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CONSOLIDATION OF COMPETITION LAW AND CONSUMER PROTECTION LAW IN INDONESIA: NORMATIVE STUDY BASED ON HANS KELSEN'S PURE THEORY OF LAW

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Abstract: *This article examines the urgency of consolidating Competition Law and Consumer Protection Law in Indonesia into a single integrated enforcement agency. Since 1999, Indonesia has operated two separate legal regimes through the Business Competition Supervisory Commission (KPPU) under Law No. 5 of 1999 and the National Consumer Protection Agency (BPKN) under Law No. 8 of 1999, with a total annual budget of Rp 401 billion. This research found that the separation of these two institutions has resulted in measurable structural failure: as of July 2025, Rp 265.49 billion in KPPU fines remained unenforced from 114 final and binding decisions, whilst the BPKN was only able to recover 10.6 per cent of the Rp 424.3 billion in documented consumer losses in 2024, with 70 per cent of its recommendations ignored by ministries and agencies. The total value lost due to the inefficiencies of these two agencies in a single year exceeds their entire budget. Referring to the models of the US Federal Trade Commission (FTC) and the Australian Competition and Consumer Commission (ACCC), and given that 89 out of 148 countries have opted for a consolidation model, this article argues that the establishment of a Competition and Consumer Protection Commission (KPPK) is an urgent constitutional, academic and fiscal necessity for Indonesia.*

Keywords: *BPKN; Consolidation; Consumer Protection; Competition Law; Economic Democracy; KPPU; Pure Legal Theory*

I. INTRODUCTION

Competition law and consumer protection law are two fundamental pillars of a country's economic system. The two work in synergy: healthy competition drives innovation, efficiency and competitive prices for consumers, whilst consumer protection ensures that the benefits of such competition are truly enjoyed by the public through safe products, adequate information and effective redress

mechanisms.[1] Competition law and consumer protection law are two fundamental pillars in the architecture of a country's economic system. Both work synergistically: healthy competition drives innovation, efficiency, and competitive pricing for consumers, while consumer protection ensures that the results of this competition are genuinely enjoyed by the public through safe products, adequate information, and effective compensation mechanisms.

In Indonesia, these two fields of law are governed by two separate laws and enforced by two different independent agencies. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition is mandated to the Competition Supervisory Commission (KPPU), while Law Number 8 of 1999 concerning Consumer Protection is enforced by the National Consumer Protection Agency (BPKN). This institutional dualism has persisted for more than twenty-five years without fundamental evaluation.[2] There are three fundamental issues that drive the emergence of this article. First, both laws were enacted on the foundation of the 1945 Constitution before it was amended, while the Indonesian constitution has undergone four significant changes between 1999 and 2002 that fundamentally altered the structure of state institutions and the principle of popular sovereignty, raising serious questions about the legal validity of both laws within the hierarchy of current Indonesian legal norms.[3]

Secondly, the institutional dualism between the KPPU and BPKN results in significant inefficiencies in the state budget as well as a failure to provide measurable protection. In 2024, the KPPU received a budget allocation of Rp 115.5 billion while the BPKN, through the Directorate General of Consumer Protection and Trade Order, received a budget of Rp 285.5 billion, bringing the total to Rp 401 billion for two institutions that essentially oversee the same business ecosystem.[4] However, behind this budget, by July 2025, there was Rp 265.49 billion in fines from the KPPU that had been legally decided but remained uncollected, while the BPKN allowed Rp 379.5 billion in consumer losses to go unrecovered in just one year, the total value lost due to the inefficiencies of these two institutions in a year exceeded the entire budget allocated for both.

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[1] Tania Babina, et al., 2023. *Antitrust Enforcement Increases Economic Activity*. *National Bureau of Economic Research* (NBER) no. 31597.

[2] Law of The Republic of Indonesia no. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition.

[3] Jimly Asshiddiqie, 2006. *Hans Kelsen's Theory of Law*. Jakarta: Secretariat General of the Constitutional Court of the Republic of Indonesia.

[4] Ministry of Finance of the Republic of Indonesia, 2024. *Book III Collection of RKA-K/L*.

Thirdly, out of 148 countries that have competition law enforcement agencies and consumer protection institutions, 89 countries, or nearly 60 percent, have chosen a consolidation model, including the United States and the People's Republic of China.[5] This article is built upon three problem formulations: (1) why does the separation of competition law and consumer protection in Indonesia occur and does it still have constitutional legitimacy? (2) how effective is the consolidation model in countries such as the United States and Australia? and (3) how should the enforcement of competition law and consumer protection in Indonesia be redesigned for the future? This research uses a normative legal research method with a statutory approach and a conceptual approach, with primary legal materials consisting of legislation and court decisions, as well as secondary legal materials including scientific literature and expert doctrines. A review of the existing literature shows that the issue of consolidating these two institutions has not been comprehensively studied in the context of Indonesian law. The most relevant previous research is Max Huffman's study in the European Competition Journal (2010),[6] which concluded that the integration of competition law and consumer protection within a single institution results in significant efficiencies in the European context. In Indonesia, studies on KPPU and BPKN have been conducted separately: KPPU is examined from the perspective of competition law, while BPKN is studied from the perspective of consumer protection law. There has yet to be research specifically testing the constitutional legitimacy of this institutional dualism based on Kelsen's hierarchy of norms theory post-amendment of the 1945 Constitution, thus this article fills that gap.

