Research Article

The Anomaly of Domesticity: Indonesian Competition Law and the Case for Extraterritoriality

Hendronoto Soesabdo[1*], Kurnia Toha[1], Kanaphon Chanhom[2], Annisa Permata Sari Harahap[3]
[1]Doctoral Program, Faculty of Law, Universitas Indonesia, Indonesia
[2]Faculty of Law, Chulalongkorn University, Thailand
[3]LLM Program, Faculty of Law, Universiti Malaya, Malaysia
[*]hendronoto.soesabdo@office.ui.ac.id

ABSTRACT

Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition has a significant regulatory gap due to its territorial approach which lacks the statutory support necessary for the Indonesian Competition Commission (KPPU) to address cross-border business realities. This article examines the dynamics of the KPPU's efforts to assert jurisdiction over foreign business entities despite this lack of explicit statutory authority and argues for a necessity of aligning Indonesia's competition framework with international standards. Utilizing a doctrinal research method, the study draws comparative insights from other Indonesian regulatory frameworks that already recognize extraterritorial reach in areas with cross-border impacts. The findings establish that as indeed, the other legal sectors in Indonesia have integrated extraterritorial principles. The competition law remains an anomaly, leaving the KPPU in an uneasy situation as it is not equipped with clear legal mandates on extraterritoriality issues. This research argues for urgent reform of Indonesia's competition law to give it explicit extraterritorial reach. This would enable the country to address the complexities of a globalised market.

Keywords: Competition Law; Extraterritoriality; Jurisdiction; KPPU; Legal Certainty.

A. INTRODUCTION

In the modern era, societal participation has become a significant factor in the development of public welfare (Riyanto & Kovalenko, 2023). In practice, society is becoming increasingly active in improving its own welfare by engaging in cross-border business activities to expand trade. Technological advancements have prompted multinational companies to engage more frequently in cross-border business activities (Dewi & Anisah, 2022). As technology makes global markets more interconnected, halting progress is neither feasible nor meaningful (Sherstyuk et al., 2026). Therefore, cross-border trade between entities is inevitable and must be anticipated. In this regard, competition law has accepted this situation and adapted to these developments. Competition law regimes worldwide have increasingly embraced the extraterritorial jurisdiction of their competition laws to protect their markets from anti-competitive practices abroad. Extraterritorial jurisdiction refers to the ability of a state to exercise its authority over actors and activities outside its own territory (Criddle, 2024), and in the context of competition law, it refers to whether domestic competition legislation applies to foreign entities that may not be present in the forum, but whose conduct harms or may harm local consumers or producers (UNCTAD, 2021). The assertion of such extraterritoriality rests upon three major theoretical foundations, namely the Effects Doctrine, the Single Economic Entity Doctrine, and the Implementation Doctrine, which together form the conceptual basis through which major jurisdictions, particularly the United States and the European Union, have extended the reach of their competition laws beyond their own borders.

The Effects Doctrine was first established in the 1945 case of United States v. Aluminum Co. of America ('Alcoa'), in which the Sherman Antitrust Act was applied to foreign companies operating abroad provided their actions were intended to affect the US market (Gevurtz, 2022). The Alcoa ruling is significant because the court focused on the intended effect on the U.S. market rather than where the conduct occurred. This principle was later confirmed and clarified in the Foreign Trade Antitrust Improvements Act (FTAIA) of 1982. The FTAIA limits the Sherman Act to activities outside the U.S. that directly and substantially affect U.S. commerce. Meanwhile, the European Union ('EU') developed the Single Economic Entity and Implementation Doctrines to reach companies located outside its borders. Under the Single Economic Entity Doctrine, a subsidiary that cannot make its own decisions and simply follows its parent company's orders is treated as forming one economic unit with the parent company. This was illustrated in the 1972 Dyestuffs case, in which three non-EU manufacturers were held liable for a price-fixing cartel because their EU subsidiaries operated under their instructions (Whish & Bailey, 2021). Under the Implementation Doctrine, the EU can enforce its competition laws on transactions conducted by entities outside its borders, provided they are implemented within the EU. This was demonstrated in the Wood Pulp case (Elhauge & Geradin, 2011).

The EU's recent adoption of the Effects Doctrine is illustrated by the Intel case, in which the European Commission found that Intel, an American manufacturer of central processing units engaged in anti-competitive conduct by granting rebates to computer manufacturers that agreed to use its microprocessors on an exclusive basis (European Commission, 2023). Although the conduct in question occurred outside the European Union, the Commission argues with the European Court of Justice that it affected the European Union market. As Zelger (2020) explains, following this decision, the ECJ's attitude shifted: whereas previously it had avoided the Effects Doctrine in favour of the Single Economic Entity and Implementation Doctrines, it has since relied on the Effects Doctrine, or its derivative, the Qualified Effects Doctrine, as a basis for extraterritorial jurisdiction. This development is favoured by many scholars; Çorlu (2021) notes that the doctrine offers greater flexibility and reflects a growing convergence between US and EU approaches, while Martyniszyn (2023) emphasises that the Effects

Doctrine has become an accepted norm adopted by various competition law regimes to establish their legal jurisdiction.

