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Business Actor Liability for the Misuse of Company Secrets Obtained Through Collusion: A Study of KPPU Decision No. 08/Kppu-L/2024

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Abstract

This study analyzes the forms of business actors' liability for the misappropriation of confidential information obtained through collusion under Article 23 of Law No. 5 of 1999, using the case of KPPU Decision No. 08/KPPU-L/2024 concerning PT Chiyoda Kogyo Indonesia as the focal point. The research employs a normative juridical method through statutory and case study approaches, applying a deductive–interpretative reasoning model to assess the consistency of legal norms and the construction of corporate liability in competition law enforcement. The findings indicate that the misappropriation of corporate secrets through collusion meets the elements of Article 23 under the rule of reason approach, as it generates anti-competitive effects such as lost sales, market structure distortions, and reduced competitive discipline. The KPPU panel applied identification theory and vicarious liability to attribute the actions of individuals to the corporation; however, the effectiveness of law enforcement is constrained by KPPU's limited authority, which allows only administrative sanctions without personal liability. The novelty of this study lies in the integration of normative analysis, corporate liability theory, and a law-and-economics framework to assess the competitive impact of information collusion. The study has theoretical implications by reaffirming the position of corporate secrets as part of market structure and practical implications through recommendations for legal reform, including turnover-based fines and the expansion of KPPU's authority to enhance deterrence and the effectiveness of competition law enforcement in Indonesia.

INTRODUCTION

In general, the primary motivation for individuals to engage in business activities is to obtain profit and income in order to meet their livelihood needs. This condition, in turn, creates competition among business actors. Accordingly, competition in the business sector is a natural phenomenon and even constitutes a fundamental prerequisite for the functioning of a market economy. A competitive environment is likewise an essential condition for achieving efficient economic growth, particularly for developing countries such as Indonesia.[1] Nevertheless, not all forms of business competition generate positive impacts. In practice, business competition is divided into fair competition and unfair competition. While fair competition supports market dynamics, unfair competition instead becomes an impediment to economic development.[2] One form of unfair competition that has increasingly emerged in modern business practices is the misuse of competitors' confidential information through unlawful means.

Confidential business information constitutes a strategic asset that determines a company's competitiveness, particularly within an increasingly stringent competitive environment. The leakage of confidential information carries serious legal consequences and directly affects a company's competitive position. The resulting harm is not only material in nature but also includes the loss of exclusivity over the company's methods, techniques, operational strategies, and internal designs. The unlawful disclosure of strategic documents or information enables competitors to exploit such information to imitate, develop, or even replace the products and services of the rightful owner. When the information is used to produce similar goods, the original holder of the confidential information is likely to suffer ongoing losses due to declining market share and a weakened competitive position.[3] As the owner of trade secrets, a company is entitled to use them independently or to grant licenses, and likewise holds the right to prohibit other parties from using or disclosing such secrets to third parties.[4] Therefore, safeguarding the confidentiality of information is both a legal and economic necessity in business activities.

Protection of confidential information is carried out through preventive measures, such as the use of restricted-access facilities, stringent supervision, and the application of

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[1] Susanti Adi Nugroho, *Hukum Persaingan Usaha Di Indonesia, Dalam Teori Dan Praktik Serta Penerapan Hukumnya* (Kencana, 2014).

[2] Aruna Irani Qotrunnada Kahfi, "Persekongkolan Tender Dalam Perspektif Hukum Persaingan Usaha Pada Putusan Nomor 570 K/Pdt.Sus-KPPU/2022," *Jurnal Rechtens* 13, no. 1 (2024): 1–20.

[3] Ali Jovansyah and Heru Sugiyono, "Strategi Pengamanan Informasi Terkait Rentannya Kebocoran Rahasia Dagang Oleh Karyawan," *Jurnal Kertha Semaya* 12, no. 3 (2024): 494–505.