Historical background and juridical validity: born from external pressure, not constitutional needs. To understand the root of the dualism issue between KPPU and BPKN, an honest historical tracing of the process of forming these two laws is necessary. Unlike many laws that arise from an organic legislative process based on societal needs, Law No. 5 of 1999 and Law No. 8 of 1999 were born amid the monetary crisis of 1997–1998 as a requirement set by the International Monetary Fund (IMF) in the economic recovery agreement for Indonesia. The IMF Letter of

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[5] Federal Trade Commission, *Competition and Consumer Protection Agencies Worldwide*. accessed January 15, 2024, https://www.ftc.gov/policy/international/competition-consumer-protection-agencies-worldwide.

[6] Max Huffman, 2010. *Bridging the Divide? Theories for Integrating Competition Law and Consumer Protection*. European Competition Journal 6, no. 1, p. 25.

Intent document from 2000 explicitly states legal reforms on competition and consumer protection as conditions for the disbursement of financial aid.[7]

This historical context cannot be separated from the political dynamics of Indonesia during the post-New Order democratic transition. The fall of the Soeharto regime in May 1998 opened the door for reform demands in various sectors, including the economic and business law sectors. The IMF, World Bank, and other international financial institutions capitalised on this momentum to push for economic liberalisation, the establishment of antimonopoly regulations, and consumer protection mechanisms as part of the Structural Adjustment Program. The newly formed government under President Habibie, in a position vulnerable both fiscally and politically, had little room to reject these conditions.

The fact that both laws were completed and enacted in a very short time namely in March 1999 for the Competition Law and in April 1999 for the Consumer Protection Law, just a week apart, reflects more external schedule pressure than a mature legislative process. In comparison, the UK took years of discussion and extensive public consultation before passing the Competition Act 1998 the same year. Japan undertook a series of phased revisions to the Antimonopoly Act over several decades before reaching its modern form. This historical fact has serious normative implications. If the establishment of these two laws was more driven by external pressures than by mature academic and constitutional studies, then the resulting institutional design is likely not based on a deep analysis of Indonesia's needs as a country with a civil law legal system grounded in Pancasila. To date, the author has not found an Academic Manuscript that clearly explains the constitutional reasons for the separation of the two institutions in 1999. The absence of a comprehensive Academic Manuscript is not merely a procedural defect but a reflection that fundamental institutional decisions were made without adequate academic foundation.

The issue of legal validity becomes even more pronounced when examined from the perspective of the theory of the structure of legal norms (Stufentheorie) developed by Adolf Merkl and refined by Hans Kelsen. Each legal norm derives its validity from a higher norm within the hierarchy of legislation. At the time Law No. 5 and Law No. 8 of 1999 were enacted, both were based on the 1945 Constitution before the

[7] International Monetary Fund. *Indonesia Letter of Intent*. accessed January 15, 2024, https://www.imf.org/external/np/loi/2000/idn/03/073100.pdf.

amendments. However, since 2002, the 1945 Constitution has undergone four fundamental changes.[8]

These constitutional changes encompass several dimensions that are directly relevant to the institutional architecture of KPPU and BPKN. First, the change of Article 1 paragraph (2) which initially stated 'Sovereignty is in the hands of the people, and is fully exercised by the People's Consultative Assembly' to 'Sovereignty is in the hands of the people and is exercised according to the Constitution' fundamentally shifts the paradigm of institutional legitimacy. Under the old constitutional regime, state institutions could stand on the basis of delegation of authority from the MPR as the holder of supreme sovereignty. In the new constitutional regime, each state institution must have an explicit constitutional basis and a structured accountability mechanism in accordance with the Constitution.

Secondly, the addition of Article 1 paragraph (3) which states 'The Republic of Indonesia is a Rule of Law State' is not merely a symbolic affirmation. In the rechtstaat tradition embraced by Indonesia as a continental European rule of law country, this principle carries substantive consequences: every government action and every state institution must be based on clear laws (legaliteitsprincipe), every citizen is guaranteed fundamental rights (grondrechten), and every dispute can be resolved through an independent and impartial judiciary (onafhankelijke rechterlijke macht). The institutional architecture that leads to fragmented authority, unclear accountability mechanisms, and ineffective law enforcement is difficult to declare fully compliant with the principles of the rule of law in this sense.

Thirdly, the amendment to Article 33 of the 1945 Constitution on the national economy provides an additional substantive dimension. The Third Amendment to the 1945 Constitution adds paragraph (4) which states that the national economy is organised based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental awareness, independence, and maintaining a balance of progress and unity of the national economy. The principle of fair efficiency which is explicitly mentioned in this constitution should serve as the benchmark for assessing whether the dualism of the KPPU-BPKN institutions meets the efficiency standards desired by the constitution.