Indonesia, however, remains an outlier: despite its growing integration into the global economy, its competition law framework continues to rely on a purely territorial approach, and a 2021 UNCTAD survey identifies Indonesia as one of only six developing countries that still lack the legal power to reach foreign conduct (UNCTAD, 2021), a position shared within ASEAN only by Lao PDR, Myanmar, and Thailand (Association of Southeast Asian Nations, 2022). The UNCTAD survey revealed that 34 of the 40 participating jurisdictions had already adopted the extraterritorial application of their competition laws, thus confirming that Indonesia's territorially confined framework places it firmly among a small minority of developing countries rather than reflecting the now-dominant global trend (UNCTAD, 2022). Meanwhile, the United Nations Conference on Trade and Development (UNCTAD) has proposed in its Model Law on Competition document that countries adopt the extraterritoriality on Effects Doctrine basis in their respective jurisdictions. Regulations concerning business competition are intended to guarantee various mechanisms for competition between businesses and ensure the establishment of fair business competition (Prananingtyas et al., 2020). However, in Indonesia, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition remains the primary regulatory framework for competition matters. In 2025, the KPPU itself acknowledged that the law's scope is confined to Indonesian territory (Maarif et al., 2025). This normative gap poses practical challenges for the KPPU in asserting jurisdiction over foreign business actors whose conduct abroad generates substantial domestic impacts (Wicaksono et al., 2019).

This gap that this research seeks to address concerns the fact that, although most major competition regimes have embraced extraterritoriality, Indonesia's law remains limited to territorial jurisdiction. While Furqon and Effendi (2020) contend that reform is necessary for the KPPU to engage foreign business actors, and Sukarmi et al. (2021) adopt the more cautious position that the existing law cannot reach them at all, and while Wicaksono et al. (2019) demonstrate that the United States, the European Union, Singapore, and Malaysia have all implemented extraterritorial approaches, none of these studies investigate how the KPPU has actually tried to operate within this constraint in practice, nor do they compare the Competition Law with other Indonesian regulatory sectors that already recognize extraterritoriality. Accordingly, this research aims to analyse the KPPU's enforcement efforts to reach foreign business entities despite existing legal limitations, to compare the Competition Law with other Indonesian sectors that already accommodate extraterritoriality, and to provide normative recommendations for reforming the Competition Law in line with these findings.

Although the KPPU has displayed ingenuity in interpreting its mandate, the law's dependence on territoriality still restricts its capacity to respond to the increasingly global character of cross-border transactions. This problem reveals ambiguities and deficiencies in the current legal framework. There is always an argument that Indonesia's ability to hold foreign entities accountable for harming its domestic market is limited.

Scholars have repeatedly emphasized that Indonesia must reform its Competition Law to accommodate extraterritoriality. Furqon and Effendi (2020) maintain that such reform is essential for the KPPU to assume jurisdiction over foreign business actors whose conduct affects Indonesia's market, thereby promoting fairness and protecting national interests within an increasingly interconnected global economy. Their discussion highlights the KPPU's mandate as an independent state institution and the executorial character of its decisions. By contrast, the present article gives greater attention to the extraterritorial scope of the KPPU's jurisdiction.

Sukarmi et al. (2021) take a rigorous conservative position, arguing that under the current Competition Law Indonesia cannot hold foreign entities responsible for causing harm to its domestic market. From their formalist standpoint, the lack of explicit extraterritorial provisions means Indonesia is unable to extend liability to foreign business actors. The present article contributes to this debate by reframing the territorial restriction not as an unavoidable structural impediment, but as a set of domestic regulatory irregularities.

Wicaksono et al. (2019) posited the necessity of accommodating extraterritoriality in the context of the ASEAN Economic Community's integration. Based on an examination of the United States, the European Union, Singapore, and Malaysia, their study concludes that each of these jurisdictions employs extraterritorial approaches in its competition laws. Building on this, the present article introduces an inward looking comparative framework, juxtaposing the Competition Law with other domestic legal sectors. This reframing positions strict territoriality not as a natural feature of Indonesian law, but as a unique domestic anomaly. Furthermore, the present article updates the enforcement timeline by providing contemporary empirical evidence, particularly through detailed analysis of recent foreign merger and acquisition notification cases. From the standpoint of international law, Çorlu (2021) notes that although laws generally operate only within a country's borders, competition law forms a widely recognized exception. Measured against this globally accepted exception, the present article portrays Indonesian Competition Law as anomalous.

At the macro level, Marek Martyniszyn (2023) contends that extraterritoriality in competition law is both necessary and now universally accepted, because it is required to protect local consumers. His systematic account of the global development of extraterritoriality in competition law is placed, in this present article, within a localized critique of Indonesia's continuing territorial limitations. On the doctrinal side, Zelger (2020) highlights that the Effects Doctrine offers a practical mechanism for dealing with the challenges that globalization poses. The present article draws on this established global consensus to stress that Indonesia's competition framework is a clear domestic anomaly.

Generally, although earlier studies have compared Indonesia with developed jurisdictions such as the United States and the European Union, this research provides a fresh viewpoint. By analysing KPPU's enforcement efforts to reach business entities and transactions despite existing legal constraints and critically, by comparing the competition law framework with other Indonesian regulatory domains that already acknowledge extraterritoriality, this article adds to the ongoing debate. It starts by assessing Indonesia's present Competition Law framework and its territorial limits. It then examines major KPPU cases that demonstrate attempts to extend its scope beyond national borders, and concludes the analytical portion with a comparative review of extraterritoriality across other regulatory sectors. The final section will present normative recommendations for reforming Indonesia's Competition Law so that it can accommodate extraterritoriality. Ultimately, this study seeks to make a theoretical contribution to the development of Indonesia's legal framework in response to the challenges and opportunities created by globalization.

