E-ISSN : 2963-4946
Vol. 4 No. 12 September 2026
https://ajosh.org/

Asian Journal of
Social and Humanities

The Per Se Illegal and Rule of Reason Approaches in the Judicial Practice of the Business Competition Supervisory Commission from the Perspective of Legal Certainty

Kamser Lumbanradja*, Dhaniswara K Harjono, Hulman Panjaitan, Bernard Nainggolan
Universitas Kristen Indonesia, Indonesia
Email: kamser@gmail.com*

Keywords:
Per se Illegal, Rule of Reason, KPPU, Legal Certainty, Business Competition

ABSTRACT

This research aimed to analyze the application of the per se illegal and rule of reason approaches in the adjudicative practice of the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha [KPPU]) and their implications for legal certainty in Indonesian competition law enforcement. The research problem was motivated by differences in the characteristics of these approaches in examining competition cases, which in practice continued to create uncertainty regarding the boundaries of their application. This condition potentially resulted in differing interpretations, inconsistent decisions, and uncertainty for business actors in distinguishing between permitted and prohibited conduct. This research employed a normative legal method using statutory, conceptual, and case approaches. Data were obtained through literature studies involving relevant legislation, KPPU decisions, legal literature, and academic sources. The analysis was conducted qualitatively to examine the consistency between legal provisions and their implementation in adjudicative practice. The results showed that both approaches served different functions: the per se illegal approach was applied to conduct that was inherently anti-competitive, while the rule of reason approach was applied to conduct requiring an assessment of economic impacts and market conditions. However, the implementation of these approaches in KPPU practice still faced challenges due to the absence of clear and consistent parameters, which affected legal certainty. Therefore, clearer implementation guidelines were required to ensure that both approaches could be applied proportionally and provide greater legal certainty in Indonesian competition law enforcement.

INTRODUCTION

National economic development is essentially aimed not only at promoting economic growth but also at establishing an economic system that provides fair business opportunities for all business actors. In a modern economic system, business competition serves as an important instrument for encouraging efficiency, promoting innovation, improving the quality of products and services, and generating greater benefits for consumers. Healthy competition encourages business actors to continuously enhance competitiveness through quality improvement, cost efficiency, and technological development. Conversely, when competition does not function properly due to monopolistic practices or anti-competitive behavior, market mechanisms may become distorted. The impacts are experienced not only by business actors who lose opportunities to compete fairly but also by consumers, who may face uncompetitive prices, limited product choices, and declining service quality (Hovenkamp, 2018; Utomo, 2026).

In this context, the existence of competition law has become an integral part of the state's efforts to establish a democratic economic system as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia. The principle of economic democracy requires that economic activities should not be controlled by certain parties through practices that harm the public interest. The state is responsible for ensuring that every business actor has equal opportunities to conduct economic activities without the abuse of market power by dominant parties. Therefore, competition regulations function not only as instruments for supervising business conduct but also as mechanisms for maintaining a balance between business freedom and the protection of public interests (Diab et al., 2023; Sibuea & SH, 2026).

As a commitment to creating a healthy competitive environment, Indonesia enacted Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, which was subsequently adjusted through Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law. The existence of this regulation represents an important milestone in the development of economic law in Indonesia because it established a specific legal framework governing the prohibition of monopolistic practices, abuse of dominant positions, anti-competitive agreements, and various forms of business conduct that may hinder market mechanisms. Through this regulation, the state seeks to maintain a balance between the interests of business actors, consumer protection, and broader national economic interests (Ikraam & Inas, 2025; Polontoh & Saputri, 2025).

The implementation of the provisions contained in this law is entrusted to the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha [KPPU]), an independent institution responsible for supervising, investigating, examining, assessing, and imposing administrative sanctions on violations of competition law. The existence of KPPU holds a strategic position because the institution not only performs law enforcement functions but also provides policy recommendations to the government to ensure that economic policies continue to uphold the principles of fair business competition. In practice, KPPU handles various types of cases, including tender collusion, cartels, price fixing, market allocation, abuse of dominant positions, and mergers and acquisitions that have the potential to create monopolistic practices (Putra, 2023; Saleha et al., 2025).