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[8] Raisul Muttaqien, 2014. *Pure Legal Theory: Foundations of Normative Legal Science, 16th edition*. Bandung: Nusa Media.

As a concrete illustration of the potential unconstitutionality, the Constitutional Court through Decision Number 85/PUU-XIV/2016 has granted the testing of the phrase 'other parties' in Articles 22, 23, and 24 of the Competition Law, as well as the phrase 'investigation' in Articles 36 and 41, as being contrary to the 1945 Constitution. This decision proves that the Competition Law is not a document that is immune from constitutional correction, and opens up space for a more comprehensive examination of its entire institutional architecture.[9] If the technical articles within that law can be tested and declared unconstitutional, then the more fundamental institutional design should also be open to the same evaluation.

From a constitutional law perspective, it should also be noted that the existence of the KPPU as a quasi-judicial body that performs investigation, prosecution, and adjudication functions simultaneously potentially conflicts with the principle of due process of law which is increasingly firmly guaranteed by the constitution following amendments. The new constitution places the judicial power as an independent power to conduct trials in order to uphold the law and justice. Meanwhile, the KPPU, although formally classified as an independent administrative body, in practice performs functions resembling judicial functions without having institutional guarantees equivalent to those of constitutional judicial institutions. The context of the IMF pressure must also be viewed within a broader framework of the conditionality practices applied by the Bretton Woods institutions at that time. As analysed by Joseph Stiglitz in Globalization and Its Discontents, IMF programmes often import institutional models from advanced economic contexts into developing countries without considering local institutional readiness, law enforcement capacity, and fundamentally different market conditions. In the context of Indonesia, the transplantation of competition law rooted in the US antitrust tradition and European model consumer protection law into Indonesia's civil law system, which is still in the process of democratic transition, results in norms that are not fully compatible with the domestic legal ecosystem.

The quality aspect of the legislation of both laws also deserves critical attention. From a legislative technical perspective, several provisions in Law No. 5 of 1999 contain significant normative ambiguities, as reflected in the numerous decisions made by the KPPU that were later annulled by the District Court or the Supreme Court due to differing interpretations of the same provisions. This normative

[9] Constitutional Court, "Decision No. 85/PUU-XIV/2016," Pub. L. No. Judicial Review of Law Number 5 of 1999, 1 (2016).

ambiguity, some of which can be traced back to a rushed legislative process, has resulted in a heavy litigation burden and legal uncertainty that harms both business actors and consumers. New laws under the consolidation framework must be designed with a far higher standard of legislative technical quality.

II. RESEARCH METHODS

This research is a normative legal study that examines legal norms within the regulatory system related to the enforcement of competition law and consumer protection in Indonesia. This research uses a statutory and conceptual approach. The statutory approach is conducted by analyzing the institutional arrangements in Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and Law Number 8 of 1999 concerning Consumer Protection, including the authority of the Business Competition Supervisory Commission and the National Consumer Protection Agency. This research also examines the legal validity of these two laws within the constitutional framework following the four amendments to the 1945 Constitution of the Republic of Indonesia. Meanwhile, a conceptual approach is used to analyze the concept of legal effectiveness and institutional design, referring to the legal system theory proposed by Lawrence M. Friedman. The legal materials used consist of primary, secondary, and tertiary legal materials obtained through literature review. All legal materials are analyzed qualitatively and prescriptively to assess the consistency of legal norms with constitutional principles and to formulate arguments regarding the possibility of institutional consolidation in the competition law enforcement system and consumer protection in Indonesia.

III. ANALYSIS AND DISCUSSION

a. The Separation of Competition Law and Consumer Protection Institutions in Indonesia: Origins and Constitutional Legitimacy.

Dualism of kppu-bpkn: anatomy of inefficiency and overlapping authorities. The legal effectiveness approach developed by Lawrence M. Friedman states that law must be viewed from three components: substance, structure, and legal culture.[10] Through this lens, the institutional dualism of KPPU-BPKN shows fundamental structural weaknesses in the competition law enforcement system and consumer protection in Indonesia. From the structural side, KPPU has very broad authority but is not equipped with adequate instruments. As a quasi-judicial body, KPPU performs investigation, prosecution, and adjudication functions under one roof a condition

[10] Lawrence M. Friedman, 1975. *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.

that has been problematic from the perspective of the principle of separation of powers. On the other hand, BPKN has even more severe limitations: this institution can only conduct supervision, outreach, and receive complaints, but cannot perform adjudication. The adjudication task is delegated to the Consumer Dispute Resolution Agency (BPSK), which can only conduct conciliation, mediation, and arbitration without the authority to produce legally binding public decisions.