[4] Millytia Fabiola Gabriela Salmon, "Perlindungan Hukum Terhadap Rahasia Perusahaan Dalam Menghadapi Persaingan Bisnis Di Indonesia," *Lex Privatum* VII, no. 4 (2019): 88–98.

legal norms accompanied by strict sanctions.[5] In the legal domain, such protection is known as the Law of Confidence, a body of rules that safeguards confidential information and establishes consequences for parties who disclose or misuse it. Normatively, the protection of confidential information has often been associated with the Intellectual Property regime, particularly Law Number 30 of 2000 on Trade Secrets. Nevertheless, the domain of competition law also provides its own form of protection. Article 23 of Law Number 5 of 1999 stipulates that obtaining confidential information illegally through collusion constitutes a form of unfair business competition.[6] This provision positions confidential business information not merely as an object of intellectual property protection, but also as an instrument safeguarded to preserve a competitive market structure.[7]

Although Law Number 5 of 1999 provides a clear legal foundation, practices of unfair business competition continue to occur across various sectors. The primary motive is the accumulation of profit through dishonest means, which ultimately exacerbates economic and social disparities.[8] Furthermore, the enforcement of Article 23 remains particularly rare, leaving broad room for interpretation regarding its elements. One decision that applies this provision is KPPU Decision Number 08/KPPU-L/2024, which concerns alleged collusion in obtaining and using confidential information belonging to PT Chiyoda Kogyo Indonesia.

PT Chiyoda Kogyo Indonesia is a Japanese foreign investment company engaged in the production of machine components, spare parts, and metalworking equipment. Its products include automated equipment and assembly machinery such as robotic systems, washing machines, coolant tanks, and special jigs. For many years, the company manufactured machines based on orders from PT Maruka Indonesia, which were subsequently sold to PT Maruka's customers. However, since July 2020, PT Maruka has ceased placing orders.[9] This situation was exacerbated by the transition of PT Chiyoda Kogyo Indonesia's former Technical Director to PT Maruka, as well as the establishment

[5] Rachel Fayza Rabbani and Suherman Suherman, "Urgensi Pengaturan Confidentiality Agreement Sebagai Optimalisasi Perlindungan Kerahasiaan Informasi Bernilai Ekonomi," *Jurnal Usm Law Review* 6, no. 3 (2023): 1020–39, https://doi.org/10.26623/julr.v6i3.7830.
[6] Ahmad M. Ramli, *H.A.K.I (Hak Atas Kepemilikan Intelektual) Teori Dasar Perlindungan Rahasia Dagang* (Bandung: Mandar Maju, 2000).
[7] Sudiarto, *Pengantar Hukum Persaingan Usaha Di Indonesia* (Jakarta: Kencana, 2021).
[8] Luki Alvino, Firdaus, and Setia Putra, "Penggunaan Bukti Petunjuk Dalam Proses Pembuktian Perkara Persaingan Usaha Dan Monopoli Dalam Pengadilan Indonesia," *Jurnal Ilmiah Wahana Pendidikan* 11, no. April (2025): 67–80.
[9] Noviarizal Fernandez, "KPPU Sidangkan Persekongkolan Pencurian Rahasia Perusahaan," Context.id, 2024, https://context.id/read/2294/kppu-sidangkan-persekongkolan-pencurian-rahasia-perusahaan.

of PT Unique Solution Indonesia, which later took over the industrial machine orders. The Special Purpose Machine Division of PT Chiyoda suffered a drastic decline in revenue, with estimated losses reaching IDR 63 billion. On this basis, PT Chiyoda reported allegations of collusion in obtaining and using the company's confidential information to the KPPU.

Interestingly, in Decision No. 08/KPPU-L/2024, although collusion involving several parties was proven, sanctions were imposed solely on PT Maruka Indonesia. This outcome raises a fundamental legal question: why was only one business entity held liable, while other individuals or entities involved were not sanctioned? This question is particularly relevant when connected to the primary purpose of Article 23, namely safeguarding fairness in business competition and preventing collusive practices that disrupt market mechanisms.