Along with the increasing complexity of economic activities and the development of various business models, competition law enforcement has faced increasingly significant challenges. The development of digital technology, platform-based economies, global market integration, and various forms of cooperation among business actors have made competition law violations more complex. Not all forms of cooperation between business actors can immediately be categorized as legal violations because, under certain conditions, cooperation may improve production efficiency, enhance the distribution of goods and services, and provide benefits to consumers. Conversely, cooperation that initially appears legitimate may develop into anti-competitive practices if it aims to control markets or eliminate competition (Widhiyanti, 2015). Therefore, assessing conduct under competition law requires an approach capable of distinguishing between behavior that remains justifiable and behavior that clearly violates the principles of fair competition.

In competition law practice, two primary approaches are recognized for determining whether a violation has occurred, namely the per se illegal approach and the rule of reason approach. Both approaches originated from competition law practices in various jurisdictions and have subsequently been adopted into Indonesia's competition law system. Although both approaches aim to determine whether competition law violations exist, they differ in terms of evidentiary requirements and the legal considerations applied during the assessment process (Adeffian & Apriani, 2023).

The per se illegal approach is based on the assumption that certain types of agreements or conduct are inherently harmful to competition, and their existence alone is sufficient to establish a violation of competition law. Under this approach, the evidentiary process primarily focuses on proving the existence of prohibited conduct as regulated by legislation without requiring an extensive analysis of the economic effects resulting from such conduct. In other words, once the elements of the prohibited conduct have been fulfilled, the conduct may be declared unlawful. This approach is considered capable of improving enforcement efficiency because the evidentiary process is relatively simpler and provides greater certainty in applying legal norms (Wulida, 2025).

In contrast, the rule of reason approach places economic analysis as an essential component of the evidentiary process. Under this approach, conduct is not automatically considered unlawful merely because it fulfills certain formal elements. Instead, a comprehensive assessment is required regarding the purpose of the conduct, relevant market structure, market concentration, the position of business actors, market share, potential barriers to entry, and the impact on efficiency and consumer welfare. This approach allows judges or commission panels to consider all relevant circumstances before determining whether a competition law violation has occurred (Fadhilah, 2019).

Conceptually, the application of both approaches is intended to ensure that competition law enforcement operates proportionally. Not all forms of cooperation among business actors should be treated identically, nor should every action that potentially restricts competition immediately be classified as a violation. The per se illegal approach is applied to conduct that has been generally recognized as inherently harmful to competition, whereas the rule of reason approach is applied to conduct requiring further analysis of its economic effects. Thus, both approaches complement each other in achieving effective and fair competition law enforcement (Hariz, 2023).

However, the application of these two approaches in the adjudicative practice of the Indonesian Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha [KPPU]) continues to present several significant issues. One of the most frequently debated issues is the lack of consistency in applying the per se illegal and rule of reason approaches in examining and deciding competition cases. In several decisions, conduct that, based on the characteristics of the relevant legal provisions, should have been assessed using the per se illegal approach was instead subjected to extensive economic analysis using indicators commonly associated with the rule of reason approach. Conversely, some cases that required comprehensive evaluation of competitive effects were decided primarily based on the fulfillment of formal legal elements without sufficient consideration of their economic consequences (Aryadiputra et al., 2022).

These differing patterns of application indicate that the distinction between the two approaches has not always been implemented consistently. Such inconsistency may create disparities in law enforcement, particularly when cases with similar factual and legal characteristics are assessed using different analytical approaches. Consequently, considerable interpretative discretion arises in determining the evidentiary methods applied by the Commission Panel. Ultimately, this situation may affect the quality and consistency of KPPU decisions, as different legal reasoning approaches may produce different conclusions in cases involving substantially similar issues (Sari et al., 2024).

This issue becomes increasingly important when viewed from the perspective of legal certainty, which constitutes one of the fundamental principles of a state governed by the rule of law. Legal certainty does not only refer to the existence of clear statutory provisions but also includes the consistent application of legal norms by law enforcement institutions. In competition law, legal certainty provides business actors with assurance regarding the standards of conduct that are permitted or prohibited, the evidentiary framework applied in enforcement proceedings, and the legal consequences arising from specific business practices. Greater legal certainty enables businesses to formulate commercial strategies without facing uncertainty caused by inconsistent interpretations during law enforcement processes (Tunggati, 2024).

Conversely, inconsistent application of the per se illegal and rule of reason approaches creates uncertainty regarding the assessment standards used by KPPU. Such conditions reduce legal predictability, even though predictability is widely recognized as an essential element of a favorable investment climate. Investors and business entities require a legal system that is stable, transparent, and predictable to ensure that commercial decisions are not exposed to unnecessary legal risks arising from inconsistent interpretations by competition authorities (Rivaldi & Usman, 2026).