From a budgetary perspective, the data from the Ministry / Institution Work Plan and Budget (RKA-K/L) for 2024 presents a concerning picture. The KPPU received an allocation of IDR 115.5 billion, of which 79.5 per cent is used solely for management support programmes, while only 20.5 per cent is allocated for the essential competition supervision function. This means that more than three-quarters of the KPPU's budget is spent on purely administrative matters. With a total of IDR 401 billion for two agencies overseeing the same business ecosystem, the question of state budget efficiency becomes very relevant and urgent.[11] Ironically, this administrative inefficiency occurs alongside a rather significant law enforcement performance: since its establishment until mid-2025, the KPPU has collected Non-Tax State Revenue (PNBP) amounting to IDR 825.34 billion from penalty executions.[12] Nevertheless, as of July 2025, there are still 114 decisions with a total fine of IDR 265.49 billion that are legally binding but have yet to be executed, not due to legal defects, but because of limitations in the agency's capacity and execution instruments.[13] This fact shows that the weakness lies not in the substance of the KPPU's decisions, but in the institutional structure that is not equipped with adequate resources and execution authority.

Beyond mere budget inefficiency, this institutional dualism creates a tangible gap in legal protection for the public. When a business actor's behaviour is both an instance of unfair competition and detrimental to consumers, it must navigate through two different bureaucratic paths, with differing standards of proof, under separate agencies, and often results in uncoordinated rulings. This fragmentation structurally weakens the position of consumers and the public interest against more organised business actors. A study of the patterns of cases handled by the KPPU over the past decade shows that a significant number of cases involving price cartels, predatory pricing, and abuse of dominant position have a direct and measurable impact on consumers either through prices being higher than they should be, lower product quality, or more limited choices. However, because the KPPU is only authorised to

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[11] Indonesia, Book III Collection of RKA-K/L.

[12] Business Competition Supervisory Commission, 2025. *Press Release No. 048/VII/2025: Total Cumulative PNBP since 2000 Amounting to IDR 825.34 Billion*. kppu.go.id.

[13] Business Competition Supervisory Commission, 2025. *Ibid*.

impose sanctions on business operators and does not directly provide restitution to harmed consumers, there exists a gap between the enforcement of competition law and the recovery of consumer losses that should be addressed by a single integrated institution.

The situation becomes increasingly complex when considering that BPSK, as the spearhead of consumer dispute resolution, faces serious capacity challenges.[14] With a limited number of BPSK across Indonesia and an ever-increasing case load alongside the growth of the digital economy, many consumers, especially in areas without BPSK, practically have no effective access to consumer dispute resolution mechanisms. Data from BPKN quantitatively illustrates the dimensions of this failure: in 2024, BPKN received 1,733 complaints a 200 percent increase compared to 2022 with documented potential consumer losses amounting to Rp 424.3 billion. However, from this number, only Rp 44.8 billion or 10.6 percent was successfully recovered. This means that Rp 379.5 billion in reported and officially documented consumer losses went unaddressed in just one year. Furthermore, of the 279 recommendations sent by BPKN to ministries and agencies since 2005, only 30 percent received a formal response, 70 percent were ignored.[15] This is not merely inefficiency: it is a systemic failure of state protection for its citizens stemming directly from an institutional design lacking adjudicative authority. Consolidation into KPPK, accompanied by the expansion of adequate regional office networks and the utilisation of technology for online dispute resolution, could significantly enhance access to justice for consumers throughout Indonesia.

b. Internatioanl Consolidation Model: FTC and ACCC as a Comparative Mirror

The argument for the consolidation of the KPPU and BPKN becomes significantly stronger when placed in a global comparative context. Data compiled by the Federal Trade Commission shows that out of 148 countries that have both types of law enforcement agencies, 89 countries, or nearly 60 percent, have opted for a consolidation model, including countries with leading legal systems and economic capacities.[16]

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[14] Febry Chrisdanty, 2020. *Penyelesaian Sengketa Konsumen Melalui Pengadilan dan Non Litigasi oleh Badan Penyelesaian Sengketa Konsumen (BPSK)*. Jurnal Magister Hukum Perspektif 11, no. 2, p. 52 - 62. https://doi.org/10.37303/magister.v11i2.9.

[15] National Consumer Protection Agency, 2024. *2024 Year-End Report, December 17, 2024: 1,733 Complaints, Potential Losses of Rp 424.3 Billion, Recovered Rp 44.8 Billion (10.6%); Cumulative Statistics 2005 – 2024: 279 Recommendations, 70% Not Responded to by Ministries/Agencies*. bpkn.go.id.

[16] Commission. *Competition and Consumer Protection Agencies Worldwide*.

The United States Federal Trade Commission (FTC) is the most mature and extensively studied consolidation model in legal literature. Established in 1914, the FTC carries out a dual mission simultaneously: enforcing antitrust laws and protecting consumers from unfair business practices.[17] With a single commission, a unified management structure, one system for gathering evidence, and a single enforcement mechanism, the FTC is able to see the connection between anticompetitive behaviour and its direct, holistic impact on consumers. A study by Max Huffman published in the European Competition Journal concluded that the integration of competition law and consumer protection within a single agency provides significant efficiency benefits because these two areas of law share the same theoretical foundation and objectives.