Several previous studies have examined similar cases but with different emphases. Mayva & Anggraeni (2024) focus on the examination of KPPU Decisions No. 19/KPPU-L/2007 and 35/KPPU-I/2010, as well as KPPU's tendency to equate the concept of confidential business information with trade secrets under Law No. 30 of 2000. However, that study does not address the forms of liability borne by business actors.[10] Research by Moch. Virgi Arivandi et al. (2024) centers on the legal and ethical implications of the trade secret violations involving PT Chiyoda but places greater emphasis on contractual instruments such as Non-Disclosure Agreements rather than the competition law dimension.[11] Roy et al. (2025) analyze Decision 08/KPPU-L/2024 from a methodological perspective, particularly weaknesses in KPPU's application of the rule of reason approach and the single economic entity doctrine, but do not specifically address business actor liability.[12]

Accordingly, a significant gap remains within the existing academic discourse. No prior study has provided an integrated analysis of the misuse of confidential business information, the elements of Article 23, corporate liability doctrines, and their economic implications for market structure. Nor has any research critically examined the KPPU

[10] Verandha Mayva and Anna Maria Tri Angggraeni, "Eksaminasi Putusan Kppu Mengenai Rahasia Perusahaan Yang Mengakibatkan Persaingan Usaha Tidak Sehat," *Amicus Curiae* 1, no. 3 (2024): 1004–14, https://doi.org/10.25105/ygbbhn17.

[11] Moch. Virgi Arivandi et al., "Implikasi Hukum Dan Etika Dalam Kasus Pelanggaran Rahasia Dagang : Studi Kasus PT Chiyoda Kogyo Indonesia," *Jurnal Ekonomi Dan Pembangunan Indonesia* 2, no. 4 (2024): 233–46, https://doi.org/10.61132/jepi.v2i4.1013.

[12] Nur Abdul Rahman Roy, Elisatris Gultom, and Deviana Yuanitasari, "Eksaminasi Penerapan Rule of Reason Terhadap Persekongkolan Untuk Memperoleh Rahasia Perusahaan Kompetitor Dan Probabilitas Dominasi Perusahaan Dalam Tindakan Anti Kompetitif: Studi Kasus Putusan Perkara Nomor: 08/Kppu-L/2024," *Jurnal Pendidikan Indonesia* 6, no. 4 (2025): 1985–95, https://doi.org/10.59141/japendi.v6i4.7652.

Commission Council's reasoning in imposing sanctions on only one business actor despite the involvement of multiple parties.

To address these issues, this study focuses on two primary research questions: (1) what forms and legal constructions of business actor liability arise from the misuse of confidential information obtained through collusion under Article 23 of Law Number 5 of 1999; and (2) how the considerations of the Commission Council in KPPU Decision No. 08/KPPU-L/2024 delineate the boundaries of corporate liability, particularly regarding why administrative sanctions were imposed on only one entity despite proven involvement of other parties. Methodologically and conceptually, this analysis is grounded in corporate liability theory, namely the doctrines of vicarious liability and identification/directing mind, which will be applied to evaluate the allocation of responsibility between individual conduct and corporate legal consequences. KPPU Decision No. 08/KPPU-L/2024 is selected because it represents a rare instance of Article 23 being applied and simultaneously illustrates the phenomenon of single-entity sanctioning within a multi-actor collusive scheme, thereby providing strong empirical grounds to examine the coherence between competition norms, proof of anticompetitive effects, and liability models. Thus, this study contributes theoretically by integrating a normative analysis of Article 23 with corporate liability theory, and practically by offering recommendations to strengthen competition law enforcement in Indonesia.

RESEARCH METHOD

This study employs a normative or doctrinal juridical method, focusing on the examination of legal norms codified in statutory regulations and their application in practice. The approaches used are the statute approach, to analyze the provisions of Article 23 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, and the case approach, through the analysis of KPPU Decision No. 08/KPPU-L/2024 as the primary case study. The data sources consist of primary legal materials, including Law No. 5 of 1999 and the aforementioned KPPU Decision; secondary legal materials, such as books, academic journals, and legal scholars' opinions relevant to the issues of collusion and corporate secrecy; and tertiary legal materials, including legal dictionaries and credible online sources. Data collection is conducted through library research by reviewing, classifying, and systematically analyzing legal materials pertinent to the topic. The data analysis technique applied is qualitative, utilizing deductive reasoning to draw conclusions from general legal principles and norms toward their application in the concrete case, thereby formulating

legal arguments that are logical, consistent, and aligned with the framework of Indonesia's positive law.