Furthermore, the unique characteristics of competition law, which combine legal principles with economic analysis, make the evidentiary process more complex than in many other areas of law. Determining the legality of particular business conduct requires not only a literal interpretation of statutory provisions but also an assessment of relevant market conditions, market concentration, market power, consumer behavior, economic efficiency, and broader effects on consumer welfare and public interest. This complexity makes the selection of the appropriate analytical approach a decisive factor in competition case outcomes. Therefore, clear criteria regarding the circumstances under which the per se illegal or rule of reason approach should be applied are essential to improving the quality and consistency of competition law enforcement (Asmah et al., 2023).

In practice, many KPPU decisions have subsequently been challenged before the Commercial Court and further appealed to the Supreme Court. These judicial proceedings demonstrate that differing interpretations remain regarding the legal reasoning used to determine whether competition law violations have occurred. Such interpretative differences indicate that both approaches continue to present conceptual and practical challenges requiring further academic examination. Without clear guidelines establishing the parameters for applying each approach, the possibility of inconsistent legal outcomes will remain (Dewi et al., 2024; Meese, 2000).

Based on this background, this study aimed to analyze the application of the per se illegal and rule of reason approaches in the adjudicative practice of the Indonesian Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha [KPPU]). It further examined the consistency of these approaches in the examination and adjudication of competition cases and assessed their implications for achieving legal certainty. In addition, this research identified the main issues arising from the implementation of both approaches and formulated a more consistent framework for their application to strengthen legal certainty in Indonesian competition law enforcement.

The findings of this research are expected to provide benefits for various stakeholders. For the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha [KPPU]), this study provides practical insights for applying both approaches more consistently and transparently, thereby improving the quality and accountability of its decisions. For business actors, this research provides greater legal certainty regarding the boundaries between permitted and prohibited conduct, enabling more predictable commercial decision-making. For legal practitioners and academics, this study contributes to the development of competition law literature and provides a conceptual basis for further research on the application of per se illegal and rule of reason approaches. For policymakers, this research supports the formulation of clearer implementation guidelines and regulations to strengthen Indonesia’s competition law enforcement framework. Finally, for society and consumers, more consistent competition law enforcement contributes to healthier market competition, fairer prices, improved product quality, and stronger consumer protection, thereby supporting sustainable national economic development.

METHOD

This research employed a normative legal research (doctrinal legal research) method using a descriptive-analytical approach. The normative legal method was selected because the study focused on examining legal norms governing the application of the per se illegal and rule of reason approaches in Indonesian competition law, particularly in the adjudicative practice of the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha [KPPU]), while assessing their implementation from the perspective of legal certainty. The descriptive-analytical approach was used to describe the applicable legal framework and analyze the consistency between legal norms and their implementation in practice.

The research applied three complementary approaches: the statutory approach, the conceptual approach, and the case approach. The statutory approach examined competition law regulations, particularly Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, as amended by Law Number 6 of 2023, along with related implementing regulations and guidelines issued by KPPU. The conceptual approach was applied to analyze the concepts of per se illegal, rule of reason, and legal certainty based on legal scholarship. The case approach involved examining KPPU decisions and court judgments concerning objections and cassation appeals against KPPU decisions to identify patterns in the application of these approaches in adjudicative practice.

The study utilized primary, secondary, and tertiary legal materials. Primary legal materials included the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1999 as amended by Law Number 6 of 2023, KPPU regulations, KPPU decisions, and relevant court judgments related to the research subject. Secondary legal materials consisted of legal books, journals, research reports, dissertations, theses, academic articles, and expert opinions related to competition law, the concepts of per se illegal and rule of reason, and legal certainty. Tertiary legal materials included legal dictionaries, encyclopedias, and other supporting references.

Legal materials were collected through library research involving the identification, review, and analysis of legislation, judicial decisions, KPPU decisions, scholarly literature, and other relevant documents. The collected materials were classified according to their type, substance, and relevance to the research objectives to support systematic analysis.

The collected legal materials were analyzed qualitatively through legal interpretation and juridical analysis. The analysis involved identifying relevant legal norms, interpreting applicable provisions, comparing the normative framework with its implementation in KPPU decisions, and evaluating the findings based on the principle of legal certainty. The results of the analysis were systematically organized to draw conclusions regarding the consistency of the application of the per se illegal and rule of reason approaches in the adjudicative practice of KPPU and their implications for achieving legal certainty in Indonesian competition law enforcement.