B. RESEARCH METHODS

This research adopts a doctrinal legal research method employing documentary study to analyse legal norms and principles governing extraterritorial jurisdiction in Indonesian competition law. While remaining normative in orientation, the study applies a comparative analytical approach to situate Indonesia's framework alongside developments in foreign and supranational competition regimes, particularly the European Union and the United States, in order to evaluate how extraterritorial authority is conceptualised, justified, and operationalised. Primary legal materials provide the basis for the analysis, encompassing Indonesian Competition Law, decisions of the KPPU, and relevant judicial and administrative rulings that illustrate how jurisdiction is applied in practice. These are examined together with comparative case law such as *Imperial Chemical Industries Limited v Commission* and *Intel Corporation v European Commission* to clarify doctrinal foundations and enforcement logic. Secondary materials consist of peer-reviewed journal articles, scholarly monographs, institutional reports, and expert commentaries drawn from the competition law and public international law literature, including analyses of extraterritoriality, regulatory power, and enforcement asymmetry. Documentary sources such as ASEAN policy reports and UNCTAD publications are incorporated to contextualise Indonesia's position within regional and global regulatory trends. The collected materials are analysed using qualitative doctrinal reasoning to identify patterns of interpretation, enforcement practice, and normative justification, ensuring that the research remains closely connected to practical regulatory realities while maintaining conceptual rigour.

C. RESULTS AND DISCUSSION

1. Current State: Legal Norms vs Implementation Practice

a. The Territorial Cage of the Competition Law

Jurisdictional scope is a foundational element of any competition law regime, determining the boundary of a state's regulatory reach over market conduct. Historically, in its strictest sense, territoriality referred to the exclusive authority of a state to regulate events occurring within its own borders, such that a claim of territorial jurisdiction rested solely on conduct occurring within the regulating state and could not overlap with a competing claim by another country (Buxbaum, 2009). As markets globalized and anticompetitive conduct increasingly crossed borders, jurisdictions such as the US and EU progressively supplemented or departed from strict territoriality by adopting the Effects Doctrine and related theories discussed above. However, the approach of Indonesia's Competition Law is still territorial.

There is no specific rule in the Indonesian Competition Law on its jurisdiction, but as the Competition Law regulates the conduct of business actors, the term "business actor" as defined in Article 1(5) of the Law may be used to infer the scope of jurisdiction. The term "business actor" as delineated in the Article is to be understood as any individual or business entity, irrespective of ownership status, that is established, resides, or conducts activities within the legal jurisdiction of the Republic of Indonesia. These business actors may operate in an independent capacity or in collaboration with one another through the establishment of agreements, engaging in a wide range of economic activities. The Competition Law does not provide for a specific categorization of business actors. Consequently, the term "business actors" is broad in scope, with the key nexus being that the entity must either be established, domiciled, or conducting economic activities within Indonesia. This definitional structure indicates that the Competition Law is anchored in the territoriality doctrine and has become the standard for determining the subjects bound by competition law. Consequently, the KPPU is effectively constrained to rely almost exclusively on the Single Economic Entity Doctrine as an approach that itself lacks explicit statutory recognition, provided that it can be shown that the parties are conducting economic activities within the territory of Indonesia.

b. Implementation Practice: Dynamics in the Contentious Cases

With the limitation provided by Article 1(5) of the Competition Law, KPPU is still trying to enforce the Competition Law to foreign business entities.

The first case involving a foreign business entity occurred in 2002 when KPPU examined YPF Southeast Sumatra B.V., a company incorporated in Amsterdam. According to in KPPU Verdict No. 08/KPPU-L/2001 (2001), this foreign business entity was alleged to have engaged in anti-competitive practices in Indonesia, specifically involving a tender conspiracy and market entry restrictions regarding the supply of barite and bentonite for its offshore operations. Because both the tender and the alleged misconduct took place in Indonesia, KPPU's jurisdictional basis was clear and uncontested under Article 1(5) of the Competition Law. This case marked a milestone as the first time the KPPU targeted a foreign business entity in its enforcement efforts. Since that time, the KPPU has dealt with multiple cases concerning the investigation and sanctioning of foreign companies operating in the country. Because the alleged conduct occurs within Indonesia's territory, it falls within the territorial scope of Article 1(5) of the Competition Law, thereby providing the KPPU a strong legal foundation for exercising jurisdiction over these foreign business entities.

In 2007, the KPPU issued a landmark decision on its extraterritorial reach over foreign business entities that had no actual operations in Indonesia. The case concerned a group of Singaporean entities: Temasek Holdings Pte Ltd, Singapore Technologies Telemedia Pte Ltd, STT Communications Ltd, Asia Mobile Holding Company Pte Ltd, Asia Mobile Holdings Pte Ltd, Indonesia Communications Pte Ltd, Singapore Telecommunications Ltd, Singapore Telecom Mobile Pte Ltd, and a company incorporated in Mauritius, Indonesia Communications Ltd. In the so-called Temasek case, the KPPU held these entities liable for cross-ownership in Indonesian telecommunications companies, a practice that was thought to have contributed to monopolistic conduct in the local market. To assert authority over these foreign entities, the KPPU relied on the Single Economic Entity Doctrine, maintaining that the companies functioned jointly as a single business unit in Indonesia. Although the expert witness for the foreign entities, Hikmahanto Juwana, argued that this doctrine was not recognized in Indonesia, the KPPU reaffirmed its decision. Relying on KPPU Verdict No. 07/KPPU-L/2007 (2007), the commission further maintained that the doctrine supplied the basis for applying its jurisdiction to foreign entities.

