

# COMPARATIVE COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION (KPPU) WITH THE FEDERAL TRADE COMMISSION (FTC) IN THE UNITED STATES

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## ABSTRACT

*The purpose of this research is to know the comparison of duties, functions and authorities of KPPU in Indonesia with Federal Trade Commission (FTC) in the United States in handling monopolistic practices and unfair business competition.*

*KPPU and Federal Trade Commission (FTC) are institutions that have authority in handling Business Competition cases. The difference between KPPU and FTC is on the scope of its authority. KPPU only has authority in law enforcement business competition while FCT not only has authority in business competition law enforcement; The FTC has another authority to protect the rights of consumers. Another difference between FTC and KPPU is that the FTC has the authority to conduct searches on cases handled, while KPPU does not have the independent authority to conduct searches in handling cases.*

**Keywords:** Commission, Authority, Competition, Business.

## INTRODUCTION

Law No. 5/1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (to be written Business Competition Law) mandates to establish a commission authorized to overseeing the implementation of this Law (Regulations, 1999). The supervisory committee is known as the Commission for the Supervision of Business Competition (abbreviated as KPPU). The formation of KPPU is done based on Presidential Decree No. 75 of 1999 on the Establishment of Business Competition Supervisory Commission which is then amended by Presidential Decree no. 80 of 2008 on the Amendment of Presidential Decree No.75 of 1999 on the formation of KPPU (Budi, 2008). The formation of such a commission seems important because it can prevent large corporate monopolies from controlling prices and products on the market (Martin, 1994).

Before the existence of Business Competition Law in Indonesia, the United States (US) had first prohibited the existence of unfair business competition practices since 1890, namely the existence of *The Sherman Act* (Ernest & William, 1994; Regulation, 1890). In 1980 the United States has established a regulation that specifically regulates the law of business competition that is

*“Act to Protect Trade Commerce Again Unlawful Restrain and Monopolies”*

or better known by the name of *Sherman Act*. To enforce the Act, then established Federal Trade Commission or FTC. The question is how the comparison of duties, functions and authority between KPPU and FTC.

## **RESEARCH METHOD**

This type of research is empirical with a socio-legal approach. In this study using primary data (primary data) is data obtained directly in the field both in the form of interviews (interviews) and observation (observation) which includes, the comparison of duties, functions and authorities of KPPU in Indonesia with Federal Trade Commission (FTC) in the United States in handling monopolistic practices and unfair business competition.

Secondary data (secondary data) legal materials in the form of laws, research results, books and other literature. The tertiary data are encyclopedias and dictionaries, and then analyzed qualitatively, by describing the material that has been obtained from the research with the framework of inductive thinking.

## **RESULT AND DISCUSSION**

### **Duties, Functions and Authorities of KPPU**

#### **Duties and function of KPPU**

The establishment of KPPU is an implementation of the provisions of Article 30 Paragraph (1) of Law no. 5 Year 1999. For the first time the members of KPPU are stipulated by Presidential Decree no. 162/M of 2000, dated June 7, 2000, consisting of eleven members over the next five years.

The duties and functions of KPPU are contained in Article 35 of the Business Competition Law which in essence is to assess the indication of the occurrence of agreements and activities which may result in monopolistic practices and/or unfair business competition and abuse of dominant positions, then take action in accordance with the authority possessed.

The membership of KPPU is explained in Article 31 of Law no.5 of 1999 that stated that commission consists of a Chairman concurrently member, a Vice Chairman concurrently member, and at least 7 (seven) members, the members of the Commission shall be appointed and dismissed by the President upon the approval of the People's Legislative Assembly, and the commission shall have a term of 5 (five) years and may be reappointed for 1 (one) subsequent term of office.