RESULTS AND DISCUSSION

Regulation of the Per Se Illegal and Rule of Reason Approaches in Indonesian Competition Law

Competition law possesses distinctive characteristics that differentiate it from other branches of law because it does not merely assess the normative legality of a particular conduct but also considers its economic impact on market mechanisms. In the enforcement of competition law, an analytical framework is required to determine whether the conduct of business actors constitutes a prohibited practice or remains legally justifiable. Two principal approaches have evolved within competition law, namely the per se illegal approach and the rule of reason approach. These approaches serve as fundamental instruments for law enforcement authorities, particularly the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha—KPPU), in assessing alleged monopolistic practices and unfair business competition.

The per se illegal approach is an evaluative method that regards certain conduct as inherently contrary to competition law because such conduct is generally recognized as having an inherently harmful effect on competition. Under this approach, the evidentiary process is not directed toward examining the economic consequences of the conduct; instead, it is sufficient to establish that the statutory elements of the prohibited act have been fulfilled. Accordingly, the primary focus of the per se illegal approach is the existence of specific conduct or agreements that are expressly prohibited by law because they are presumed to almost invariably produce adverse effects on market competition.

Within the Indonesian competition law framework, the per se illegal approach is generally applied to several forms of business conduct explicitly prohibited under Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. These include, among others, price fixing, market allocation agreements, and certain forms of collusion intended to eliminate competition. With respect to such practices, the legislature considers their detrimental effects on the market to be sufficiently evident, thereby eliminating the need to prove their actual economic consequences in every case. The application of this approach is intended to enhance the effectiveness of law enforcement while deterring business actors from engaging in conduct that directly undermines competitive market mechanisms.

In contrast, the rule of reason approach evaluates business conduct by considering its context and its actual effects on market competition. A particular practice is not automatically deemed unlawful merely because it has the potential to restrict competition. Rather, a comprehensive assessment must first be conducted to determine whether the conduct genuinely causes harm to the market or consumers. Under this approach, the KPPU is required to consider various factors, including market structure, the market position of the business actor, the degree of market power, the purpose of the conduct, barriers to market entry, economic efficiency, and the potential benefits that may accrue to consumers.

The application of the rule of reason approach demonstrates that competition law is not solely intended to sanction business conduct that restricts competition but also seeks to maintain a balance between protecting competition and preserving the freedom to conduct business activities. In practice, certain business practices may appear to restrict competition in a formal sense yet, under particular circumstances, generate significant economic benefits, such as improved efficiency, enhanced innovation, or higher service quality. Consequently, this approach requires a more comprehensive and sophisticated analysis than the per se illegal approach.

Under Law Number 5 of 1999, the application of these two approaches is not always expressly identified within each statutory provision. Nevertheless, the characteristics of the legal norms contained in the law indicate that certain prohibitions are more closely aligned with the per se illegal approach, whereas others require an assessment based on the principles of the rule of reason. This demonstrates that the Indonesian competition law system adopts a flexible framework by employing different methods of analysis according to the characteristics of the business conduct under examination.

On the one hand, this flexibility enables the KPPU to undertake a more comprehensive assessment of the increasingly diverse forms of anti-competitive conduct emerging in contemporary business practices. On the other hand, such flexibility may also create legal uncertainty if it is not accompanied by clear parameters regarding when a case should be evaluated under the per se illegal approach or the rule of reason. The absence of clear boundaries governing the application of these approaches has the potential to generate inconsistent interpretations during case examinations and may ultimately undermine legal certainty for business actors.

Implementation of the Per Se Illegal and Rule of Reason Approaches in the Adjudicative Practice of the Business Competition Supervisory Commission

In competition law enforcement, the Business Competition Supervisory Commission (KPPU) is authorized to determine the analytical approach applied in examining alleged violations of competition law. The selection of either the per se illegal or the rule of reason approach constitutes a crucial aspect of the adjudicative process, as it directly influences the evidentiary standard that must be satisfied. An examination of various KPPU decisions demonstrates that the application of these two approaches continues to exhibit considerable complexity and variation in practice.