In that same year, the KPPU investigated a Hong Kong company, Manufacturers Life Insurance Company (MLIC), as well as an international organization, the International Finance Corporation (IFC), among other parties, concerning an alleged tender conspiracy under Article 22 of the Competition Law. The tender concerned 40% shares of an Indonesian company, PT Dharmala Sakti Sejahtera (DSS), within PT Asuransi Jiwa Manulife Indonesia (AJMI). Although the KPPU ultimately concluded that these foreign entities and their local partners did not breach the law, the approach used to assert jurisdiction is noteworthy. Because the conduct took place within Indonesia, the KPPU could have relied straightforwardly on the territorial approach in Article 1(5) of the Competition Law. Instead, the Commission weighed additional considerations: with respect to MLIC, it emphasized MLIC's position as the majority shareholder of its Indonesian subsidiary, noting that MLIC controlled corporate policy, appointed directors, and directly participated in the subsidiary's profits and losses. This points to the KPPU's renewed effort to apply the Single Economic Entity Doctrine to MLIC. Regarding the IFC, the Commission, in KPPU Verdict No. 17/KPPU-L/2007 (2007), asserted jurisdiction on the ground that the IFC maintained an office in Indonesia. Taken together, these considerations indicate that the KPPU sought to broaden the scope of Article 1(5) of the Competition Law so as to include an entity's general presence, not merely specific activities or transactions.

Another contentious episode emerged in the so-called Astro Case that the KPPU decided in 2008. The case concerned several foreign companies, namely Astro All Asia Network PC ("AAAN") from Malaysia, ESPN Star Sports ("ESS") from Singapore, and All Asia Multimedia Networks ("AAMN") from the United Arab Emirates. The KPPU alleged that AAAN violated Article 16 of the Competition Law, which bars business actors from entering agreements with foreign parties that result in monopolistic conduct or unfair competition. The Commission maintained that the AAAN–EES agreement, which included provisions on the broadcasting distribution of the English Premier League and the appointment of a television operator in Indonesia, produced unfair business competition or monopolistic practices. In assessing whether it had jurisdiction over ESS, the KPPU examiners concluded that merely selling goods or services to Indonesia was not enough to qualify as "conducting activities" within the country. In addition, the examiners in KPPU Verdict No. 03/KPPU-L/2008 (2008) explicitly stated that they refrained from engaging in debates regarding the Effects Doctrine and the Implementation Doctrine. This statement indicates that, at that time, the KPPU was not yet sufficiently confident in adopting the Effects Doctrine and the Implementation Doctrine in its enforcement actions; had the Commission had a basis to apply the Effects Doctrine, it likely could have exercised jurisdiction over ESS.

In 2008, KPPU investigated a case involving IPS Marketing Resources (Singapore) Pte Ltd, a foreign business entity domiciled in Singapore, alongside five Indonesian business entities. Although KPPU ultimately concluded that the alleged unfair practices were not proven, its jurisdictional position toward the Singapore company is noteworthy. The dispute concerned allegations of tender conspiracy related to the Gamma Ray Container Scanner provided by the Directorate General of Customs and Excise, in which IPS Marketing supplied products to two participants, PT Putrindo Adiyasa Perkasa and PT Learnit Teknologi. In KPPU Verdict No. 18/KPPU-L/2008 (2008), KPPU interpreted Article

1 (5) of the Competition Law broadly, reasoning that IPS Marketing Resources was conducting business in Indonesia by supporting domestic firms through its commercial activities. KPPU's interpretation indicates its attempt to extend the reach of the Competition Law creatively to a foreign business entity, still employing the Single Economic Entity approach, despite the indirect connection to the alleged transaction.

Another important case regarding KPPU's jurisdiction is the so-called Pfizer case in 2010. In that matter, the Pfizer entities identified by KPPU as the Pfizer Business Group and PT Dexa Medica were accused of participating in a price-fixing cartel through parallel pricing—an indirect form of evidence used to show coordinated price increases for Norvask and Tensivask, two competing antihypertensive drugs. KPPU determined that the companies colluded in setting prices and also engaged in market allocation and production coordination, thereby restricting fair competition. Further, it was found that Pfizer Indonesia abused its dominant position by encouraging doctors and pharmacies to exclusively prescribe Norvask. From an extraterritorial standpoint, KPPU considered the Supply Agreement between PT Dexa Medica and the foreign party Pfizer Overseas LLC to violate Article 16 of the Indonesian Competition Law, which bars business actors from entering into agreements that result in monopolistic conduct or unfair competition. KPPU, in its Decision, also imposed a fine on Pfizer Overseas LLC of IDR 25 billion. In KPPU Verdict No. 17/KPPU-I/2010 (2010), KPPU again relied heavily on the Single Economic Entity Doctrine; although the relevant Pfizer entities contested the approach, KPPU maintained that Pfizer Overseas LLC constituted a single economic entity with the Indonesian business actor, PT Pfizer Indonesia.

c. Implementation Practice: Dynamics in the Notification Cases

In 2010, the Government of Indonesia issued the Government Regulation No. 57 of 2010 on Merger or Consolidation of Business Entities and Acquisition of Company Shares which May Result in Monopolistic Practices and/or Unfair Business Competition (GR 57/2010). With this regulation, the KPPU started to implement its authority to control merger and acquisition transactions. Once again, the regulation does not explicitly state the extent of KPPU's extraterritorial reach. Nevertheless, in practice the KPPU continues to seek to cover overseas transactions carried out by foreign business entities.

