

AUTHORITY OF THE COMMERCIAL COURT IN BUSINESS COMPETITION CASES POST LAW NO. 11 OF 2020 ON JOB CREATION

Musataklima¹

Citation Guide:

Musataklima,
**‘AUTHORITY OF THE
COMMERCIAL COURT
IN BUSINESS
COMPETITION CASES
POST LAW NO. 11 OF
2020 ON JOB CREATION
(UU CIPTA KERJA)’**
[2021] 3 (2) Prophetic Law
Review 149.

Received:

1 September 2021

Accepted:

30 November 2021

Published:

21 December 2021

DOI:

10.20885/PLR.vol3.iss2.art3



Copyright: © 2021 by the author.
Licensee Prophetic Law Review
Journal, Indonesia. This article is
an open access article distributed
under the terms and conditions of
the Creative Commons
Attribution 4.0 International
License (CC BY SA).

Abstract

The enactment of Law No. 11 of 2020 on Job Creation has had an impact on existing laws. One of the affected laws is Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. The formulation of the problems that will be discussed in this paper is a). How is the existing condition of the authority of the Commercial Court to appeal the KPPU's decision after the Job Creation Law? b). what is the prospect of bringing cases before the Commercial Court on monopoly and business competition cases after the Job Creation Law? This research uses normative research with a statutory approach, conceptual approach, and a philosophical approach. Based on the discussion, it can be concluded that, firstly, the existing authority of the Commercial Court's continues to expand. Currently it is believed to settle the objection cases to the KPPU's decision through the Job Creation Law. The Commercial Court can examine the formal pleadings and material facts that form the basis of the KPPU's decision, so that the Commercial Court is not limited in time to complete it. Second, the prospect of the Commercial Court's authority in cases of unfair business competition is determined by two factors, namely internal factors in the form of the existing condition of the current authority specifically in the field of economic law issues, and the condition of human resources who have been selected and trained and experienced in resolving economic law cases. External factors including (a) the development of the business economy which is increasingly complex and requires an effective, efficient and neutral settlement agency, and the KPPU theoretically has not been able to guarantee a fair process in the settlement of the business competition case because it includes the authority to investigate, investigate, prosecute and adjudicate.

Key Words: Authority, Commercial Court, Prospect, Business Competition Laws.

¹ Lecturer, Faculty of Law and Sharia, State Islamic University of Maulana Malik Ibrahim Malang.
E-mail: musa@syariah.uin-malang.ac.id.

A. Introduction

A sound business model based on economic democracy can foster investment in a country, and Indonesia is no exception. With increased investment, the national income or Gross Domestic Product (GDP) can increase, because business and production processes are increasingly sophisticated, and household consumption increases accordingly. The importance of investment for Indonesia has given birth to regulations that are able to invite investors to invest in this country, because in it there is convenience, simplicity and legal certainty in investing. This is a direct result of Law No. 11 of 2020 on Job Creation or more commonly known as the omnibus law. The philosophical basis of this law is in the context of establishing a just and prosperous Indonesian Economy based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The Job Creation Law consists of 186 articles that contain 10 (ten) categories,² or combines 10 (ten) fields that have non-uniform legal paradigms with the aim of harmonization and deregulation.³ The 10 (ten) categories are (1) Improving the investment ecosystem and business activities, (2) Employment, (3) Ease, protection, and empowerment of cooperatives and MSMEs, (4) Ease of doing business, (5) Research and innovation support, (6) Land acquisition, (7) Economic Zones, (8) Central Government Investment and Acceleration of National Strategy Projects, (9) Implementation of government administration, and (10) Imposition of sanctions.

To make it easier for businesses to invest, the Job Creation Law changes, deletes, or stipulates several new provisions, one of which is regulated in Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Thus, in this cluster, the law on the prohibition of monopolistic practices and unfair business competition is revised.

There are several articles that have been amended. Amended provisions include Articles 44, 45, 47 as well as the repeal of Article 48. Article 44 paragraph (2) of the amended version states that businesses may file an objection to the Commercial Court no later than 14 (fourteen) days after receiving notification of the decision. This article is an amendment to the old version of Article 44 paragraph (2) which reads that businesses can

² Sri Wiyanti Eddyono (ed.), 'Catatan Kritis Terhadap Undang-Undang No. 11 Tahun 2020 tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020)' (2020) edition 2, 11.

³ The purpose of the Omnibus Bill (Omnibus Law) is to deregulate laws that are not harmonious, overlapping, Raynaldo Sembiring, 'Indonesia's Omnibus Bill on Job Creation: A Setback for Environmental Law?', (2020) 4 Chinese Journal of Environmental Law 97, 98.

file an appeal to the District Court no later than 14 (fourteen) days after receiving the notification of the decision.

Based on the above, there is a shift in authority to adjudicate cases of objections to the decision of the Business Competition Supervisory Commission (KPPU) contained in the work copyright law. The application for objection to the KPPU's decision was originally the authority of the District Court, which has jurisdiction to in enforce laws under the Supreme Court (MA), now it is the authority of the Commercial Court which is a special court within the District Court based on copyright law in Indonesia.

With respect to the new authority of the Commercial Court, it is important to describe the legality of the transfer of authority, the requirements for submission of the reported party and the scope of the examination in resolving appeals. It is also important to discuss the prospects for the authority of the Commercial Court in the future. For example, there are several cases that have been litigated by companies whose cases were processed by the Central Jakarta District Court (PN), consisting of PT Sentul City Tbk (BKSL) and another case. In this regard, it is important to conduct this research to provide knowledge as well as discourse related to the authority of the Commercial Court to prevent monopolistic practices and unfair competition.

B. Problem Formulation

Departing from the description of the background of the problem above, the formulation of the problems in this paper are a). How is the existing condition of the authority of the Commercial Court to appeal against the KPPU's decision after the Job Creation Act? b) what is the prospect of bringing cases before the Commercial Court on monopoly and business competition cases after the Job Creation Act?

C. Methodology

This research uses normative research with a statutory approach, conceptual approach, and a philosophical approach. The research data used is secondary data consisting of primary, secondary, and tertiary legal materials. These legal materials were collected using library resources and also through online search/internet searching. The collected legal materials are then interpreted qualitatively to provide answers to the problems studied.

D. Discussion and Results

1. The Present Authority of the Commercial Court in the Application for Objection to KPPU Decision Post Job Creation Law

Objecting to the KPPU's decisions is a constitutional right of the parties in cases alleging unfair business competition. Objections as legal remedies are not recognized in procedural law in Indonesia. The objection as a "legal remedy" under Article 56 Paragraph (2) of Law No. 8 of 1999 on Consumer Protection and Article 44 paragraph (2) of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Business Competition. In addition, it is also known in the Supreme Court Regulation No. 4 of 2019 on Amendments to Supreme Court Regulation No. 2 of 2015 on Procedures for Settlement of Simple Lawsuits.