In cases applying the per se illegal approach, KPPU generally focuses its assessment on whether the statutory elements of the prohibited conduct have been fulfilled. In matters involving price-fixing agreements or forms of cooperation among business actors that are explicitly intended to control the market, KPPU does not necessarily require extensive proof of the actual economic effects because such conduct is inherently regarded as anticompetitive. This approach facilitates law enforcement by directing the evidentiary process primarily toward establishing the existence of prohibited agreements or conduct rather than evaluating their market consequences.

Conversely, KPPU also applies the rule of reason approach in a number of cases by conducting a more comprehensive assessment of market conditions. Cases involving the abuse of a dominant position, business integration, distribution agreements, or other conduct capable of generating either pro-competitive or anticompetitive effects require a thorough evaluation of the actual impact of the behavior on market competition. Accordingly, the examination extends beyond proving the existence of the conduct itself to determining whether the conduct has substantially restricted or distorted competition.

The implementation of the rule of reason approach is reflected in KPPU's reliance on economic analysis during the adjudicative process. Considerations such as the definition of the relevant market, the degree of market power possessed by the undertaking, competitors' conduct, and consumer interests constitute essential elements in determining whether a violation of competition law has occurred. This illustrates that competition law enforcement cannot be separated from a multidisciplinary framework integrating both legal and economic perspectives.

Nevertheless, practical challenges remain regarding the consistency of applying these two analytical approaches. Cases with comparable factual characteristics are occasionally assessed under different analytical frameworks, indicating that no definitive parameters have yet been established to guide KPPU in determining whether the per se illegal or the rule of reason approach should be adopted. Consequently, disparities in evidentiary standards may arise across competition cases with similar legal and economic characteristics.

Such differences in application are not merely procedural or technical in nature but also carry significant implications for the legal position of the parties under investigation. Where a case is assessed under the per se illegal doctrine, the evidentiary burden imposed upon KPPU is relatively less demanding than in cases examined under the rule of reason approach, which requires a comprehensive demonstration of anticompetitive effects. Accordingly, the choice of analytical framework plays a decisive role in influencing both the examination process and the ultimate outcome of KPPU's decisions.

Implications of the Application of the Per Se Illegal and Rule of Reason Approaches for Legal Certainty in KPPU Adjudicatory Practice

The application of the per se illegal and rule of reason approaches in the adjudicatory practice of the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha/KPPU) is closely related to the principle of legal certainty. In a state governed by the rule of law, legal certainty constitutes one of the fundamental principles that must be realized in every law enforcement process. Legal certainty is not limited to the existence of written legal norms regulating particular conduct, but also encompasses consistency in the application of legal rules, clarity in evidentiary standards, and the ability of individuals and business actors to predict the legal consequences of their actions. Within the context of competition law, legal certainty assumes even greater importance because business activities inherently require regulatory stability, enabling market participants to formulate business strategies without uncertainty regarding potential legal consequences.

When viewed through the lens of the theory of legal certainty as advanced by Gustav Radbruch, the law must fulfill three fundamental values: justice, legal certainty, and utility. These three values should operate in a balanced manner so that the law functions not merely as an instrument of coercion but also as a means of ensuring protection and social order. In competition law enforcement, legal certainty can be achieved through the application of clear legal norms, consistent legal interpretation, and evidentiary approaches that are transparent and understandable to all interested parties.

Challenges arise because the application of the per se illegal and rule of reason approaches has not yet been clearly delineated in KPPU adjudicatory practice. Although both approaches are well recognized in competition law, the governing legislation does not provide detailed criteria or parameters for determining when a particular case should be assessed under the per se illegal approach and when the rule of reason approach should be applied. Consequently, the Commission Panel retains considerable discretion in selecting the analytical framework for deciding individual cases.

On the one hand, this condition affords the KPPU the flexibility to tailor its legal approach to the specific characteristics of each case. Such flexibility is necessary because the dynamic nature of modern business practices continuously generates forms of commercial conduct that cannot always be readily categorized as either lawful or unlawful. On the other hand, where such flexibility is not accompanied by clear and consistent guidelines, it may result in inconsistencies in the application of competition law. Divergent approaches to cases involving substantially similar factual circumstances may create the perception that the applicable legal standards lack consistency and predictability.

From the perspective of business actors, such uncertainty may create difficulties in distinguishing between legitimate commercial conduct and practices that constitute violations of competition law. For instance, a particular form of business cooperation that is regarded as a legitimate commercial strategy in one case may be considered anti-competitive when evaluated under a different analytical approach. This illustrates that the analytical framework adopted by the KPPU directly affects the degree of legal certainty experienced by business actors.

