from administrative sanctions to criminal sanctions when necessary. Changes to criminal provisions through the Job Creation Law, which remove the threat of criminal penalties for business actors who fail to comply with KPPU decisions, have created normative inconsistencies that weaken the function of ultimum remedium in the competition law enforcement system. Reconstruction of competition law enforcement policy requires regulatory harmonization that ensures synchronization between administrative and criminal sanctions and clarity of criminalization parameters that align with the principles of a welfare state and the theory of effective criminal policy.

### 4. 2 Criminal Policy on Violations of Indonesian Competition Law

The formulation of criminal policy in Indonesian competition law reflects the legislators' efforts to integrate penal and non-penal approaches to combating monopolistic practices and unfair business competition. The legislative policy of Law Number 5 of 1999 adopts a hybrid model that places administrative sanctions as the primary instrument, with criminal sanctions as the ultimum remedium mechanism. The normative design of this law creates a hierarchy of sanctions, starting with administrative actions by the

[50]Quddus, et.al. *Op,cit* .

KPPU (Commission for Competition) and escalating to the criminal realm when administrative sanctions prove ineffective. This construction of criminal policy demonstrates the legislators' awareness that competition violations require a different approach than conventional criminal offenses, given the underlying economic complexities.

The legislative policy of Law Number 5 of 1999 demonstrates the adoption of a gradual enforcement approach in line with G. Peter Hoefnagels' criminal policy theory on *the rational organization of social reaction to crime* . [51]The normative structure of this law places administrative sanctions as the primary option and criminal sanctions as the ultimum remedium through an automatic escalation mechanism. [52]Lawmakers categorize violations based on their severity by providing different criminal threats according to the economic and social impacts they cause. The classification in Article 48 paragraphs (1) and (2) of the previous version of Law Number 5 of 1999 reflects the legislator's understanding that monopolistic practices and unfair business competition have a gradation of danger levels that require a proportional legal response.

An analysis of the structure of criminal sanctions in Article 48 of Law Number 5 of 1999 reveals a deterrent strategy that relies on financial sanctions of significant magnitude to create a deterrent effect for perpetrators of violations. The legislators established a gradation of sanctions based on the level of gravity of the violation, with the maximum penalty of Rp100 billion for violations categorized as the most serious. The selection of a fine as the primary punishment reflects the understanding that perpetrators of competition violations are generally business entities that can be effectively punished through financial sanctions that reduce the economic benefits from the violation. [53]The alternative of imprisonment in lieu of a fine demonstrates the flexibility of the system in accommodating situations where business actors are unable to pay the imposed fine. This construction of criminal sanctions reflects the application of deterrence theory in criminal policy,

[51]Barda Nawawi Arief, *Op.cit* .

[52]Siregar, AG (2023). Implementation of the Ultimum Remedium Principle in the Application of Criminal Sanctions in Administrative Law. *Innovative: Journal of Social Science Research* , *3* (4), 10271-10285.

[53]Lukmadi, FK, & Gunadi, A. (2023). The Urgency of Imposing Fines as the Main Administrative Sanction: A Review of Tender Rigging Cases in Unfair Business Competition. *Unes Law Review* , *6* (2).

which assumes that business actors will make a rational calculation between the benefits of the violation and the risk of sanctions.

The reality of Indonesian competition law enforcement demonstrates an extreme imbalance between normative formulation and field practice, indicating a systemic failure in the operationalization of criminal policy. Official records from the KPPU (Commission for Competition and Development) for the past two decades confirm that not a single one of the hundreds of cases decided was subsequently handed over to investigators, even though nearly half of business actors ignored the obligation to implement final decisions. This imbalance between normative design and law enforcement practice has created what Muladi calls a crisis of excess criminal penalties, where unenforceable criminal provisions actually undermine the credibility of the legal system as a whole. This phenomenon contradicts Barda Nawawi Arief's theory of criminal policy, which emphasizes the importance of alignment between the formulation, implementation, and enforcement stages of the criminal justice system to achieve optimal effectiveness.

A fundamental change to the architecture of criminal competition policy occurred through Article 118 of Law Number 6 of 2023 concerning Job Creation, which drastically amended the criminal provisions in Article 48 of Law Number 5 of 1999. This legislative transformation removed all criminal threats for substantive violations of monopolistic practices and unfair business competition as previously regulated in Article 48 paragraphs (1) and (2), by only retaining the criminal threat for actions to obstruct the KPPU examination process in Article 41. This paradigm shift reflects a new orientation that places greater emphasis on ease of doing business and reducing criminal risks for business actors as part of the government's economic reform agenda. This policy rationalization indicates an indirect recognition of the failure of the system in implementing criminal sanctions for substantive violations of business competition so far. This criminal deregulation approach is in line with the global trend towards *administrative enforcement* in competition law but raises serious questions about the effectiveness of deterrence without the backing of credible criminal sanctions.[54]

[54]Habib, M, et.al. *Op.cit*

The structural consequences of the elimination of substantive criminal provisions in the Job Creation Law create normative contradictions that disrupt the coherence of the Indonesian competition law system as a whole. The elimination of criminal threats without any accompanying changes to the KPPU's authority in Article 44 paragraph (4) creates a paradoxical situation where the institution still has an obligation to submit cases to investigators but no criminal norms can be applied. [55]This condition creates legal uncertainty that contradicts the principle of legal certainty as one of the fundamental pillars of the rule of law as stated in the theory of the welfare state law. This incomplete legislative change has the potential to reactivate criminal provisions in the Criminal Code through the application of the legal principle that states that the elimination of special rules will result in the reapplicability of general rules. The application of Article 382 of the Criminal Code concerning fraudulent acts with a maximum prison sentence of one year and four months or a maximum fine of thirteen thousand five hundred rupiah is clearly disproportionate to the level of economic losses caused by violations of modern business competition, which can reach trillions of rupiah.