The objection, according to the above regulation, is a legal remedy seeking reconsideration of a judge's decision in a lawsuit. Meanwhile, according to the Supreme Court Regulation No. 1 of 2006 on Procedures for Filing an Objection to the Decision of the Consumer Dispute Settlement Agency (BPSK) it is stated that "objection" is an attempt by businesses and consumers who do not accept the BPSK decision. In Supreme Court Regulation No. 3 of 2019 on Procedures for Filing an Objection to the Decision of the Unfair Business Competition Supervisory Commission, it is stated that an objection is a request for examination at the District Court submitted by the reported party who does not accept the KPPU's decision.

The description of the "objection" above can be seen as challenging a legal decision, so according to Adi Susanti Nugroho "objection" is an appeal regulated in the civil procedural law applicable in the General Court.⁴ Thus, an objection is a constitutional effort to overturn an erroneous decision, so that an objection as a legal remedy is a constitutional right of the parties whose implementation is guaranteed by the 1945 Constitution Article 28D paragraph (1) which states that everyone has the right to for recognition, guarantees, protection, and fair legal certainty and equal treatment before the law.

Enforcement of laws in Indonesia is carried out by an independent judiciary, a Supreme Court and its inferior courts (religious courts, general courts, state

⁴ Adi Susanti Nugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Kendala Implementasinya* (Prenada Media, 2008) 339. See also, M. Syamsuddin, 'The Failure of the Court to Protect Consumers: A Review of Consumer Dispute Resolution in Indonesia' (2021) 44 *Journal of Consumer Policy* 117, 127.

administrative courts and military courts), and by a Constitutional Court. For order and certainty in carrying out its functions, the judiciary under the auspices of the Supreme Court is distinguished from its authority, both absolute authority and relative authority. In addition, for special matters, courts of limited jurisdiction can be formed in the above judicial structure, such as the Commercial Court, the Syar'iyah Court, a special court within the Religious Courts, and the Tax Court as a court of limited jurisdiction within the Administrative Court.

The Commercial Court as a special court was not established by a separate law, nor was the determination of its authority based on a special law. The legal basis for the establishment of the Commercial Court and the determination of its authority is Regulation in Lieu of Law (Perppu) No. 1 of 1999 on Amendments to the Bankruptcy Law, which in Article 280 states that (1) the application for declaration of bankruptcy and suspension of obligation to pay debts as referred to in Chapter the first and second chapters are examined and decided by the Commercial Court within the General Courts. (2) The Commercial Court as referred to in paragraph (1), apart from examining and deciding the application for declaration of bankruptcy and suspension of debt payment obligations, is also authorized to examine and decide other cases in the field of commerce, dictated by government regulation.

The existing authority of the Commercial Court is based on several laws, such as the authority in copyright based on Law No. 28 of 2014, the authority in patents is based on Law No. 13 of 2016, the authority over brands and geographical indications is based on Law No. 20 of 2016, the authority over liquidation process disputes is based on Law No. 24 of 2004 on the Deposit Insurance Corporation, the authority to cancel the registration of the Integrated Circuit Layout Design is based on Law No. 32 of 2000, the authority on Industrial Design is based on Law No. 31 of 2000. In turn, the authority to appeal the KPPU's decision is based on Law No. 11 of 2020 on Job Creation.

Table 1. Legal Basis of Authority of the Commercial Court

No	Legal basis	Authority
1	Regulation in Lieu of Law (Perppu) No. 1 of 1999 on Amendments to the Bankruptcy Law	Establishment of a Commercial Court with jurisdiction over Bankruptcy and suspension of debt payment obligations
2	Law No. 28 of 2014	Copyright Authority
3	Law No. 13 of 2016	Patent Authority

4	Law No. 20 of 2016	Authority over Brand
5	Law No. 24 of 2004 on the Deposit Insurance Corporation	Authority over liquidation process disputes
5	Law No. 32 of 2000	Authority over Cancellation of Integrated Circuit Layout Design registration
6	Law No. 31 of 2000	Authority over Industrial Design
7	Law No. 11 of 2020 on Job Creation	Authority to object to the decision of the Business Competition Supervisory Commission

The *ratio legis* of the Commercial Court is not specified in a special law, due to the dynamics of the specificity of the fields themselves and in accordance with the provisions of Article 280 paragraph (2) of Regulation in Lieu of Law (Perppu) No. 1 of 1999 on Amendments to Bankruptcy Laws, which opens up new opportunities for the commercial court. The opportunity is wide open without having to change the law forming the basis for the authority of other Commercial Courts. The determination of authority, which is spread out in several special field regulations, can be seen as a special feature attached to the Commercial Court as a special court itself.

The authority of the Commercial Court to reconsider the KPPU's Decision is the authority that originally existed at the District Court inferior to which was the Commercial Court. This transfer of authority, in the text of the Job Creation Law, is not accompanied by reasons for the change, or consideration of the implications.⁵ While no original intent was found from the transfer of authority, the *legis ratio* according to the author is an effort to improve the quality of evidence in the Commercial Court, because Commercial Court judges are generally accustomed to dealing with commercial cases, so that the trial process in Commercial Courts become comprehensive, and the complexity of commercial cases can be resolved properly. Another thing that forms the basis of the *legis ratio* is that the General Court is less precise in trying him because of his heavy workload, as well as difficulties in examining and deciding business competition cases which are quite complex, resulting in biased decisions.

Thirty (30) days after a business receives notice of the KKPU's decision, the business is obliged to implement the decision and report it. However, if businesses object, then 14 (fourteen) days after receiving notification of the decision, they can file an appeal to the Commercial Court. According to Article 12 paragraph (2) Government

⁵ Ministry of Law and Human Rights, 'Naskah Akademis RUU tentang Cipta Kerja' (2020) 1964.

Regulation No. 44 of 2021 on the Implementation of Prohibition of Monopolistic Practices and Unfair Business Competition states that as a guarantee of compliance with the Commission's decision containing administrative actions in the form of fines, the reported party must submit sufficient bank guarantees, at most 20% (twenty percent) of the value of the award, at most within 14 (fourteen) working days after receiving notification of the Commission's decision.

The fourteen (14)-days limit time for filing an objection to the KPPU's decision, is also the maximum time limit for submitting a 20% (twenty percent) guarantee, so that the guarantee can be said to be a requirement in filing an objection to the KPPU's⁶ decision, which is intended as a guarantee of compliance by the reported party. to the KPPU's decision. The submission of this guarantee is not acquiescence in KPPU's decision before it becomes permanent legal force, so that the principle of presumption of innocence⁷ is respected. This guarantee shows KPPU's pessimism about the effectiveness of its own decision, so that it is deemed necessary to guarantee the propriety of the reported party against it. The question is if the KPPU's decision is annulled, what is the process and mechanism for returning the funds that have been deposited with the state treasury to the reported party? This is one of the problems that needs to be solved. If this guarantee is forced to be applied, it is necessary to include in the decision of objection or cassation that the guarantee fund must be returned 14 (fourteen) days after the decision of objection or cassation is issued. In this regard, it is important for the KPPU to promulgate regulations related to technical guidelines and instructions for implementing the refund of the guarantee fund.