Furthermore, differences in the application of these approaches also influence the evidentiary process in competition cases. Under the per se illegal approach, the evidentiary burden is relatively straightforward because it is generally sufficient to establish the existence of conduct that has been expressly prohibited by law. In contrast, the rule of reason approach requires a far more comprehensive analysis, as it necessitates proof that the conduct in question has produced or is likely to produce adverse effects on market competition. Consequently, the selection of the applicable analytical approach becomes a decisive factor in determining the outcome of competition cases.

From an institutional perspective, the consistency with which the KPPU applies these approaches also affects its legitimacy as the authority responsible for enforcing competition law. Decisions grounded in coherent and consistent legal reasoning enhance public confidence in the institution while providing valuable guidance for businesses in conducting their commercial activities. Conversely, inconsistent application of the per se illegal and rule of reason approaches without persuasive legal justification may invite criticism regarding the quality and credibility of competition law enforcement.

Issues relating to legal certainty are also evident in the relationship between KPPU decisions and subsequent judicial review proceedings before the Commercial Court, as well as cassation proceedings before the Supreme Court. In several cases, differences have emerged between the KPPU and the judiciary regarding both the interpretation of substantive legal norms and the analytical methods employed in assessing alleged competition law violations. Such differences indicate that judicial understanding of the per se illegal and rule of reason approaches continues to evolve and that a uniform interpretative standard has yet to be fully established. Accordingly, greater efforts are required to promote a shared understanding between the KPPU and the judiciary in order to ensure greater consistency in the enforcement of Indonesian competition law.

In conclusion, the application of the per se illegal and rule of reason approaches has direct implications for the realization of legal certainty within Indonesia's competition law framework. Neither approach constitutes the principal source of concern, as each serves a distinct function and objective in the enforcement of competition law. Rather, the more fundamental issue lies in ensuring that these approaches are applied consistently on the basis of clear, objective, and legally accountable parameters. Without adequate standards to guide their application, the flexibility inherent in these analytical approaches may ultimately become a source of legal uncertainty rather than an instrument for achieving effective and predictable competition law enforcement.

Model for Implementing the Per Se Illegal and Rule of Reason Approaches to Enhance Legal Certainty in Competition Law Enforcement

Based on the analysis of the application of the per se illegal and rule of reason approaches in the adjudicative practice of the Indonesian Competition Commission (KPPU), it can be understood that the primary objective of competition law enforcement is not to adopt either approach exclusively, but rather to develop an implementation framework capable of accommodating the distinctive characteristics of each case. Both approaches serve different legal functions; therefore, their application should be determined by the nature, purpose, and competitive effects of the conduct under examination.

The per se illegal approach should ideally be applied in a limited manner to categories of business conduct that clearly possess inherently anticompetitive characteristics and almost invariably produce adverse effects on market competition. In this context, the application of the per se illegal doctrine must be based on a high degree of certainty that the conduct in question has consistently been proven to generate anticompetitive effects. Accordingly, the use of this approach should not merely emphasize procedural efficiency in proving violations, but should also reflect the principle of prudence to avoid unnecessarily restricting legitimate business activities that may generate economic benefits.

Conversely, the rule of reason approach should be employed in cases involving business conduct whose competitive effects may vary depending on the specific market conditions. In such cases, the KPPU is required to undertake a comprehensive assessment of the relationship between the conduct of business actors and the prevailing competitive conditions within the relevant market. This analysis should integrate both legal and economic considerations in a balanced manner, ensuring that decisions are based not on presumptions of competitive harm but on empirical evidence demonstrating the actual impact of the conduct on market competition.

To strengthen legal certainty, clearer guidelines are required regarding the parameters governing the application of both approaches. Such guidelines should specify the categories of violations that are, in principle, subject to the per se illegal approach, identify the circumstances requiring rule of reason analysis, and establish the evidentiary standards applicable under each analytical framework. The availability of such guidance would provide both business actors and competition law enforcement authorities with a more predictable and transparent reference for interpreting and applying competition law.

Furthermore, consistency in KPPU decisions constitutes an essential element in promoting legal certainty. Each decision should not only explain whether the legal elements of a violation have been satisfied, but should also provide a clear justification for the selection of the analytical approach employed. The reasoning explaining why a particular case is assessed under the per se illegal doctrine or the rule of reason framework should form an integral part of the legal considerations. Such transparency would enhance both the accountability and legitimacy of the decision-making process.