In 2016, the KPPU imposed a penalty on Toray Advance Materials Korea ("TAK") for submitting its notification late regarding its acquisition of a 56,21% stake in another Korean company, Woongjin Chemical Co Ltd ("Woongjin"). Although the transaction occurred outside Indonesia, the KPPU maintained that TAK was still required to report the deal because the company has a business group in Indonesia. The commission further observed that both TAK and Woongjin conduct direct and indirect business activities within the country. In its defense, TAK argued that it should not have been required to notify the KPPU because the transaction took place in Korea and had no adverse impact on competition in the Indonesian market. As stated in KPPU Verdict No. 17/KPPU-M/2015 (2015), the company was firmly of the view that it was obligated to report the merger only to Korean authorities.

Another confusion occurred in 2021, where the KPPU penalized Travel Circle International (Mauritius) Ltd (TCI) for its late notification of the acquisition of 100% shares in Asian Trails Holding Ltd (ATH), another Mauritius company. The acquisition occurred in 2017 and it was part of a package acquisition over several entities. TCI does not have any activities in Indonesia, the only connection with Indonesia is that it is indirectly owned by Fairfax (Barbados) International Corp (great grandchild), who also indirectly own shares in an insurance company, PT Asuransi Multi Artha Guna Tbk (grandchild). During the examination, TCI explained that initially it was not aware of the obligation to notify the transaction to KPPU as it was advised by its counsel that notification to KPPU was unnecessary due to the reasons that the regulatory requirements and threshold for notification were not met. However, in 2019, after receiving an advice from a different counsel, TCI realized that it has an obligation to notify KPPU. TCI made the report in 2019 and even after examining the matter, KPPU considered that the acquisition did not cause any disruption to Indonesian market but still, KPPU in Verdict No. 22/KPPU-M/2020 (2020) penalized TCI a penalty of Rp 1 billon for the late notification.

Another instance in which the KPPU imposed a penalty on a foreign business entity for that entity's late notification regarding a transaction taking place outside Indonesia occurred in 2023. In that case, the KPPU penalized a Dutch business entity, PON Holdings BV, in the amount of Rp 1,250 billion for failing to notify the KPPU in a timely manner upon its acquisition of 100% of the shares of Dorel Investment B.V. in Dorel Finance US Inc., a business entity based in the United States. The KPPU took the view that PON Holdings BV had an obligation to notify the KPPU because PON Holdings BV has subsidiaries in Indonesia, whereas Dorel Finance US Inc carries on its activities in Indonesia by selling products through a distributor. In its decision, the KPPU concluded that there were no monopolistic or unfair competition practices; however, in Verdict No. 2/KPPU-M/2023 (2023), it still penalized PON Holdings BV for its late notification (one working day) in the amount of Rp1,250 billion.

A comparable case arose in the same year involving APF Holdings I LP as the penalized party. APF Holdings I LP is an American company that acquired 82.5% of the shares in GCA2016 Holdings Limited, a company incorporated in Bermuda. APF Holdings I LP purchased the shares from BUSS Container International 4 GmbH & Co KG, BCI, 4 Pte Ltd, and Buss Global Asset ILP. GCA Holdings Limited conducts its indirect business activities in Indonesia, including, among other things, renting and selling shipping containers through its subsidiary, Global Container Assets 2016 Limited, to the Indonesian market. In KPPU Verdict No. 09/KPPU-M/2023 (2023), the KPPU took the view that there were no monopolistic or unfair competition practices, but it still imposed a penalty on APF Holdings I LP for its late notification (three working days) in the amount of Rp1,5 billion.

In 2025, KPPU issued another decision involving two foreign business entities: Mitsui & Co Ltd from Japan and Mitsui & Co (Australia) Ltd from Australia. Both companies acquired shares in Position Partner Pty Ltd, another Australian based company. During the investigation, the KPPU implicitly applied the Single Economic Entity Doctrine by treating the Mitsui & Co Ltd and Mitsui & Co (Australia) Ltd as a single unit. This allowed the commission to combine their ownership, which totalled more than 50% of the shares in Position Partner Pty Ltd. The KPPU determined that these companies were active in Indonesia because Mitsui & Co Ltd has local subsidiaries. Additionally, the commission noted that Position Partner Pty Ltd provides sales, rentals, and training services of its products in Southeast Asia including Indonesia. While the KPPU in Verdict No. 21/KPPU-M/2024 (2024) found that the transaction did not violate Competition Law, it fined the two acquiring companies Rp 1 billion for submitting their notification one day late.