The examination of appeals to the KPPU's decisions at the Commercial Court on the aspect of settlement time is different from the examination at the District Court in the past, this can be seen in the table below:

⁶ This is reinforced by the explanation of Government Regulation No. 44 of 2021, s12 (2), of which states that the obligation to provide bank guarantees is not required if the Business accepts and implements the Commission's decision and does not file an objection to the Commercial Court or the Supreme Court of the Republic of Indonesia.

⁷ This principle is a general principle in procedural law because it is regulated by Law No. 48 of 2009 on Judicial Power, s 8 (1), which states that every person who is suspected, arrested, detained, prosecuted, or brought before a court must be considered innocent, before a court decision declares his guilt and has obtained permanent legal force. As a general principle, the principle of presumption of innocence applies to all case criminal proceedings. E. Nurhaini Butarbutar, 'Principle of Unguilty Presumption: Its Application and Regulation in Civil Procedure Law' (2011) 11(3) Jurnal Dinamika Hukum 470, 470.

Table 2. Comparison of the time for Completion of Objections to the KPPU's Decision

Law No. 5 of 1999	Law No. 11 of 2020
Article 45	
(1) The District Court must examine the objections of the businesses as referred to in Article 44 paragraph (2), within 14 (fourteen) days from the receipt of the objections.	(1) The Commercial Court must examine the objections of the businesses as referred to in Article 44 paragraph (2) within 14 (fourteen) days from the receipt of the objections.
(2) The District Court must render a decision within 30 (thirty) days from the commencement of the examination of the objection.	(2) Parties who object to the decision of the Commercial Court as referred to in paragraph (1) within 14 (fourteen) days may file an appeal to the Supreme Court of the Republic of Indonesia.
(3) Parties who object to the decision of the District Court as referred to in paragraph (2), within 14 (fourteen) days may file an appeal to the Supreme Court of the Republic of Indonesia.	(3) Provisions regarding procedures for examination at the Commercial Court and the Supreme Court of the Republic of Indonesia are carried out in accordance with the provisions of the laws and regulations.
(4) The Supreme Court must render a decision within 30 (thirty) days from the receipt of the cassation request.	

There is no time limit for the Commercial Court to resolve objections from businesses to the KPPU's decision, only within 14 (fourteen) days after the application is received, the Commercial Court is obliged to start an examination. There is no time limit for the settlement of the objections requested above, firstly, because the workload of the Commercial Court is not as heavy as that of the District Court, so it can realize a fast and efficient settlement as required in commercial disputes and in accordance with the principles of fast, simple and low-cost adjudication, without need to be given a time limit as in the District Court.

Second, because the Commercial Court is given discretionary authority to examine the formal and material aspects of the facts which are the basis for the KPPU's decision.⁸ So that 30 (thirty) days is not enough to conduct an examination in these two aspects in order to find justice. The examination carried out by the Commercial Court is thorough, like handling a dispute from the beginning because it does not focus on the point at which the objection was filed. This indicates that there is no respect for the KPPU's decision. Unlike in America where the court respects (deference or comity) to

⁸ Government Regulation No. 44 of 2021 on the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition, art. 19 (2).

the decisions of the Federal Trade Commission (FTC). If the court finds an error in the examination procedure at the FTC, the decision is not annulled but is remanded to the FTC for re-examination according to the procedure.⁹

The Job Creation Law does not limit the time for the settlement of objections to the KPPU's decision in the Commercial Court, but through Article 19 paragraph (3) of Government Regulation No. 44 of 2021 on the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition, the time limit is set, namely a minimum of 3 (three) months and a maximum of 12 (twelve) months. The restrictions are very loose when compared to the restrictions in Law no. 5 of 1999. If there is no prohibition on the time limit for ruling on objections to the KPPU's decision, as long as there is no restriction in the work creation law, it is permissible if it is based on the maxim of Islamic law which states "the law of origin is that everything is permissible until there is a reason that forbids it".¹⁰

Parties may appeal Commercial Court decisions to the Supreme Court (MA). Within fourteen (14) days from the receipt of the cassation request, the Supreme Court is obliged to start conducting the examination, but there is no time limit for completing it, which is different from the previous provision, where the Supreme Court must issue a decision within 30 (thirty) days. There is no time limit for the settlement at this level of cassation, which correlates with Article 15 of Supreme Court Regulation No. 3 of 2019 on Procedures for Filing an Objection to the KPPU's Decision which states that appeals of decisions on objections, the Reported Party and/or KPPU can only file an appeal to the Supreme Court as a last resort. Because the cassation is a last resort, even though the Supreme Court is a *judex juris*, it is given ample time to resolve it, but that does not mean delaying in delivering justice, because it is an injustice (justice delayed is justice denied).¹¹

Efforts to appeal without time limit, can ameliorate efficiency in commercial dispute resolutions. Efficient and fair dispute resolution is an important principle to be realized in the petition for objection to this KPPU's decision. In addition, uncertainty remains about return of the 20% (twenty percent) guarantee fund due to the vague

⁹ Alum Petronella Simbolon, 'Komisi Pengawas Persaingan Usaha Dalam Penegakan Hukum Persaingan Usaha', (2008) 20(3) Jurnal Mimbar Hukum 459, 464.

¹⁰ Jalaluddin Abdurrahman al-Suyuthi, *Al-Asybah wa al-Nadhair* (Dar Al-Fikr, 1996) 82.

¹¹ Tania Sourdin and Naomi Burstyn, 'Justice Delayed Is Justice Denied' (2014) 4(1) Victoria University Law and Justice Journal 46, 47.

status of the business due to the uncertainty of the cassation decision being issued. Based on this, the existence of the guarantee is not realistic to apply. If the aim is to ensure the compliance of businesses with court decisions. Courts as a of judicial power have a complete set of tools to make these decisions effective and make businesses obey them, without such guarantees.

The appeal, the last legal remedy in the petition for objection to the KPPU's decision, means closing the door on judicial review (PK) as an extraordinary legal remedy for the parties. This injures the sense of justice of the parties, because the existence of PK is guaranteed by Law no. 14 of 1985 as amended into Law No. 5 of 2004 on the Supreme Court, which, under Article 67 states that "applications for reconsideration (PK) can be filed against civil cases that have obtained permanent legal force". Article 24 paragraph (1) of Law No. 48 of 2009 on Judicial Powers also states, "court decisions that have obtained permanent legal force, the parties concerned can submit a judicial review (PK) to the Supreme Court, if there are certain things or conditions specified in the law."

Article 15 of the Supreme Court Regulation No. 3 of 2019 above is a form of defiance of Article 67 of Law No. 5 of 2004 and Article 24 paragraph (1) of Law No. 48 of 2009 which is hierarchically higher.¹² Theoretical disobedience to the law according to Ronald Dworkin has 2 (two) different dimensions, namely as an attitude towards the law that is contrary to conscience (conscientious disobedience), and as an attitude of disinterest in the law.¹³ In these two dimensions, the limitation of legal remedies against objection decisions is disobedience in the dimension of indifference to the law which is hierarchically higher.