The effectiveness of Indonesia's competition crime policy, based on the performance of the KPPU (Commission for Competition and Development of the Republic of Indonesia) since 2000, demonstrates a structural failure in achieving the expected deterrence objectives of a combination of administrative and criminal sanctions. The value of uncollected fines reaching Rp290,511,040,136 illustrates the systematic resistance of business actors to KPPU decisions, indicating the ineffectiveness of administrative sanctions as a deterrent instrument. The spectrum of cases handled by the KPPU covers various strategic economic sectors, from telecommunications and banking to food commodities, but this diversification is not directly proportional to the resulting level of compliance. This empirical condition proves that although the KPPU has demonstrated high productivity in producing decisions, the effectiveness of law enforcement is still hampered by weak execution mechanisms and the absence of credible criminal sanctions.

[55]Lubis, ZM, Panjaitan, BS, & Harahap, A. (2025). Criminal Law Aspects in Business Competition After the Job Creation Law No. 6 of 2023 and Government Regulation No. 44 of 2021 and Presidential Regulation No. 100 of 2024 concerning the KPPU: *Scientific Journal of Law Enforcement* , *12* (1), 91-100.

An evaluation of business compliance levels over the past five years, 2018-2023, revealed a consistent pattern of non-compliance below 50% with KPPU decisions that have become legally binding. This phenomenon indicates that business actors are making rational calculations, where the cost of compliance is higher than the risk of sanctions from non-compliance. The absence of criminal law enforcement regulations for more than two decades has created a situation where business actors lack adequate fear of the consequences of violations. The fact that 113 of the 223 decisions that have become *legally binding* has not been implemented by business actors indicates that this systematic pattern of non-compliance demonstrates the failure of existing criminal policies to operationalize the ultimum remedium mechanism as designed in the law.

The failure of Indonesia's competition law is reflected in the disparity between the KPPU's institutional productivity and the low effectiveness of law enforcement, indicating the need for fundamental changes to the preventative approach within the competition law system. The inability of the existing system to foster a culture of compliance among business actors demonstrates that the design of existing sanctions is not aligned with the characteristics of Indonesian business actors' economic behavior, which tends to prioritize profits with a high tolerance for risk. The separation of the KPPU's semi-judicial authority from the criminal justice system has created a gap in law enforcement that allows business actors to ignore administrative decisions without risking escalation to more severe sanctions. [56]This situation demonstrates that an effective criminal policy in competition law requires not only a sound legal framework but also the institutional capacity and political will to apply sanctions consistently and proportionally. The necessary criminal policy changes must be able to bridge the gap between administrative and criminal sanctions through a workable mechanism and a credible deterrent to create an effective and sustainable competition law enforcement system in Indonesia.

An evaluation of the effectiveness of criminal policy following the amendments to the Job Creation Law demonstrates the need for a fundamental reconstruction of the approach to competition law enforcement

[56]Alamsyah, FD, Nasco, MZ, Situmorang, CI, & Kuswoyo, MAA (2025). Strengthening the KPPU Through a Supervisory Model to Prevent Overlapping Authority in Enforcing Competition Law. *Journal of Statutory Law* , *4* (2), 95-107.

in Indonesia. The elimination of substantive criminal sanctions has the potential to significantly weaken deterrence, given that the KPPU's administrative sanctions have proven incapable of creating adequate levels of compliance over more than two decades of implementation. The removal of the threat of criminal penalties as the ultimate sanction removes the psychological element that can influence business actors' decision-making processes regarding compliance with competition law. This situation contradicts the deterrence theory in criminal policy, which assumes that effective law enforcement requires an optimal combination of certainty, severity, and speed of sanction application. The necessary reconstruction of criminal policy must be able to realign the goal of facilitating business operations with the need to protect fair market competition through the design of proportionate and effectively implementable sanctions.

## 5. CONCLUSION

The legal standing of KPPU decisions within the competition criminal law enforcement system creates a unique legal construction but is problematic in its implementation. Although Article 44 paragraph (5) of Law Number 5 of 1999 has given a special position to KPPU decisions as "sufficient initial evidence" for investigators, empirical reality shows that the transition mechanism from administrative sanctions to criminal sanctions has never been operationalized. The paradoxical phenomenon where almost 50% of business actors ignore KPPU decisions that have permanent legal force but not a single case is submitted to investigators indicates a fundamental dysfunction in the design of competition criminal law policy. Changes to criminal provisions through the Job Creation Law that remove the threat of substantive criminal penalties in Article 48 paragraphs (1) and (2) without changing the KPPU's authority in Article 44 paragraph (4) have exacerbated normative inconsistencies and created a legal vacuum that contradicts the principle of legal certainty.

Indonesia's criminal policy for competition law violations has systematically failed to achieve the deterrent objectives envisioned by combining administrative and criminal sanctions. An evaluation of the effectiveness of the criminal policy, based on the performance of the Commission (KPPU) over more than two decades, shows that the gradual

enforcement approach, which relies on administrative sanctions as the primary instrument, has failed to foster a culture of compliance among business actors. The inability of the existing system to operationalize the ultimum remedium mechanism as designed in the law, demonstrates a structural gap between legislative policy formulation and available implementation capacity. The elimination of substantive criminal sanctions through the Job Creation Law has the potential to further weaken the deterrent effect of the competition law enforcement system, given that the KPPU's administrative sanctions have proven ineffective in changing the behavior of business actors, who tend to rationally calculate the benefits of violations against the minimal risk of sanctions.

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