In the same year, the KPPU in Verdict No. 19/KPPU-M/2024 (2024) also penalized Louis Dreyfus Company Melbourne Holdings Pty Ltd, an Australian based company, for its late notification of its acquisition of 100% shares in Emerald Grain Pty Ltd, another Australian company, from Longriver Farms Pty Ltd, which is also an Australian based company. Like in the previous cases, the KPPU decided that the transaction is not violating of the Indonesian Competition Law but the KPPU penalized Louis Dreyfus Company Melbourne Holdings Pty Ltd with Rp 1 billion fine due to their late submission of notifications (9 days late submission).

d. Breaking out the Cage of Territoriality

Within the territorial framework stipulated in Article 1(5) of the Competition Law, the KPPU may establish jurisdiction over foreign business entities only if it can be shown that they conduct economic activities within Indonesia rather than on the basis of the effects of their conduct on the domestic market. In contentious cases, it appears that the KPPU has relied heavily on the Single Economic Entity Doctrine within this territorial framework. In notification cases, however, the KPPU appears to be trying to adopt the Effects Doctrine. However, the KPPU has admitted that its efforts to break free from territoriality are challenged by the fact that the Competition Law provides no basis for extraterritoriality (Maarif et al., 2025).

When attempting to adopt the Single Economic Entity Doctrine, the KPPU must consider that, under the Indonesian corporate law regime, shareholders are a separate entity from their subsidiaries. According to the piercing the corporate veil principle, this separation can only be overridden in specific situations when shareholders fail to maintain it, effectively treating the subsidiaries as their alter ego. In various contentious cases handled by the KPPU, it appears that the KPPU insists on reaching the shareholders despite the shareholders' limited control over the subsidiaries.

From the notification cases, it appears that the KPPU is grappling with a contradiction: under Article 1(5) of the Competition Law, the KPPU must prove that foreign business entities are conducting business in Indonesia. Also, in the absence of clear guidance in the Law, the KPPU appears to be further straying from the Effects Doctrine, as establishing the element of 'conducting activities' does not pertain to the transaction itself. Instead, emphasis is placed on the existence of a substantive nexus between the parties and Indonesia, for example through the maintenance of subsidiaries or the direct or indirect supply of products to the Indonesian market.

These cases raised a fundamental legal question on how the KPPU reach foreign business entities in the realm of territorial nature of the Competition Law. In the context of globalized economy, it appears that the Indonesian Competition Law is in anomaly.

2. Extraterritoriality in Other Areas of the Indonesian Legal System

To address the ambiguity inherent in the lack of extraterritoriality in the Competition Law, a comparative legal analysis can be conducted by examining how other Indonesian regulatory fields have resolved the same problem. Unlike the Competition Law, Law No. 1 of 2023 on the Criminal Code (the "Criminal Code"), Law No. 11 of 2008 on Electronic Information and Transactions (the "ITE Law"), and Law No. 27 of 2022 on Personal Data Protection (the "PDP Law") each contain an explicit statutory basis for reaching conduct that occurs outside of Indonesian territory but has effects within it. The critical distinction is not merely that these three laws recognize extraterritoriality while the Competition Law does not, but that each does so through an express jurisdictional clause, a feature conspicuously absent from Article 1(5) of the Competition Law, which instead confines jurisdiction to entities established, domiciled, or conducting activities within Indonesia.

Article 5 of the Criminal Code most directly demonstrates this contrast. It broadens the reach of Indonesian criminal law to conduct that occurs abroad when that conduct threatens or causes harm to protected national interests, applying to any person regardless of nationality and covering a wide range of designated interests, including state security, the constitutional order, and national economic systems. Although its doctrinal foundation is articulated primarily in terms of the protective principle, it operates in line with effects-based principles, because jurisdiction is established by the conduct's substantive impact on Indonesia rather than by where it occurs. By contrast, where the Competition Law asks only whether an entity is present or active within

Indonesia, Article 5 asks whether Indonesia's interests were harmed, a jurisdictional inquiry that is entirely absent from the competition framework.

Article 2 of the ITE Law goes further still, expressly enabling its application to legal actions occurring beyond Indonesia's borders as long as they produce legal repercussions within Indonesia or adversely affect the country's interests (Nizar, 2018). This provision does not require that the foreign entity be present, domiciled, or otherwise active in Indonesia in the way Article 1(5) of the Competition Law demands; it requires only that the conduct's effects be felt domestically. The concept of "harming Indonesia's interests" under the ITE Law is deliberately broad, encompassing economic security, critical data, national dignity, and sovereignty, and is designed to confront the transnational nature of cybercrime (Rusdianto & Risnain, 2023). This application aligns with the ubiquity principle, which permits a state to assert jurisdiction over conduct occurring partly within and partly outside its territory (Martono et al., 2025; Arief, 2003). Notably, this ubiquity-based reasoning gives the ITE Law a jurisdictional reach that does not depend on locating any part of the perpetrator's business or infrastructure inside Indonesia, in marked contrast to the KPPU's reliance on the Single Economic Entity Doctrine, which still requires demonstrating some corporate or operational link to Indonesian territory. The practical consequence is that a foreign actor with no presence, subsidiary, or agent in Indonesia whatsoever can still fall within the ITE Law's jurisdiction purely on the strength of the harm caused, a possibility that Article 1(5) of the Competition Law forecloses by design.