2. The Prospect for Commercial Court to Resolve Monopolistic Practices and Unfair Business Competition after the Job Creation Law

The Commercial Court is a species, while the District Court is a genus.¹⁴ This means that the Commercial Court is a court of limited jurisdiction of the District Court.

¹² Hierarchy is the ordering of laws and regulations which in discussing it must also discuss the theories from Hans Kelsen Hans Nawiasky which underlie the order model adopted by Indonesia today. Bivitri Susanti, 'Menyoal Jenis dan Hierarki Peraturan Perundang-undangan di Indonesia' (2017) 1(2) Jentera Journal 128, 130.

¹³ Ronald Dworkin, *Taking Rights Seriously* (Gerald-Duckworth, 1977) 26.

¹⁴ Genus means general, as revealed in the diction "abuse of authority is a genus consisting of three different species, namely (1) beyond authority; (2) confuse authority; (3) act arbitrarily". Enrico Parulian Simanjuntak, 'Examination to Determine the Presence or Absence of Abuse of Authority according to Government Administration Law' (20180) 7(2) Jurnal Hukum dan Peradilan 237, 239.

Special Courts are courts that have the authority to examine, hear and decide certain cases which can only be established within one of the judicial bodies under the Supreme Court as regulated by law.¹⁵

The existence of a court of limited jurisdiction is not a new thing for Indonesia. History shows that these courts were once formed to examine and decide on certain cases or subjects, for example at the beginning of independence known as the Swapraja Court and the Customary Court.¹⁶ During the reformation period, after Law No. 35 of 1999 on the Amendment to Law No. 14 of 1970 on the Basic Provisions of Judicial Power,¹⁷ seven courts of limited jurisdiction have been formed in Indonesia, namely, the Juvenile Court, Commercial Court, Human Rights Court, Corruption Court, Industrial Relations Courts which are within the General Courts,¹⁸ Sharia Courts/Sharia Courts within the Religious Courts, and Tax Courts within the State Administrative Courts.¹⁹ The placement of courts of limited jurisdiction in the 4 (four) courts above has fulfilled the constitutional requirements, so that its existence is constitutional. Except for the tax court which requires further research, because institutionally it is under two roofs, namely judicially under the Supreme Court, while organizationally it is under the government (minister of finance).²⁰

Observing the authority of the Commercial Court, which is always expanding, is evidence that economic and legal issues are becoming increasingly complex. Therefore, it is necessary to have a special institution that is competent in resolving disputes that arise from it, with the aim that the decision issued can reflect a sense of justice resulting from a fair process as well. In addition, these courts provide more expeditious relief. Because the business character requires an efficient but still fair solution.

The authority of the Commercial Court is open to expansion. This is as mentioned in the previous section, namely Article 280 paragraph (2) of Perppu No. 1 of 1999 on

¹⁵ Explanatory Notes to the Law No. 48 of 2009 on Judicial Power, point 8. Jimly Asshiddiqie, 'Pengadilan Khusus' in Hermansyah and others (eds), *Hitam Putih Pengadilan Khusus* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2013) 3.

¹⁶ Hamdan Zoelva, 'Konstitusionalitas Pengadilan Khusus' in Hermansyah, Imran, Elza Faiz, Dinal Fedrian (eds.), *Putih Hitam Pengadilan Khusus* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2013) 171.

¹⁷ Currently, it has been changed to Law No. 48 of 2009 on Judicial Power.

¹⁸ This is in accordance with Law No. 48 of 2009 on Judicial Power, s 27, which states that special Courts can only be formed in one of the judicial environments under the Supreme Court.

¹⁹ Muchsin, *Independent Judiciary After Amendment to the 1945 Constitution According to Law No. 48 of 2009* (Untag Press 2010). See also, Explanatory Notes to s 27 (1) of the Law No. 48 of 2009 on Judicial Power.

²⁰ Law N. 14 of 2002 on the Tax Court, s5.

Amendments to the Bankruptcy Law, stating that the Commercial Court “also has the authority to examine and decide other cases in the commercial sector whose stipulation is carried out by government regulations.” This language is the door for the expansion of the authority of the Commercial Court to be carried out at a time in accordance with the development of economic law, if it is determined by laws and regulations.

The expansion of the authority of the Commercial Court is not entirely over the emerging legal issues but can be in the form of a transition from the judiciary or other institutions. Such as the authority to appeal the KPPU’s decisions, which is a transition from the District Court. The Commercial Court may examine the formal and material aspects of the facts which are the basis for the KPPU’s decision. The Commercial Court examines cases as if the case has never been resolved by the KPPU, thus the KPPU’s examination which has given birth to a decision is considered to have never existed. This is because the basis for KPPU to issue a decision can be re-examined by the Commercial Court, both on the formal side and on the material aspect. In such an examination, because the Commercial Court is domiciled as *judex facti*, the reported party may present fact witnesses, expert witnesses, or additional evidence to support his arguments.

Article 19 paragraph (4) Government Regulation No. 44 of 2021 it is stipulated that “unless otherwise stipulated in this Government Regulation, the procedure for examining objections at the Commercial Court is carried out in accordance with civil procedural law.” This provision was later confirmed in the Circular Letter of the Supreme Court No. 1 of 2021 on the Transfer of Examination of Objections to the Decision of the Business Competition Supervisory Commission to the Commercial Court, it is determined that “unless otherwise stipulated by Law No. 11 of 2020 on Job Creation, the procedure for considering objections to the KPPU’s decision by the Commercial Court is carried out in accordance with Supreme Court Regulation No. 3 of 2019 on Procedures for Filing Objections to the Decisions of the Business Competition Supervisory Commission and instructions for its implementation”.

Article 12 of Supreme Court Regulation No. 3 of 2019 above stipulates that the examination of objections is carried out only based on a copy of the KPPU’s Decision and its case file. Theoretically, however, the position of the Commercial Court as *judex facti* in the examination of the objection, the opportunity to present witnesses and

expert witnesses as well as additional evidence should be possible in the context of a complete and complete examination, both in the formal and material aspects.

The authority of the Commercial Court in considering objections targeting the formal and material aspects of the facts which are the basis for the KPPU's decision is the same as having the authority to handle unfair business competition. Examination of the formal and material aspects of the facts that form the basis of the KPPU's decision, opens space for the Commercial Court to repeat what has been done by KPPU. The KPPU's examination until the decision is made ultimately in vain. The granting of such authority to the Commercial Court can be seen as a signal that the legislature secretly not only want the Commercial Court to have authority over the appeal against the KPPU's decision, but more than that, namely, to have the authority to handle allegations of unfair business competition.

It is time for KPPU to exercise its authority to examine unfair business competition, although in the Cassation process for the KPPU's Decision, 73% were upheld by the Supreme Court and at the Judicial Review stage, 89% of KPPU's decisions were upheld,²¹ because its independence is doubtful. KPPU should stand as a prosecutor, just as the Corruption Eradication Commission (KPK) and the Financial Services Authority (OJK) carry out their functions and authority. While the power to adjudge, it is important to be handed over to the Commercial Court.