RESULTS AND DISCUSSION

1. Collusion and Misuse of Corporate Secret Information Against PT Chiyoda Kogyo Indonesia

A company's confidential information is understood as business-related information that has never been disclosed to any party except those directly connected to the relevant business activities.[13] Such information is strategic because it determines a company's competitive position in the market. Its confidentiality provides a competitive advantage, as it is the product of lengthy processes, requires specialized expertise, and is developed through substantial business investment.[14] Therefore, confidential business information constitutes an intangible asset that serves as a key determinant of a company's competitiveness. In the business context, losses resulting from the disclosure of such information are not only financial but also strategic, as they alter the competitive structure of the market. Business actors' interest in protecting confidential information is closely tied to commercial interests, ensuring that business activities are able to generate profit.[15]

Article 23 of Law No. 5 of 1999 limits the prohibited object solely to business activity information belonging to competitors that is classified as confidential business information. The protected confidential information includes all forms of information whose secrecy is maintained, whether or not such information possesses economic value.[16] This protection ensures that competitors cannot obtain confidential information through unlawful means and subsequently use it to distort the market. Collusion under Article 23 may be understood as an agreement or coordinated effort to engage in dishonest conduct within business activities.[17] Collusion involving information

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[13] Sri Hidayanti and Muannif Ridwan, "Perlindungan Hukum Terhadap Rahasia Perusahaan Di Indonesia," *Varia Hukum* 3 (2021): 37–66.

[14] Khaidir Tiar Arsyad, "Analisis Pertimbangan Hakim Dalam Menjatuhkan Putusannya Pada Suatu Perkara Rahasia Dagang Ditinjau Dari Ketentuan Perundang-Undangan Tentang Rahasia Dagang (Studi Putusan Pengadilan Negeri Nomor 112/ PID.SUS/2019/PN.Mnd)," *"Dharmasisya" Jurnal Program Magister Hukum FHUI* 1, no. July (2022).

[15] Rahmi. Yuniarti and Cheny Berlian, "Kajian Yuridis Upaya Hukum Persaingan Usaha Dalam Menciptakan Keseimbangan Antara Kepentingan Pelaku Usaha Dan Perlindungan Konsumen," *UIR LawReview*, 2023, 62–70.

[16] Hidayanti and Ridwan, "Perlindungan Hukum Terhadap Rahasia Perusahaan Di Indonesia."

[17] Tarmizi, "Analisis Hukum Persaingan Usaha Di Indonesia Dalam Undang-Undang Nomor 5 Tahun 2019," *Jurnal Real Riset* 4 (2022): 12–19, https://doi.org/10.47647/jrr.

specifically includes the exchange of information that restricts competition among business actors by harmonizing pricing, production, or marketing strategies.[18]

In its evidentiary framework, Article 23 requires the demonstration of anticompetitive effects through a *rule of reason* approach.[19] Within this framework, the application of Article 23 must analyze both the acquisition and the utilization of a competitor's confidential business information. The evidence must show that such information was obtained through a relationship involving a breach of trust, a violation of agreement, or an abuse of authority. The principle of *breach of confidence* establishes that any disclosure, communication, or use of confidential information without authorization constitutes a legal violation.[20] Moreover, the violation also encompasses actions involving the improper acquisition of information or the use of information known to originate from an unlawful source. In its evidentiary structure, the investigation must demonstrate the connection between the act of obtaining the information and its impact on market structure. Additionally, Article 23 requires a causal relationship between information-based collusion and the resulting competitive restraints. Thus, the *rule of reason* directs the analysis toward competitive effects, rather than merely the act of acquiring the information.

In the PT Chiyoda case, the former director and related party, Hiroo Yoshida, obtained the company's confidential information pertaining to customers, marketing strategies, and internal documentary videos of the machine assembly process. This information constituted part of the corporate secret because it was stored in a restricted manner and accessible only to certain authorized individuals. The relationship between Hiroo Yoshida, PT Maruka Indonesia, and PT USI served as the conduit through which the information was acquired. The trial established that Hiroo Yoshida deliberately delayed projects that had already been quoted to customers prior to his resignation. This delay was carried out with the intention that the projects would later be undertaken by the newly established company he formed together with PT Maruka Indonesia.[21] The shift of customers from PT Chiyoda Kogyo Indonesia to PT Unique Solution was viewed as an instant, non-competitive strategy that directly harmed PT Chiyoda's operations.