Personal data protection encounters challenges that are strikingly similar to those faced in business competition law. It has achieved substantial worldwide momentum in response to a sequence of widely publicized data breaches and the cross-border misuse of personal information. A notable case is the Cambridge Analytica scandal, in which data from millions of Facebook users was exploited across multiple jurisdictions (Taufiq et al., 2025). With this context, the PDP Law follows the same pattern as the ITE Law. Article 2(1) explicitly extends the law's jurisdiction to (1) individuals, public bodies, and international organizations acting within or outside Indonesia; (2) legal acts carried out abroad that produce legal effects within Indonesian territory; and (3) actions affecting the personal data of Indonesian citizens regardless of their location. This provision underscores Indonesia's recognition of the necessity for a robust legal framework that can adapt to the borderless nature of the internet, ensuring the continued protection of personal data amid the growing interconnectivity of the global digital landscape (Siti, 2022). Significantly, the third limb of Article 2(1), which anchors jurisdiction to the nationality or location of the affected data subject rather than to any territorial or corporate connection of the offending entity, represents extraterritorial jurisdictional principle. Foreign companies that collect and process the personal data of Indonesian citizens whether through digital platforms or other transactions are now bound by PDP Law. The Law directly reaches foreign entities that process Indonesian citizens' data from abroad, without requiring the kind of territorial presence that the KPPU must establish under Article 1(5) of the Competition Law before it can assert jurisdiction over a foreign business actor. As a result, PDP Law successfully protects a wide array of interests, ranging from economic, national, and consumer interests to those of businesses, investors, and industries, as well as the individual privacy rights of Indonesian citizens (Kusumayudha & Bustani, 2023).

Read together, these three laws reveal a consistent legislative pattern that the Competition Law does not share: each pairs an extraterritorial jurisdictional test with an explicit statutory clause authorizing its application to foreign conduct, whether framed through the protective principle (Criminal Code), the ubiquity principle (ITE Law), or a tripartite territorial-and-effects test (PDP Law). The Competition Law possesses neither element. It contains no textual basis comparable to Article 5 of the Criminal Code, Article 2 of the ITE Law, or Article 2(1) of the PDP Law, and its jurisdictional inquiry under Article 1(5) of the Competition Law remains anchored to the location of the business actor rather than the location of the harm. This comparison isolates the deficiency in the Competition Law: not an inability to conceive of extraterritoriality in principle, since Indonesian law demonstrably has that capacity elsewhere, but the absence of the specific legislative mechanism, an express, effects-based jurisdictional clause, that has enabled its application in every other area examined. With this comparison to the Criminal Code, ITE Law, and PDP Law, the debate over whether Indonesia may apply extraterritoriality, and even the Effects Doctrine, in its Competition Law is considerably narrowed: the question is no longer whether such a framework is compatible with Indonesian law, but why the Competition Law alone has yet to adopt it.

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3. Arguments for Extraterritoriality of Competition Law

The digital economy has grown alongside changes in consumer and business behavior, with digital platforms reducing territorial boundaries in economic activities (Prabowo & Sulistianingsih, 2023). In Indonesia, this growth requires a legal framework that balances innovation and legal certainty, including clearer institutional authority through regulatory reform (Widayanti et al., 2025). Therefore, revising the Competition Law is necessary to provide a clear legal basis for KPPU’s institutional authority in handling extraterritorial cases.

Indonesian competition law should not continue to operate within a state of jurisdictional ambiguity when confronting cross-border anticompetitive conduct. In an era of increasingly integrated markets, regulatory authority that remains territorially confined risks becoming structurally ineffective. The main claim put forward here is that Indonesia needs an explicit statutory foundation for extraterritorial jurisdiction within its competition law to secure legal certainty, institutional legitimacy, and effective market protection. Although dependence on implicit authority or interpretive flexibility may seem adequate in principle, it produces uncertainty in practice for regulators, courts, and market participants. Because enforcement powers directly shape commercial behaviour and compliance decisions (Rangone, 2018; Stępień et al., 2024), jurisdiction cannot remain an unresolved doctrinal issue but must be clearly set out in law. A commonly raised counterargument holds that extraterritorial jurisdiction does not have to be expressly regulated in written law, since it may stem from general principles of international law or from judicial interpretation especially through the effects doctrine. On this view, regulatory authority develops organically through practice, making formal codification unnecessary. While this position recognises the dynamic nature of jurisdiction in international economic regulation, it overlooks the specific demands of domestic legal systems, where the exercise of public power is expected to be grounded in clear legislative authorisation. Jurisdiction inferred rather than expressed risks inconsistency in application and invites challenges based on legality and due process. In competition law, where enforcement decisions often carry significant financial and reputational consequences, uncertainty surrounding jurisdictional reach undermines both compliance incentives and enforcement credibility.

Academic research has advanced nuanced arguments for the proposition that extraterritorial application may be effective without being expressly set out in statutory language. Cedric Ryngaert conceptualises jurisdiction as a flexible construct shaped by reasonableness and interstate acceptance, suggesting that legitimacy can emerge through practice rather than formal legislation (Ryngaert, 2023; Ryngaert & Parrish, 2023). Similarly, Hannah L. Buxbaum emphasizes that transnational regulatory authority frequently emerges gradually through judicial reasoning and regulatory cooperation (Buxbaum, 2025a; Buxbaum, 2025b). In the field of competition law, Spencer Weber Waller traces the evolution of the effects doctrine as a response to enforcement necessity rather than explicit legislative design (Waller, 2023; Waller, 2025). These contributions provide valuable theoretical insights into the historical development of extraterritoriality, particularly within well-established legal systems with robust judicial traditions.