The transfer of authority to adjudicate unfair business competition cases to the judicial power, because in this institution there is the principle of judicial independence (independent judicial power) and there is a Judicial Commission that maintains and upholds the ethics, dignity, and behavior of judges.²² This guarantee of independence is the basis for an ideal judicial authority authorized to adjudicate cases of unfair business competition. The independence of the judiciary is guaranteed constitutionally, both on the institutional and personal levels. Institutional independence philosophically aims to guarantee the freedom and independence of the judiciary in carrying out its role to uphold justice and the law. Meanwhile, personal independence aims to prevent judges from external influences, politics, economics and worries.²³

²¹ 'FGD Kewenangan Pengadilan Niaga dalam Mengadili Permohonan Keberatan terhadap Putusan KPPU' (2021) <<https://kppu.go.id/blog/2021/08/fgd-kewenangan-pengadilan-niaga-dalam-mengadili-permohonan-keberatan-terhadap-putusan-kppu/>> accessed 12 September 2021.

²² Hamdan Zoelva (n 16) 168-169.

²³ *ibid* 169-170.

Unfair business competition as special cases are important to be resolved through the Commercial Court as a court of limited jurisdiction due to the constitutional guarantee of its independence, and because of the urgency of the existence of the special court itself which sociologically is a real need for the settlement of certain cases in certain time, so that the settlement of the case can be carried out professionally, quickly, precisely, simply and at low cost.

To support the professionalism of the Commercial Court as a court of limited jurisdiction in resolving special cases in the field of unfair business competition, the appointment of ad hoc judges,²⁴ both permanent and temporal, has the opportunity to be carried out in accordance with Article 32 of Law no. 48 of 2009 which states that ad hoc judges can be appointed to special courts to examine, hear, and decide cases that require expertise and experience in certain fields within a certain period of time.

The opportunity to appoint ad hoc judges to the Commercial Court, according to the author, based on good judges are not born but made (good judges are not born, but are created through a sound system of recruitment, selection, and training),²⁵ does not need to be implemented. Career judges who have had enough coaching and training on actual issues in the field of competence so that their abilities continue to grow. Guidance of judges is important to review their academic background to facilitate the coaching process itself, such as having a business law background and having taken competition law courses and compiling a final project in the field of business competition law. As one piece of information, even though they are in the business law study program, not all of them compose a business competition final project and not all take business competition law courses, because this course in some law and sharia faculties is elective.

Rationalization of authority over business competition cases to be transferred to the Commercial Court, in line with the existence and authority it currently has. The existence of the Commercial Court is currently inhabited by Human Resources (HR) who:²⁶ 1) have experience as judges in the general court environment; 2) have dedication and mastery of knowledge in the field that are within the scope of authority

²⁴ Ad hoc judges are judges who are temporary in nature who have expertise and experience in certain fields to examine, hear, and decide on a case whose appointment is regulated by law. Law No. 48 of 2009 on Judicial Power, point 9.

²⁵ Hamdan Zoelva (n 16) 178.

²⁶ Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, art. 302.

of the Commercial Court; 3) authoritative, honest, fair, and not reprehensible; and 4) have successfully completed a special training program as a judge sitting on the Court.

The requirements to become a judge of the Commercial Court above show that the recruitment process has been well-considered, and the judges selected have gone through a coaching process. Thus, the judges of the Commercial Court have gone through the process of good judges are not born but made. The Human Resources (HR) of judges at the Commercial Court are currently very much needed during the business world that has penetrated the digital sector with all its complexities. The complexity of the current economy requires selected human resources to handle and resolve the legal issues that arise.

The existing condition of the Commercial Court above is an internal factor determining the prospect of its authority in future business competition cases. The Job Creation Law has begun to realize the importance of business competition cases to be resolved by a special court, although currently it is only an objection to the KPPU's decision related to business competition. However, this is an early stage to involve the Commercial Court fully in business competition cases.

In addition to internal factors, there are also external factors that serve as the basis for the Commercial Court to prosecute unfair business competition in the future. This factor is the existing condition of KPPU as the current authorized institution which has not fulfilled the due process of law so that it can give rise to biased decisions. In principle, KPPU is a complementary state institution (state auxiliary organ) which has the authority based on Law no. 5 of 1999 to enforce the law on business competition.²⁷ State auxiliary organs are state institutions that were formed outside the constitution and is an institution that assists the implementation of the duties of the main state institutions (executive, legislative, and judicial) which are often also called quasi-independent institutions of the state (quasi-state).²⁸ The role of a quasi-independent (quasi) state institution is important as a responsive effort for countries that are transitioning from authoritarianism to democracy.²⁹

²⁷ Budi L. Kagramanto, 'Implementasi UU No. 5 Tahun 1999 Oleh KPPU' [2007] *Jurnal Ilmu Hukum Yustisia* 1, 2.

²⁸ Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi* (Konpres, 2008) 24.

²⁹ Andi Fahmi Lubis and Ningrum Natasya Sirait, *Hukum Persaingan Usaha. Antara Teks & Konteks* (Komisi Pengawas Persaingan Usaha, 2009) 312.

The KPPU is the overseer of the business climate, but its authority exceeds its advisory function. Because KPPU has the authority for investigators (investigation function), investigators, examiners, prosecutors (prosecuting function), adjudicators (adjudication function) as well as consultative functions in enforcing business competition laws.³⁰ This authority is contained in Article 36 of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition.

Referring to the concept of the criminal justice system, where the system of power to enforce the law is realized by 4 (four) subsystems, namely³¹

- 1). The power of “investigation” (by the investigating agency/institution),
- 2). The power of “prosecution” (by the public prosecutor’s body/institution),
- 3). The power of “judgment” and rendering decisions/criminals” (by the judiciary),
- 4). The power of “implementing criminal decisions” (by the agency/implementing/executing apparatus). Contextualized to KPPU, except for the power, “executing KPPU’s decisions,” KPPU has power in 3 (three) subsystems at the same time to enforce business competition laws, namely the power to conduct investigations and investigations, prosecution power, and decision-making power.

Three branches of power under one body do not meet the elements of due process of law. Due process of law is translated by the term due process.³² The opposite of due process of law is arbitrariness. Due process of law is a constitutional guarantee to ensure a fair legal process because with a fair procedure, a fair substantive decision is more likely to be realized. Due process of law is a constitutional guarantee that confirms that the law is enforced rationally and not arbitrarily and full of certainty. Article 28D of the 1945 Constitution paragraph (1) states that everyone has the right to fair recognition, guarantees, protection, and legal certainty as well as equal treatment before the law. The basis of the due process of law philosophy relates to natural law which postulates the due process of law philosophy is nothing but justice which is inherent to humans in defending their rights and freedoms.