#### **KPPU authorities**

The authority of KPPU is regulated in Article 36 of the Business Competition Law, which is: to receive reports from the public and or from business actors regarding the alleged occurrence of monopolistic practices and or unfair business competition; conducting research on the alleged existence of business activities and or the actions of business actors which may result

in monopolistic practices and or unfair business competition; conducting investigations and or investigation of cases of alleged monopolistic practices and or unfair business competition reported by the public or by business actors or found by the Commission as a result of its research; conclude the results of the investigation and or investigation of the existence of monopolistic practices and or unfair business competition; summoning a business actor alleged to have violated the provisions of this law; summon and present witnesses, expert witnesses, and any person deemed aware of any violation of the provisions of this law; seek the assistance of investigators to present business actors, witnesses, expert witnesses; to seek information from Government agencies in relation to the investigation of business actors in violation of the provisions of this law; obtaining, researching, and or assessing letters, documents or other evidence for investigation and or examination; decide and determine whether or not there is a loss on another entrepreneur or community; informing the decision of the Commission to business actors alleged to monopolistic practices and or unfair business competition; impose sanctions in the form of administrative measures to business actors that violate the provisions of this Law. However, from the many authorities possessed by the KPPU there is a violation of its functions because it also takes on the functions of the police (for investigation), prosecutors (for prosecution) and judges (for giving verdict) at the same time (Lubis, 2010).

## **Duties, Functions, Membership and Authority of the Federal Trade Commission (FTC) in the United States**

### **Duties and functions of FTC**

In 1980 the United States has established a legislation that specifically regulates the law of business competition. The Law is published by the American Congress under the name

*“Act to Protect Trade Commerce against Unlawful Restrain and Monopolies”*

or better known by the name of *Sherman act*. In 1994 the *Sherman Act* was perfected by the publication of the *Clayton Act*, and in the same year also published

*“Act to create a federal trade commission”*

The Federal Trade Commission (FTC) has the duty and function to keep the market in order to be always competitive for consumers and business people (Juwana et al., 2003). The position of the FTC is affirmed in the Federal Trade Commission Act which illustrates the affirmation of the FTC's position as an institution with special authorities in the field of business competition.

As the KPPU in Indonesia, the FTC in the United States is an independent agency that responsible to Congress (Federal Trade Commission, 2009). The organizational structure of the Commission consists of 5 (five) commissioners nominated by the president and constituted by the senate and served for 7 years. From the 5 Commissioners, the President then selected one commissioner as the FTC chairman. There should be no more than 3 commissioners from the

same political party. No Commission may be involved in any business, vocation or other occupation.

### **The authorities of FTC in handling the business competition issues**

Within the Federal Trade Commission Act, it is clear that the FTC has competencies in handling the business competition issues, including: Preventing unfair business competition system, and unfair or deceptive acts or practices affecting trade; Seek compensation and other assistance for actions that harm the consumer; Describe the rules of trade legislation by explaining unfair or fraudulent practices, and establishing requirements to prevent such actions; Conducting investments relating to organizations, businesses, practices and management of enterprises engaged in trading; Make reports and legislative recommendations to the congress.

The focus of the difference of the authority of the KPPU and the authority of the FTC is the scope of its authority. KPPU only has authority in business competition law enforcement while FCT not only has authority in enforcing business competition law; FTC has another authority as protecting consumer rights. Other differences FTC in conducting investigations relating to the organization, business, practice and management of companies engaged in trade and has the authority to conduct searches, while in Indonesia, KPPU does not have the authority to independently conduct a search. The FTC has the authority to handle business competition cases in the civil sphere only (the criminal sphere becomes the authority of the Antitrust Division of the Department of Justice (DOJ-AD), while the KPPU hold civil and criminal and KPPU holds three roles at the same time, namely conducting investigations such as police, prosecution such as prosecutors, and giving judgment like a judge so that often there is overlap or confusion in the handling of business cases.

### **CONCLUSSION**

KPPU and Federal Trade Commission (FTC) are institutions that have authority in handling Business Competition cases. The difference between KPPU and FTC is on the scope of its authority. KPPU only has authority in law enforcement business competition while FCT does not only have authority in business competition law enforcement; FTC has another authority as protecting consumer rights. Other differences between FTC and KPPU in Indonesia are; The FTC conducts investigations relating to the organization, business, practice and management of companies engaged in trading and has the authority to conduct searches, whereas in Indonesia KPPU does not have the independent authority to conduct searches.

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