The Australian Competition and Consumer Commission (ACCC) is an even more relevant model for Indonesia because Australia, like Indonesia, is a country with a legal tradition that has adopted a strong economic regulatory approach. The ACCC was established in 1995 through the amalgamation of the Trade Practices Commission and Prices Surveillance Authority. This agency has full authority to investigate, prosecute, and sanction anticompetitive behaviour while also addressing practices that harm consumers. The result is greater resource efficiency, consistent policy, and more effective law enforcement, as the agency can utilise evidence and data from one domain to strengthen legal actions in another. It is important to note that comparisons with the FTC and ACCC do not imply that Indonesia should uncritically adopt such models. Different legal systems and economic conditions require adaptation. However, the value of this comparison lies in confirming that the principle of consolidation is not an anomaly, but rather a global best practice based on solid legal and economic logic.

Consolidation argumentation based on pure legal theory of Kelsen and economic democracy. The theoretical foundation of this article is built on two pillars: Hans Kelsen's pure legal theory and the concept of economic democracy as formulated in Pancasila and the 1945 Constitution. Before applying both to concrete institutional problems, it is essential to first deeply understand the nature and implications of each pillar within the normative context of Indonesia.

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[17] Jennifer K. Wagner, 2021. *The Federal Trade Commission and Consumer Protections for Mobile Health Apps*. Journal of Law, Medicine & Ethics 48, no. S1, p. 103 – 114. https://doi.org/10.1177/1073110520917035.

Kelsen, in Pure Theory of Law, develops a legal theory that seeks to purify law from all non-juridical elements, sociology, politics, morality, ideology so that law can be studied as an independent science with its own methods and objects. The essence of this theory is the concept of the validity of legal norms that is hierarchical in nature. Each norm derives its validity not from social reality or moral values, but from a higher legal norm that empowers (ermächtigen) lower norm-makers to create it. This entire system of norms forms a pyramid structure (Stufenbau) with the Grundnorm at its peak.[18]

In the context of Indonesia, the pyramid structure of norms can be outlined as follows: at the top layer stands Pancasila as the Grundnorm or source of all sources of law a position long acknowledged by Indonesian legal doctrine although Kelsen himself did not develop the concept of Grundnorm in the context of national ideology. Below it stands the 1945 Constitution as the highest constitution that empowers the legislative body to form laws. Laws, including Law No. 5 and Law No. 8 of 1999, derive their validity from the 1945 Constitution. Below the laws, there are government regulations, presidential regulations, and regional regulations, all of which must derive from and not contradict the laws above them. A crucial normative issue then arises: when the constitution, namely the 1945 Constitution, undergoes fundamental changes four times from 1999 to 2002, what happens to the validity of the laws formed based on the old constitution? In Kelsen's logic, a lower norm loses its validity if the higher norm from which it derives is changed or replaced, unless the higher norm explicitly maintains the validity of the lower norm.

The amendments to the 1945 Constitution do not explicitly revoke Law No. 5 and Law No. 8 of 1999. The Transitional Provisions in the Indonesian constitution post-amendment state that all existing legislation remains in force until new laws are created in accordance with this Constitution. However, this clause is temporary and does not provide permanent legitimacy. It is only intended to prevent a legal vacuum during the transitional period, not to entrench old regulations that contradict the values of the new constitution. With more than two decades passing since the last amendment without comprehensive normative updates to the two laws, this 'transitional period' has far exceeded a justifiable limit.

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[18] Raisul Muttaqien, 2014. *Ibid*.

From the perspective of Kelsen's theory, this situation results in what can be termed as 'fragile normative validity': formally, both laws remain valid under the transitional provisions, but substantively, their conformity with the constitution that has undergone fundamental changes can be questioned. This is not merely an academic issue it has practical consequences as at any time, interested parties can submit constitutional tests against the norms contained in both laws, as evidenced in Constitutional Court Decision No. 85/PUU-XIV/2016. The second pillar of this argument is the concept of economic democracy. Article 2 of the Competition Law states that entrepreneurs in Indonesia conduct their business activities based on economic democracy while considering the balance between the interests of entrepreneurs and the public interest. This concept is directly rooted in Article 33 of the 1945 Constitution and the elaboration of MPR Decree No. II/MPR/1998 concerning the GBHN, which formulates the basic principles of Indonesia's economic democracy.[19]

Economic democracy in the context of Pancasila and the 1945 Constitution carries a distinctive meaning that is not identical to the concept of laissez-faire liberal Western economic liberalism. It emphasises that the economic system must be designed and operated not merely to produce market efficiency in a technical sense, but to realise social justice and welfare for all Indonesian people. In this framework, state institutions responsible for overseeing business competition and protecting consumers are not merely 'market regulators' in the liberal sense, but active instruments in the realisation of economic democracy. If this is the case, then the question concerning the institutional architecture of the KPPU and BPKN is not merely a technical question about bureaucratic efficiency, but a constitutional question regarding whether the existing institutional design can fulfil the mandate of economic democracy it bears. The answer to this question, based on the analysis in the earlier sections, is negative: the existing dualism weakens the state's ability to protect the public interest and consumers, which is the core of the economic democracy mandate.