Due process of law in the perspective of Human Rights (HAM) theory, implementation cannot be separated from human rights, because due process of law is

³⁰ Binoto Nadapdap, *Hukum Acara Persaingan Usaha Pasca Putusan Mahkamah Konstitusi* (Pranada Media Group, 2020) 37-40. See also Adis Nur Hayati, ‘Analisis Tantangan dan Penegakan Hukum Persaingan Usaha Pada Sektor *E-Commerce* di Indonesia’ (2021) 21(1) *Jurnal Penelitian Hukum De Jure* 109, 199.

³¹ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana tentang Sistem Peradilan Pidana Terpadu* (Badan Penerbit Universitas Diponegoro, 2006) 20.

³² Mahrus Ali, ‘Pengawasan Peredaran Barang Cetak, Due Process of Law dan Hak Atas Kebebasan Mengeluarkan Pendapat’ (2011) 8(4) *Jurnal Konstitusi* 521, 526.

human rights itself. Due process of law are basic procedural rights to ensure the implementation of fair judicial procedures.³³ Procedure is the heart of law; procedure is the heart of law. Because from a good procedure justice will be born. For example, there are several cases that have been resolved where companies whose cases were processed by the Central Jakarta District Court (PN). Consisting of PT Sentul City Tbk (BKSL), PT Hanson International Tbk (MYRX), PT Global Mediacom Tbk (BMTR), PT Trans Retail Indonesia, and PT Ace Hardware Indonesia Tbk (ACES). In the cases litigated by these companies, some of them have been completed, but some are still in process. The property development company Sentul City was sued for bankruptcy by its creditors, namely Ang Andi Bintoro, Meilyana Bintoro, Jimmy Bintoro, Denny Bintoro, and Linda Karnadi. The bankruptcy lawsuit from the Bintoro family was submitted to the Central Jakarta District Court Commercial Court on August 7, 2020 with case number 35/Pdt.Sus- Bankrupt/2020/PN Niaga Jkt.Pst. In the petition petition, one of which asks the panel of judges to accept and grant the petition for bankruptcy in its entirety. And ask Sentul City to be declared bankrupt with all the legal consequences.

The urgency of procedural law is recorded in Islamic history, when Sayyidina Ali had a case related to his armor which was in the hands of a dhimmi infidel. After completing the case, both went to Judge Suraih. In the litigation process, Sayyidina Ali proved that the armor belonged to him with two witnesses, namely Sayyidina Hasan who was his son and Qanbar who was his slave. However, Judge Suraih rejected Sayyidina Hasan's testimony because he was related by blood to Sayyidina Ali.³⁴ Islam does not accept the testimony of a person who betrays a man or a woman, nor does it accept the testimony of a person who harbors hatred for his Muslim brother and does not accept the testimony of a child against his parents and the testimony of a parent against his child. At the trial, because Sayyidina Ali did not fulfill the elements of the procedure, he was defeated by a dhimmi infidel.

Sociologically, due process of law, can lead to abuse of power or abuse of power. The party who can be harmed is the business. This can lead to an unhealthy and unfair business climate. It is not the ease of doing business that is obtained as the basis for

³³ Christoph Grabenwarter, 'Fundamental Judicial and Procedural Rights' in Dirk Ehlers (ed), *European Fundamental Rights and Freedoms* (De Gruyter 2011) 151. Bagir Manan and Susi Dwi Harijanti, 'Konstitusi dan Hak Asasi Manusia' (2016) 3(3) *Padjadjaran Jurnal Ilmu Hukum* 448, 453.

³⁴ Sayyid Sabiq, *Fikih Sunnah 14* (Mudzakir A.S., Almaarif 1988) 64.

thinking in Law No. 11 of 2020 on Job Creation was promulgated, but it was difficult to do business due to chaos within the KPPU itself. The current attractiveness of investment does not only rely on the sector of political stability and security or low labor wages, but also must provide reliable, reliable, effective, and efficient means of resolving business disputes. From the outset Adam Smith, having warned that “only peace, light taxes, and an acceptable judiciary are needed to elevate the poorest countries to the most prosperous countries; the rest depends on natural factors.”³⁵

The minimal elements of the due process of law are hearing, counsel, defense, evidence, and a fair and impartial court (hearing, legal counsel, defense, evidence and a fair and impartial trial).³⁶ The element that has not been fulfilled by KPPU is the existence of an impartial or impartial court. There is a conflict of interest when KPPU exercises its authority. This is due to the fact that 3 (three) subsystems of business competition law enforcement are under KPPU. The team of investigators who carry out investigations to carry out inquiry, the investigation is in the Investigation Division under the auspices of the Deputy for Law Enforcement, which is a direct arm of the KPPU. Meanwhile, the KPPU itself acts as a judge in deciding the unfair business competition.

The conflict of interest was felt when the commission session was held. KPPU does not justify the results of inquiry and investigations by its own subordinates, of course it undermines the authority of KPPU and KPPU can be seen as an institution that does not have credibility in carrying out its authority. Justifying it, can spawn the view that KPPU is not neutral and has no integrity.

Bagir Manan³⁷ said that the panel of judges was seen as not being neutral or taking sides for several reasons, including: 1). The influence of power where the panel of judges is powerless to face the will of the higher power holders, both from within the judiciary itself, as well as from outside (e.g., from governors, regents, ministers and others); 2). Public influence. Excessive public pressure can cause fear or anxiety to the panel of judges concerned so that they give decisions that are in accordance with the public coercion concerned. 3.) Influence of parties. The influence of the parties can

³⁵ Adi Sulistyono, ‘Pembangunan Hukum Ekonomi untuk Mendukung Pencapaian Visi Indonesia 2030’ (Speech on the Inauguration of Professor of Economic Law at the Faculty of Law, Sebelas Maret University, Surakarta, 2007) 50.

³⁶ Heri Tahir, *Proses Hukum yang Adil dalam Sistem Peradilan Pidana di Indonesia* (LaksBang Presindo, 2010) 22-23.

³⁷ Bagir Manan, *Sistem Peradilan Berwibawa (Suatu Pencarian)* (FH UII Press 2004) 20-12.

come from certain primordial relationships, or because of the commercialization of the case. The case is a commercial commodity, the one who pays more will be won.

KPPU has its capacity as a quasi-judicial in resolving unfair business competition cases. The signs that the judges are not neutral can be used to analyze the quasi-judicial process at KPPU. KPPU is not neutral because there is influence from one party, namely the investigator (prosecutor) who is a member of the KPPU itself. The settlement of unfair business competition cases is carried out by an adversarial process (conflict) between the investigator (KPPU) and the reported party (business) which results in a zero-sum decision. Acting as a judge should be a neutral third party not part of either party.

The independence of the judiciary has 2 (two) aspects, namely:³⁸ 1) Institutional independence, structural independence, external independence, or collective independence; and 2) Individual independence, internal independence, functional independence, or normative independence. Personal independence can also be seen from 2 (two) points of view, namely the independence of a judge against the influence of fellow judges or colleagues, and substantive independence, namely the independence of the judge from any power, both when deciding a case or when carrying out his duties and position as judges.