Strengthening coordination and harmonization between the KPPU and the judiciary is likewise necessary to promote consistency in the interpretation of competition law. Differences in legal interpretation between the competition authority and the courts reviewing its decisions can be minimized through the development of a shared understanding regarding the concepts, functions, and limitations of both the per se illegal and rule of reason approaches. Such harmonization does not diminish judicial independence; rather, it contributes to a more coherent and consistent application of competition law.

In conclusion, the most appropriate model for applying the per se illegal and rule of reason approaches is one that positions both doctrines proportionately according to the characteristics of each case. The per se illegal approach should be reserved for conduct that is inherently anticompetitive, whereas the rule of reason approach should be applied to conduct requiring a detailed assessment of its economic effects. Through consistent, transparent, and well-defined implementation based on clear legal parameters, Indonesian competition law can provide stronger legal certainty and more effective protection for business actors, consumers, and the broader interests of the national economy.

CONCLUSION

Based on the findings and discussion regarding the application of the per se illegal and rule of reason approaches in the adjudicative practice of the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha [KPPU]) from the perspective of legal certainty, it can be concluded that both approaches serve distinct yet complementary functions in enforcing Indonesian competition law. The per se illegal approach is applied to business conduct that is inherently considered harmful to competition, with the assessment primarily focusing on whether the elements of the prohibited conduct as prescribed by legislation have been fulfilled. In contrast, the rule of reason approach is applied to business conduct that requires a more comprehensive evaluation of the objectives of the conduct, market conditions, the market position of the business actor, and the economic effects on competition and consumer welfare.

In KPPU's adjudicative practice, the implementation of these two approaches continues to face several challenges, particularly due to the absence of explicit criteria and parameters determining whether a case should be assessed using the per se illegal or rule of reason approach. Although such flexibility allows KPPU to adjust its analysis according to the characteristics of each case, it may also result in inconsistent interpretations and variations in legal application. The use of different analytical approaches in cases with similar factual circumstances may affect the applicable standard of proof, the quality of legal reasoning, and the predictability of decisions for the parties involved.

From the perspective of legal certainty, the application of both the per se illegal and rule of reason approaches should be conducted in a consistent, transparent, and principled manner based on clearly established parameters. Legal certainty in competition law depends not only on the existence of statutory provisions but also on the consistent interpretation and application of legal norms by enforcement authorities. The lack of clarity in determining the appropriate analytical approach may create uncertainty for business actors in distinguishing between legitimate competitive conduct and conduct prohibited under competition law. Therefore, strengthening guidelines governing the application of the per se illegal and rule of reason approaches in competition law enforcement is necessary. Such guidelines should establish clear standards regarding the types of cases appropriate for each approach, applicable evidentiary requirements, and legal considerations that should guide KPPU's decision-making process. The establishment of more precise parameters and greater consistency in applying these approaches is expected to improve the effectiveness of competition law enforcement in Indonesia by balancing the protection of fair competition, consumer interests, and legal certainty for business actors.

REFERENCES

Adeffian, Choirul, & Apriani, Rani. (2023). Metode Pendekatan Per Se Illegal and Rule of Reason Terkait Penegakan Hukum Alternatif Persaingan Usaha Tidak Sehat. *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah, 9*(2), 97–103.

Aryadiputra, D., Pribadi, D. S., & Subroto, A. (2022). Perbedaan Penerapan Pendekaran Per se Illegal dan Rule of Reason dalam Putusan KPPU tentang Kartel Penetapan Harga. Risalah Hukum, 18(1), 1–19. https://doi.org/10.30872/risalah.v18i1.753

Asmah, A., Azizah, A., Dewi, R. S., & Chansrakaeo, R. (2023). Pancasila's Economic Existence in Business Development: The Efforts to Realize Justice in Business Law. Jurnal IUS Kajian Hukum Dan Keadilan, 11(2), 265–280.

Dewi, E. K., Chumaida, Z. V., & Wulandari, S. A. (2024). Characteristics Of Indirect Evidence Towards Price Fixing Agreements In The Perspective Of Competition Law. Policy, Law, Notary And Regulatory Issues (POLRI), 3(1), 139–155.