However, the theoretical plausibility of unwritten extraterritorial jurisdiction does not negate its practical limitations (Erk, 2025). Jurisdiction that is primarily exercised through interpretation gives enforcement authorities and courts significant discretion, increasing the risk of fragmented or contested application (Krisch, 2022; Williams, 2022). For an institution such as KPPU that has a significant role in investigating alleged violations, providing recommendations to the courts, and monitoring compliance with rulings (Ramadhan et al., 2023)., its authority must be both legally grounded and publicly legitimate. However, ambiguity surrounding jurisdiction undermines enforcement capacity. Businesses subject to regulation are entitled to be able to predict whether their actions may be subject to Indonesian jurisdiction, and this is difficult to guarantee without clear legal provisions (Eklund, 2023). Consequently, while non-codified extraterritoriality may be effective in certain contexts, it provides an unstable basis for consistent and predictable enforcement in Indonesia.

Against this background, the explicit statutory recognition of extraterritorial jurisdiction emerges as a necessary institutional reform. Codification would give the KPPU a clear and unambiguous mandate to tackle foreign conduct that has an anticompetitive impact on the Indonesian market. As argued by Wicaksono et al. (2019), such authority is essential to safeguard national economic interests against practices undertaken by foreign business entities. A written jurisdictional basis would transform enforcement from interpretive extrapolation into rule-based governance, reinforcing both administrative confidence and judicial defensibility. In this setting, legal certainty functions not only as a formal principle but also as a practical condition for the effective enforcement of competition rules (Zagler, 2023).

Worth mentioning that, the absence of explicit extraterritorial creates a reciprocity gap in regulatory clarity between Indonesia and other countries (e.g., Singapore and United States). Indonesian companies operating abroad are subject to competition regimes that clearly articulate their extraterritorial reach, such as Singapore’s Competition Act Section 33(1) and the United States’ Sherman Act as clarified by the Foreign Trade Antitrust Improvements Act (15

U.S.C. § 6a), allowing firms to anticipate legal exposure with a reasonable degree of certainty. By contrast, foreign firms whose conduct affects the Indonesian market encounter a framework in which jurisdiction is exercised without the same level of express statutory articulation, potentially reducing predictability and mutual transparency. This imbalance is therefore less about enforcement capacity and more about reciprocal legal clarity between jurisdictions (Steinberg & Tan, 2023). Codifying extraterritorial jurisdiction would strengthen that reciprocity by making Indonesia's enforcement boundaries more visible and foreseeable to international market actors. Indeed, as explained by Meckling and Strecker (2022) in the context of climate regulation, regulatory reform can be a form of reciprocity.

As well as recognising extraterritorial reach, Indonesian competition law should clarify the doctrinal basis upon which such jurisdiction is exercised. Adoption of the effects doctrine, accompanied by clear statutory guidance, would provide principled criteria for determining when foreign conduct falls within domestic regulatory scope. Comparative experience demonstrates that effects-based jurisdiction offers flexibility while maintaining analytical discipline, particularly when supported by thresholds relating to substantiality, foreseeability, and direct market impact as seen in the Qualified Effects Doctrine (Sukarmi et al., 2021) or Single Economic Entity Doctrine (Koenig, 2017). By setting out these parameters in law, Indonesia can shape enforcement discretion without promoting regulatory overreach, thereby improving both predictability and legitimacy.

Accordingly, the argument for explicit extraterritorial codification is grounded in the need to make the legal framework reflect economic realities. Although scholarly claims that emphasise unwritten jurisdiction highlight the flexibility of international practice, they do not diminish the value of clear domestic authorisation for ensuring enforcement that is both effective and legitimate. For Indonesia, statutory articulation of extraterritoriality would stabilise expectations regarding jurisdiction, strengthen the institutional authority of KPPU, and integrate Indonesian competition law more coherently into the global enforcement environment. The reform should therefore be understood not as an enlargement of regulatory ambition, but as a rational consolidation of legal certainty in response to the transnational character of contemporary competition-related harm.

D. CONCLUSION

Indonesian Competition Law currently stands out compared to global trends. While most countries now use extraterritoriality to protect their markets, Indonesia still relies on a strictly territorial approach. The current Competition Law does not include any legal doctrines that would allow the government to reach foreign companies. Even the EU, which initially attempted to keep its laws within its borders, has moved toward the effects doctrine to address foreign conduct. Without explicit rules on extraterritoriality in the

Competition Law, the KPPU faces many challenges when handling overseas transactions that affect the domestic market. To bridge this gap, reforming the Competition Law is essential. This reform must include clear extraterritorial provisions so foreign companies know when they will be held responsible for their actions. Indonesia needs a legal framework that recognizes the impact of foreign business conduct on its domestic market. Specifically, the law should provide guidelines and principles that emphasize the effects of conduct rather than its location. Indonesia has already successfully applied extraterritoriality to other areas of law, such as the ITE and PDP laws. Therefore, updating the Competition Law is necessary to protect consumers and local businesses, as well as to safeguard Indonesia's economic interests and competitive stance in the global market. Indonesia's Competition Law should abandon its reliance on territoriality that is focusing on whether a business entity is established, domiciled, or physically conducts business in Indonesia. A legislative amendment expressly stipulating extraterritoriality adopting the Effects Doctrine as adopted by the US FTAIA and suggested by the UNCTAD in the Model Law on Competition followed by various countries worldwide is necessary to give a stable foundation for consistent and predictable extraterritorial enforcement of Indonesian Competition Law.

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