Measuring KPPU's independence with the independence measure above. KPPU has not maintained its internal independence, because the individuals who act as investigators (prosecutor) are the Deputy for Law Enforcement Section, which is an internal part of KPPU. There is a very close relationship between investigators and the commissioners of the KPPU in an institutional structure.

In order to ensure the realization of the due process of law, the authority to decide or try the KPPU needs to be transferred to the Commercial Court as the holder of judicial power whose neutrality and independence are constitutionally guaranteed in upholding law and justice in the field of business competition law.³⁹ There is also a Judicial Commission authorized to uphold the honor and nobility of the dignity and behavior of judges in Indonesia, including commercial judges.

³⁸ Firman Floranta Adonara, 'Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi' (2015) 12(2) Jurnal Konstitusi 217, 225.

³⁹ Jawahir Thontowi, 'Kedudukan dan Fungsi Komisi Yudisial Republik Indonesia' (2011) 18(2) Jurnal Hukum 285, 290.

The realization of a due process of law, justice is easier to approach. Justice is one of the goals of law. In Islamic law, the purpose of law is called *maqasid al-syari'ah*. Jasser Audah classifies classical *maqâshid al-syarî'ah* covering 3 (three) levels of necessity: al-darûriyyah (necessity/primary), al-hajjiyyah (necessity/secondary) and al-tahsinyyah (luxury/secondary). The levels of *al-darûriyyah* (necessity/primary) by experts are divided into 5 (five), namely: (a) hifz al-dn (religious preservation), (b) hifz al-nafs (life preservation), (c) hifz al-mal (preservation of property), (d) *hifz al-'aql* (preservation of reason) and (e) hifz al-nasl (preservation of offspring). And there are also adding *hifz al-'ird* (preservation of honor),⁴⁰ and *al-'adl* (justice).⁴¹

The transfer of authority to adjudicate unfair business competition cases to the Commercial Court, is at the level of necessity based on the *maqasid al-syari'ah* classification above, because with this transition, justice is more likely to be realized, because there is a guarantee of the neutrality of the judge. In Islam, there is a maxim that reads *ma la orphanul obligatory illa bihi fahuwa obligatory* (all the prerequisites for the completion of obligations, then the law becomes obligatory as well).⁴² Establishing justice is an obligation in Islam.⁴³ The existence of facilities that guarantee the realization of justice is also an obligation. If the transfer of authority to settle cases of unfair business competition to the Commercial Court is a more effective means of realizing these obligations, then the transfer is obligatory to do.

⁴⁰ Jasser Auda, *Maqâsid al-Shariah as Philosophy of Islamic Law a Systems Approach* (International Institute of Islamic Thought, 2007) 3-5.

⁴¹ Galuh Nashrullah Kartika Mayangsari R and H. Hasni Noor, 'Konsep Maqashid Al-Syariah dalam Menentukan Hukum Islam: Perspektif Al-Syatibi dan Jasser Auda' (2014) 1(1) *Jurnal Al-Iqtishadiyah* 50, 63.

⁴² Rampung Samuddin, *Fiqih Demokrasi: Menguk Kekeliruan Haramnya Umat Terlibat Pemilu dan Politik* (GOZIAN Press, 2013) 134.

⁴³ The Qur'an as the main source of Islamic teachings, mentions justice a lot. The word al-Adl, in its various forms is mentioned 28 times, the word al-Qisth in its various shighahs is mentioned 27 times, and the word al-Mizan which contains meanings relevant to both is mentioned 23 times. Abdul-Baqi and Muhammad Fu'ad, *Mu'jam al-mufahras li al-faz al-Qur'an al-Karim* (Dar al-Fikr, 1981) 448-449 and 544-545. The verse of the command to uphold justice is like Surah al-Hadid (57) verse 25 which means: Indeed, we have sent Our messengers with clear evidence, and We have sent down with them books and balances (justice) so that humans can act justly. And We created iron which has strength, great power and many benefits for mankind, and that Allah may know who helps (religion) Him and His messengers even though (Allah) does not see it. Verily Allah is Mighty, Mighty. In addition to Surah Al-Hadid above, the command to be fair is also contained in Surah al-Maidah verses 8 and 9, which means O you who believe. Be you as enforcers of justice for Allah, (when) be witnesses with justice. And let not your hatred of a people encourage you to act unjustly. Be fair. Because (fair) is closer to piety. And fear Allah, indeed, Allah is All-Aware of what you do.

The due process of law as mentioned above is a constitutional guarantee for the realization of fair law enforcement. Due process of law is an anticipatory step to prevent injustice. Preventing injustice is more important than eliminating injustice. In accordance with the maxim *ad daf'u aula minarraf'i* (prevention is more important than eliminating). This also confirms the importance of KPPU returning to its supervisory duties to prevent unfair business competition. Supervision is preventive law enforcement to prevent disputes from occurring. The KPPU's success in supervising can minimize repressive law enforcement in the courts, so that the courts' workload can be reduced. With the emphasis on the sustainability of the existing law, it is hoped that business competitors can compete fairly without having to go against the rules that have been applied.

E. Conclusion

The discussion that has been described above can be concluded, namely: first, the existing condition of the authority of the Commercial Court continues to expand and is currently trusted to settle objections to the KPPU's decision through the Job Creation Act. The reported party may file an appeal to the KPPU's decision after depositing a security deposit of 20% (twenty percent) of the total fine to the State treasury. Settling the objection, the Commercial Court may examine the formal and material aspects of the facts that form the basis of the KPPU's decision, so that the Commercial Court is not limited in time to resolve it by the Job Creation Act. Against the decision of the Commercial Court, the parties may file a cassation to the Supreme Court, and this is the last legal remedy according to Article 15 of the Regulation of the Supreme Court no. 3 of 2019.

Second, the prospect of the Commercial Court's authority in cases of unfair business competition is determined by two factors, namely internal factors in the form of the existing condition of the current authority specifically in the field of economic law issues, and the condition of human resources who have been selected and trained and experienced in resolving economic law cases. External factors are (a) the development of the economy which is increasingly complex and requires an effective, efficient, and neutral adjudicative body, (b) KPPU theoretically has not been able to guarantee a fair process in the settlement of business competition cases because it incorporates the authority to investigate, investigate, prosecute and judge.

Acknowledgement

The author would like to send his gratitude for Prof. Ningrum Natasya Sirait, S.H., M. Li., Dr. Susanti Adi Nugroho, S.H., M.H., and Dr. Suparman Marzuki, S.H., M.Si. who has been a resource person in the discussion “Due Process of Law and Legal Efforts Against KPPU’s Decisions After the Job Creation Law,” which became the inspiration for this writing.

References

Indonesian Legislations

1945 Constitution on Indonesia.

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

Law No. 31 of 2000 on Industrial Design.

Law No. 32 of 2000 on Integrated Circuit Layout Design.

Law No. 14 of 2002 on the Tax Court.

Law No. 5 of 2004 on the Supreme Court.

Law No. 24 of 2004 on Deposit Insurance Corporation.

Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations.

Law No. 48 of 2009 on Judicial Power.

Law No. 28 of 2014 on Copyright.

Law No. 13 of 2016 on Patents.

Law No. 20 of 2016 on Brand.

Law No. 11 of 2020 on Job Creation.

Regulation in Lieu of Law (Perppu) No. 1 of 1999 on Amendments to the Bankruptcy Law.

Government Regulation No. 44 of 2021 on the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition.

Supreme Court Regulation No. 3 of 2019 on Procedures for Filing an Objection to the Decision of the Business Competition Supervisory Commission.

Supreme Court Regulation No. 4 of 2019 on Amendments to Regulation of the Supreme Court No. 2 of 2015 on Procedures for Settlement of Simple Lawsuits.

Supreme Court Regulation No. 1 of 2006 on Procedures for Filing an Objection to the Decision of the Consumer Dispute Settlement Agency (BPSK).

Supreme Court Circular No. 1 of 2021 on the Transfer of Examination of the Decisions of the Commission for Business Competition Supervisory to the Commercial Court.

Books

Abdul-Baqi and Fu’ad M, *Mu’jam al-mufahras li al-faz al-Qur’an al-Karim* (Dar al-Fikr, 1981).

Asshiddiqie J, *Pengadilan Khusus*, dalam *Hitam Putih Pengadilan Khusus* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2013).

_____, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi* (Konpres, 2008).

Auda J, *Maqâsid al-Shariah as Philosophy of Islamic Law a Systems Approach* (International Institute of Islamic Thought, 2007).

Dworkin R, *Taking Rights Seriously* (Gerald-Duckworth, 1977).

- Fahmi Lubis A and Natasya Sirait N, *Hukum Persaingan Usaha. Antara Teks & Konteks* (Komisi Pengawas Persaingan Usaha, 2009).
- Grabenwarter C, 'Fundamental Judicial and Procedural Rights' in Dirk Ehlers (ed), *European Fundamental Rights and Freedoms* (De Gruyter 2011).
- Manan B, *Sistem Peradilan Berwibawa (Suatu Pencarian)* (FH UII Press 2004).
- Muchsin, *Independent Judiciary After Amendment to the 1945 Constitution According to Law No. 48 of 2009* (Untag Press 2010).
- Nadapdap B, *Hukum Acara Persaingan Usaha Pasca Putusan Mahkamah Konstitusi* (Pranada Media Group, 2020).
- Nawawi Arief B, *Kapita Selekta Hukum Pidana tentang Sistem Peradilan Pidana Terpadu* (Badan Penerbit Universitas Diponegoro, 2006).
- Sabiq S, *Fikih Sunnah 14* (Mudzakir A.S., Almaarif 1988).
- Samuddin R, *Fiqih Demokrasi: Menguak Kekeliruan Haramnya Umat Terlibat Pemilu dan Politik* (GOZIAN Press, 2013).
- Susanti Nugroho A, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Kendala Implementasinya* (Prenada Media, 2008).
- Tahir H, *Proses Hukum yang Adil dalam Sistem Peradilan Pidana di Indonesia* (LaksBang Presindo, 2010).
- Zoelva H, 'Konstitusionalitas Pengadilan Khusus' in Hermansyah, Imran, Elza Faiz, Dinal Fedrian (eds.), *Putih Hitam Pengadilan Khusus* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2013).

Journal

- Abdurrahman al-Suyuthi A, *Al-Asybah wa al-Nadhair* (Dar Al-Fikr, 1996).
- Ali M, 'Pengawasan Peredaran Barang Cetak, Due Process of Law dan Hak Atas Kebebasan Mengeluarkan Pendapat' (2011) 8(4) Jurnal Konstitusi 521.
- Floranta Adonara F, 'Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi' (2015) 12(2) Jurnal Konstitusi 217.
- L. Kagramanto B, 'Implementasi UU No. 5 Tahun 1999 Oleh KPPU' [2007] Jurnal Ilmu Hukum Yustisia 1.
- Manan B and Dwi Harijanti S, 'Konstitusi dan Hak Asasi Manusia' (2016) 3(3) Padjadjaran Jurnal Ilmu Hukum 448.
- Nashrullah Kartika Mayangsari R G and Hasni Noor H, 'Konsep Maqashid Al-Syariah dalam Menentukan Hukum Islam: Perspektif Al-Syatibi dan Jasser Auda' (2014) 1(1) Jurnal Al-Iqtishadiyah 50.
- Nur Hayati A, 'Analisis Tantangan dan Penegakan Hukum Persaingan Usaha Pada Sektor E-Commerce di Indonesia' (2021) 21(1) Jurnal Penelitian Hukum De Jure 109.
- Nurhaini Butarbutar E, 'Principle of Unguilty Presumption: Its Application and Regulation in Civil Procedure Law' (2011) 11(3) Jurnal Dinamika Hukum 470.
- Parulian Simanjuntak E, 'Examination to Determine the Presence or Absence of Abuse of Authority according to Government Administration Law' (2018) 7(2) Jurnal Hukum dan Peradilan 237.
- Petronella Simbolon A, 'Komisi Pengawas Persaingan Usaha Dalam Penegakan Hukum Persaingan Usaha' (2008) 20(3) Jurnal Mimbar Hukum 459.
- Sembiring R, 'Indonesia's Omnibus Bill on Job Creation: A Setback for Environmental Law?', (2020) 4 Chinese Journal of Environmental Law 97.
- Sourdin T and Burstyner N, 'Justice Delayed Is Justice Denied' (2014) 4(1) Victoria University Law and Justice Journal 46.

Susanti B, 'Menyoal Jenis dan Hierarki Peraturan Perundang-undangan di Indonesia' (2017) 1(2) Jentera Journal 128.

Syamsuddin M, 'The Failure of the Court to Protect Consumers: A Review of Consumer Dispute Resolution in Indonesia' (2021) 44 Journal of Consumer Policy 117.

Thontowi J, 'Kedudukan dan Fungsi Komisi Yudisial Republik Indonesia' (2011) 18(2) Jurnal Hukum 285.

Website

'FGD Kewenangan Pengadilan Niaga dalam Mengadili Permohonan Keberatan terhadap Putusan KPPU' (2021) <<https://kppu.go.id/blog/2021/08/fgd-kewenangan-pengadilan-niaga-dalam-mengadili-permohonan-keberatan-terhadap-putusan-kppu/>> accessed 12 September 2021.

Miscellaneous

Adi Sulistyono, 'Pembangunan Hukum Ekonomi untuk Mendukung Pencapaian Visi Indonesia 2030' (Speech on the Inauguration of Professor of Economic Law at the Faculty of Law, Sebelas Maret University, Surakarta, 2007).

Sri Wiyanti Eddyono (ed.), 'Catatan Kritis Terhadap Undang-Undang No. 11 Tahun 2020 tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020)' (2020) edition 2.

Ministry of Law and Human Rights, 'Naskah Akademis RUU tentang Cipta Kerja' (2020).