Diab, A. L., Iswandi, I., Yaqub, A., Muthalib, L. M., & Baharuddin, A. Z. (2023). Safeguarding Consumers: The Role of Industry and Trade Office in Countering Monopolistic Practices

and Ensuring Business Protection. Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi, 299–312.
Fadhilah, M. (2019). Penegakan hukum persaingan usaha tidak sehat oleh Komisi Pengawas Persaingan Usaha (KPPU) dalam kerangka ekstrateritorial. Jurnal Wawasan Yuridika, 3(1), 55–72. https://doi.org/10.25072/jwy.v3i1.217
Hariz, N. (2023). Penerapan rule of reason dalam putusan komisi pengawas persaingan usaha pada kasus penguasaan pasar. Jurnal Suara Hukum, 5(1), 127–157. https://doi.org/10.26740/jsh.v5n1.p127-157
Hovenkamp, H. (2018). The rule of reason. Fla. L. Rev., 70, 81.
Ikraam, A., & Inas, A. G. (2025). Membedah Kasus Persekongkolan Tender PT Adhikarya & PT Kalber Berdasarkan Pendekatan Per Se Illegal dan Rule of Reason. Jurnal Magister Ilmu Hukum: Hukum Dan Kesejahteraan, 10(1), 24–39. https://doi.org/10.36722/jmih.v10i1.4468
Meese, A. J. (2000). Farewell to the Quick Look: Redefining the Scope and Content of the Rule of Reason. Antitrust LJ, 68, 461.
Polontoh, H., & Saputri, F. A. (2025). Regulation and sanctions against unfair business competition: Challenges in law enforcement. Jurnal Hukum Dan Keadilan, 2(3), 28–43. https://doi.org/10.61942/jhk.v2i3.322
Putra, P. (2023). The Per Se Illegal Principle and the Rule of Reason in Tender Conspiracy Practices Under the Anti-Monopoly Law and Unfair Business Competition. Jurnal Peradaban Hukum, 1(1), 27–34. https://doi.org/10.33019/jph.v1i1.5
Rivaldi, M., & Usman, R. (2026). Batasan Praktik Diskriminasi Dalam Hukum Persaingan Usaha: Analisis Terhadap Penerapan Pasal 18 Huruf D Undang-Undang Nomor 5 Tahun 1999 Dalam Putusan Kppu Nomor 07/Kppu-I/2020. Iuris Studia: Jurnal Kajian Hukum, 7(2), 382–401. https://doi.org/10.55357/is.v7i2.1265
Saleha, S., Gilalo, J. J., & Monaya, N. (2025). Analisis Putusan KPPU Terhadapi Penerapan Pendekatan Rule of Reason Terhadap Bentuk Kartel di Indonesia (Studi Terhadap Putusan KPPU: 15/KPPU-I/2022). Jurnal Sosial Dan Sains (SOSAINS), 5(5). https://doi.org/10.59188/jurnalsosains.v5i5.32202
Sari, L., Katjong, R. K., Mamonto, A. A. N., Ramli, A., & Bakung, D. A. (2024). Indirect Evidence in Disclosing Cartel Violations Under Business Competition Law in Indonesia. Jurnal Dinamika Hukum, 24(1), 54–72.
Sibuea, H. M., & SH, M. H. (2026). Ganti Rugi Dalam Persaingan Usaha: Kepastian Hukum Dan Keadilan Bagi Korban. Detak Pustaka.
Tunggati, M. T. (2024). Projection of Predatory Pricing Dispute Resolution in The Context of Business Competition Between UMKM in The Digital Economy Era Based on Win-Win Solution. JILPR Journal Indonesia Law and Policy Review, 5(2), 336–348.
Utomo, S. S. (2026). Komisi Pengawas Persaingan Usaha (KPPU) dalam Hukum Persaingan Usaha Tidak Sehat di Indonesia. Deepublish.
Widhiyanti, H. N. (2015). Pendekatan Per Se Illegal dan Rule of Reason Dalam Hukum Persaingan (Perbandingan Indonesia-Malaysia). Arena Hukum, 8(3), 385–410. https://doi.org/10.21776/ub.arenahukum.2015.00803.5
Wulida, Z. W. (2025). PENDEKATAN DAN PEMBUKTIAN PERSE ILLEGAL DAN RULE OF REASON DALAM HUKUM PERSAINGAN USAHA. WASAKA HUKUM, 13(2), 22–37.