Using Gustav Radbruch's framework of three fundamental legal values namely justice (Gerechtigkeit), utility (Zweckmassigkeit), and legal certainty (Rechtssicherheit) the current dualism of KPPU-BPKN shows a deficit in all three: a justice deficit because consumers do not receive equivalent protection to the power

[19] Business Competition Supervisory Commission, 2021. *Two Decades of Competition Law Enforcement: Debates and Unresolved Issues*, ed. Jakarta: KPPU.

of large business actors; a utility deficit because state budgets are absorbed by the management costs of two parallel bureaucracies; and a legal certainty deficit because the public lacks a clear single point of access to seek justice.[20]

Radbruch is also known for the Radbruch Formula (Radbruchsche Formel), which states that positive law that is irreconcilably opposed to justice loses its legal character. Although the Radbruch Formula is generally applied in more extreme contexts such as laws produced by totalitarian regimes, its principle serves as a reminder that the formal validity of a norm does not automatically guarantee its fairness. The institutional dualism that systematically weakens the position of consumers and hinders effective law enforcement is a dualism that requires normative correction, not tolerance in the name of formal legal certainty.

The consolidation of KPPU and BPKN into a single integrated institution referred to in this article as the Competition and Consumer Protection Commission (KPPK) will simultaneously address the three deficits of Radbruch and concretely realise the Stufenbau of Kelsen by creating institutional norms that are explicitly and cohesively sourced from the 1945 Constitution post-amendment. The proposed model is an institution with: (1) integrated investigative authority for cases that encompass both business competition dimensions and consumer harm; (2) a stronger adjudication mechanism with guarantees of the due process principle; (3) a single efficient market oversight system with consolidated resources; and (4) a new legal basis that explicitly references the 1945 Constitution post-amendment, thus possessing unquestionable constitutional validity.

The perspective of Niklas Luhmann's legal system theory can also enrich this argument. Within Luhmann's framework, law is an autopoietic system that reproduces itself through legal communication based on a binary legal/illegal code. When two legal subsystems — competition law and consumer protection operate in separate silos, they produce uncoordinated and even contradictory legal communications. Institutional consolidation is a mechanism for integrating these two subsystems into one coherent system, capable of producing consistent and predictable legal communication.

[20] Gustav Radbruch, 2006. *Statutory Lawlessness and Supra-Statutory Law (1946)*. Oxford Journal of Legal Studies 26, no. 1, p. 1 – 11. https://doi.org/10.1093/ojls/gqi041.

c. Normative Prescription: A Consolidation Step for Indonesia

The consolidation of the KPPU and BPKN is not merely an administrative merger of two agencies under one roof. It requires a comprehensive normative reconstruction, starting with the establishment of a new law that integrates all aspects of competition law and consumer protection into one coherent corpus juris, in line with the amended 1945 Constitution. In the context of the principle lex superior derogat legi inferiori, the newly formed law must not contradict the amended constitution.[21] The first step in this normative reconstruction is the establishment of a comprehensive Academic Manuscript. Unlike the process of formulating Law No. 5 and Law No. 8 of 1999, which proceeded without adequate Academic Manuscripts, the formulation of new legislation must be preceded by in-depth academic studies on: (a) the actual market conditions and the behaviour of business actors in Indonesia; (b) the most significant consumer issue map; (c) a comparative analysis of institutional models from various relevant jurisdictions; (d) a study of constitutionality based on the amended 1945 Constitution; and (e) simulations of institutional and budgetary impacts from various consolidation options.

The second step is the design of the institutional architecture of KPPK that explicitly reflects three main constitutional principles. First, the rule of law principle (Article 1 paragraph 3 of the 1945 Constitution) demands clear authority and transparent accountability mechanisms. This means that KPPK must have a clear legal basis, unambiguous authority limits, reporting mechanisms to the DPR, and judicial review mechanisms for its decisions. Second, the economic democracy principle (Article 33 of the 1945 Constitution post-amendment) requires institutions to prioritise the sovereignty of the people and the public interest, not just the interests of business actors. Third, the principle of checks and balances demands a clear separation between investigation / prosecution functions and adjudication functions within the same institution a separation that currently does not exist within the structure of KPPU. Regarding the internal structure of KPPK, the model that best meets these three constitutional principles is one with two clear functional divisions under one leadership commission. The Investigation and Prosecution Division is responsible for conducting market investigations, gathering evidence, developing cases, and bringing cases before the adjudication forum. The Adjudication Division consists of a panel of commissioners who are not involved in the investigation process, tasked with adjudicating cases brought by the

[21] Sudikno Mertokusumo, 2020. *Penemuan Hukum: Sebuah Pengantar*. Yogyakarta: Mahakarya Pustaka.

Investigation Division based on the adversarial hearing principle that meets due process standards. This separation not only meets procedural standards but also enhances the legitimacy of KPPK's decisions in the eyes of the public and business actors.

The third step is designing a coordination mechanism with related institutions. The consolidation of KPPU and BPKN does not mean KPPK will operate in isolation. In Indonesia's complex regulatory ecosystem, KPPK must have a structured coordination mechanism with the Financial Services Authority (OJK) for cases touching on the financial sector, with the National Agency of Drug and Food Control (BPOM) for cases related to product safety, with the Ministry of Trade for price and distribution policies, and with the Indonesian Broadcasting Commission (KPI) for competition in the media sector. This coordination mechanism does not need to be formal and hierarchical, but should be structured enough to prevent the overlapping of jurisdictions that has been a problem so far. The fourth step and perhaps the most critical operationally is designing a careful transition mechanism. All cases currently being handled by KPPU at the time of consolidation must be resolved or transferred to KPPK with a clear mechanism that does not create a legal vacuum. Similarly, cases that are in process at BPSK need to be handled carefully: the most prudent option is to give BPSK a limited time frame to resolve ongoing cases, after which all new cases will be directed to KPPK.

The human resources aspect in the transition process must not be overlooked. The combination of human resources from KPPU and BPKN will bring a diversity of expertise that is truly an asset for KPPK investigators trained in market and economic analysis from KPPU, as well as consumer protection specialists and dispute resolution experts from BPKN. However, this separate expertise needs to be integrated through comprehensive cross-training programs so that KPPK investigators can identify consumer protection dimensions in competition cases, and vice versa. In an era of economic digitalisation that increasingly blurs the boundaries between technology platforms, markets, and business actors, the ability of a single institution to simultaneously observe anticompetitive behaviour and its impact on consumers becomes ever more critical. Cases involving giant digital platforms, such as those faced by the FTC and European competition authorities against technology companies, show that the line between anticompetitive behaviour and consumer harm in the digital economy is nearly indistinguishable. The gig economy, two-sided markets, and platform ecosystems demand a holistic

analytical approach that is impossible to provide by two institutions operating in separate silos.

The fiscal dimensions of consolidation need to be presented concretely based on available data. First, from the perspective of direct savings: this study hypothesises that consolidating overlapping administrative functions including staffing, information technology systems, office facilities, and case management has the potential to yield efficiencies of at least 20 per cent of the combined total budget, equivalent to Rp 80 billion per year from a total of Rp 401 billion. This hypothesis requires further empirical testing, for instance through comparative studies on the budget efficiency of the ACCC in Australia following its establishment in 1995, which merged two separate agencies into one. Secondly, from the perspective of the potential increase in Non-Tax State Revenue: as of July 2025, the KPPU has 114 rulings with total fines of Rp 265.49 billion that have permanent legal force but have not yet been executed. An integrated agency with strengthened execution capacity and authority has the potential to collect a substantial portion of these arrears which amount to more than twice the annual budget of the KPPU. Thirdly, from the perspective of consumer loss recovery: the BPKN notes that in 2024, only 10.6 per cent of Rp 424.3 billion in documented consumer losses was successfully recovered. A single agency with full adjudicative authority has the potential to significantly improve this recovery ratio. Overall, the total value lost due to the ineffectiveness of these two agencies in a year uncollectible fines plus unrecoverable consumer losses — exceeds Rp 600 billion, far surpassing the total budget expended. This is a fiscal argument that deserves serious attention from the Ministry of Finance and the DPR during the budget discussion process.

The international dimension of this consolidation also needs to be considered in the context of Indonesia's commitments in international trade agreements. Indonesia, as a member of the World Trade Organization (WTO), has commitments to ensure that its domestic regulations do not create unnecessary trade barriers. In an era of increasingly comprehensive free trade agreements including the ASEAN Free Trade Area (AFTA) and the Regional Comprehensive Economic Partnership (RCEP) that Indonesia has ratified standards for consumer protection and effective competition are becoming increasingly important, not only as a constitutional demand domestically, but also as an international obligation. An institution with greater capacity and credibility will be better able to fulfil these international obligations.

Technological aspects cannot be overlooked in designing the KPPK. The fourth industrial revolution and the digital transformation of the Indonesian economy have produced new business models that are not easily classified within the existing regulatory framework. E-commerce platforms that also act as marketplaces and direct sellers, online loan services that sit at the intersection of financial services and consumer protection, and application ecosystems that bind users through high switching costs all demand a regulatory approach that is not confined within separate institutional silos. The KPPK must be designed from the outset as a tech-savvy institution, with capabilities in digital market data analysis, digital forensic investigation, and a deep understanding of platform economics.

It is also important to consider the dimension of public engagement in the design of the KPPK. One of the weaknesses of the KPPU and BPKN that is not often discussed is the limited public participation in their decision-making processes. The KPPK, as the institution mandated to realise economic democracy, must actively build mechanisms for public engagement: public consultations before issuing guidelines or regulations, full transparency regarding decisions and their underlying considerations, easily accessible reporting mechanisms for violations for the wider community, and proactive consumer education programmes. Public engagement is not merely a demand of formal democracy, but also a key to the effectiveness of law enforcement, as institutions that earn public trust will receive better information and cooperation from the community in identifying violations.

In the context of strengthening law enforcement capacity, it is also important to examine the relationship between the KPPK and the judiciary system. One of the structural weaknesses of the KPPU at present is the high rate of annulments of decisions at the District Court and Supreme Court levels, partly due to differences in standards of proof and interpretation between the KPPU and the general courts. The KPPK must be designed with better mechanisms to manage this relationship: first, by improving documentation standards and legal arguments in every decision so that they are more resilient to judicial review; second, by providing training programmes for judges who handle competition law and consumer protection cases; and third, by considering the formation of a special chamber in the commercial court to handle appeals against KPPK decisions.

Empirical research as the basis for policy is also an element that must not be overlooked. The proposed institutional consolidation in this article is built upon normative and comparative arguments; however, good policy requires empirical

validation. Before and during the consolidation process, comprehensive empirical research is needed on: the actual impact of institutional dualism on the investment climate and consumer trust; patterns of competition violations and consumer protection violations as well as the interrelationship between the two; the relative effectiveness of various law enforcement mechanisms; and the perceptions of businesses and consumers regarding the performance of the KPPU and BPKN. This empirical research will not only strengthen the normative basis for consolidation but will also provide a more targeted blueprint for the design of the KPPK.

Finally, it should be noted that this consolidation will also strengthen Indonesia's position in international forums in the field of competition law and consumer protection. The International Competition Network (ICN) and UNCTAD, the two most important multilateral forums in this field, will find it easier to interact with one institution that has an integrated mandate rather than having to negotiate with two separate institutions that sometimes have differing perspectives. Indonesia's position in the G20 Consumer Protection Working Group will also be stronger if represented by one institution that speaks with one voice. In the ASEAN region, where policy coordination on competition increasingly becomes an important agenda within the framework of the ASEAN Economic Community, Indonesia with an integrated KPPK will have significantly better negotiation and advocacy capacity.

IV. CONCLUSION

This article has built an argument that the consolidation of Competition Law and Consumer Protection Law in Indonesia into a single integrated body is a constitutional, academic, and pragmatic necessity that cannot be delayed any longer. Three main findings support this conclusion. Firstly, from the perspective of pure legal theory according to Kelsen, the separation of KPPU and BPKN lacks a strong academic and constitutional foundation. The two underlying laws were born more from the prerequisites of external agreements than from in-depth normative studies, and both are built upon a constitution that has now fundamentally changed. The juridical validity of the existing institutional architecture must be questioned and evaluated seriously. Secondly, from the perspective of legal effectiveness and institutional efficiency, the dualism of KPPU-BPKN results in a structural failure that can now be quantitatively demonstrated. The state invests Rp 401 billion per year for the two agencies, yet the outcomes are as follows: Rp 265.49 billion in legally decided fines remain unexecuted due to institutional capacity limitations; BPKN is only able to recover 10.6 percent of the documented consumer losses amounting to Rp 424.3 billion by 2024; and 70 percent of BPKN's recommendations to ministries are ignored because this agency lacks adjudicatory authority. The total lost value

within a year — uncollectible fines plus unrecoverable consumer losses exceeds Rp 600 billion, far surpassing the entire budget spent. This is not merely usual bureaucratic inefficiency: it is a systemic failure that measurably harms the public and can be prevented. Thirdly, from a global comparative perspective, 89 out of 148 countries have opted for the consolidation model, including countries with advanced legal systems and economic capacity. This is not a coincidence, but rather a reflection of the underlying legal and economic logic: competition and consumer protection are two sides of the same coin and are most effectively enforced by a single institution with an integrated mandate.

The greatest challenge in achieving this consolidation lies not in the difficulty of academic arguments as the arguments presented in this article are quite strong and solid. The real challenge is the institutional resistance from existing agencies, the interests of the bureaucracy that have developed over more than twenty-five years, and the lack of significant political will from legislative and executive power holders. Addressing this challenge requires ongoing academic advocacy, support from the legal and economic communities, and organized public pressure as ultimately seen in promoting similar consolidation in various jurisdictions that now serve as the best examples for Indonesia. In a broader framework, this article is also an invitation to the Indonesian legal academic community to be more actively involved in the debate about the architecture of state institutions. Fundamental institutional reform must not be left to become merely a bureaucratic agenda or a response to temporary political pressures. It must be built on a foundation of in-depth academic studies, normatively argued from authentic constitutional sources, and critically evaluated by the scientific community before implementation. This article seeks to contribute towards that goal, with the hope that it will stimulate further research that increasingly enriches the landscape of economic law in Indonesia.

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