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[18] "Pedoman Penjelasan Pasal 23 Uu Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat" (n.d.), https://adoc.pub/pedoman-penjelasan-pasal-23-uu-nomor-5-tahun-1999-tentang-la.html .

[19] Devy Shelviana, "Persekongkolan Tender Di Sektor Infrastruktur Sebagai Tantangan Penegakan Hukum Persaingan Usaha," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 3 (2025): 2342–48.

[20] Gabriela Salmon, "Perlindungan Hukum Terhadap Rahasia Perusahaan Dalam Menghadapi Persaingan Bisnis Di Indonesia."

[21] "Salinan Putusan Nomor: 08/KPPU-L/2024" (2024).

Therefore, the acquisition and use of this information satisfy the concepts of wrongful acquisition and wrongful use.[22]

PT Chiyoda experienced a decline in revenue of up to 61% following the transfer of customers and projects to PT Maruka Indonesia and PT USI. This customer migration occurred after strategic information had been transferred to the new company established by the reported parties. The decline in revenue was not merely financial in nature but also weakened the company's internal structure due to the loss of key human resources. The facts show that PT Maruka Indonesia and Hiroo Yoshida engaged in the takeover of PT Chiyoda's employees, including personnel who had received specialized training and those with experience in marketing. As a result, PT Chiyoda lost nearly fifty employees and was even forced to furlough part of its workforce for three months due to the decrease in workload. These non-financial losses also include reputational damage and the erosion of customer trust, particularly among core clients that consist of prominent Japanese companies operating in Indonesia.[23] Such losses correspond to the characteristics of direct harm resulting from the misuse of confidential information,[24] given the causal relationship between the use of unlawfully obtained information and PT Chiyoda's loss of market share.

The direct economic impact of the leakage of a company's confidential information can be explained through the concepts of lost sales and the diminution of firm value. The misappropriation of information generates substantial losses in sales because competitors may use the information to replicate strategies or products at lower costs.[25] Such losses are also considered equivalent to the destruction of asset value that cannot be restored. In the PT Chiyoda case, the decline in revenue amounting to IDR 63 billion in 2020 illustrates a pattern of lost sales consistent with the framework of direct economic impact. Moreover, the customer migration resulting from the use of confidential information created an unjust transfer of value to competitors.

The economic impact of trade secret violations also encompasses the potential for predatory pricing, as noted by the economic expert during the hearing.[26] By exploiting a competitor's confidential information, a firm may set prices below production costs in

[22] Ranti Fauza Mayana and Tisni Santika, *Rahasia Dagang* (Bandung, 2022).
[23] salinan Putusan Nomor: 08/KPPU-L/2024.
[24] Marditia Wulandari et al., "Analisis Yuridis Persekongkolan Untuk Mendapatkan Rahasia Perusaan Pt Chidoya Kogyo Indonesia (Studi Kasus: Putusan No.08/Kppu-L/2024)," *Arus Jurnal Sosial Dan Humaniora* 5, no. 08 (2025): 2515–24.
[25] Dan Ciuriak and Maria Ptashkina, "Quantifying Trade Secret Theft : Policy Implications Dan Ciuriak and Maria Ptashkina," *CIGI Papers*, no. 253 (2021).
[26] salinan Putusan Nomor: 08/KPPU-L/2024.

order to drive competitors out of the market. Such conduct constitutes an unfair advantage because the competitor gains competitive ability without bearing the corresponding production and R&D expenses. This condition may also be categorized as a free rider problem, namely benefiting from the work and investment of another party without providing commensurate contribution.[27] These effects render ethically investing firms unable to survive because their cost structures are no longer competitive. Such distortions reinforce competitive barriers and destabilize market mechanisms.

Leakage of company confidential information also triggers changes in market structure through an unnatural intensification of competition. Such leakage erodes economic rents and alters the competitive equilibrium. Although intensified competition may appear beneficial for consumers, the mechanism through which it arises is unlawful and therefore distortive. Moreover, information leakage through the movement of skilled personnel creates spillovers that influence the overall dynamics of the industry.[28] The resulting market structure enables the risk of dominance by firms that rely on unlawfully obtained information. Accordingly, the structural impacts of violations of Article 23 extend beyond the individual losses of a particular firm and affect the stability of competition across the sector.

Information collusion involving the unlawful acquisition of a company's confidential information constitutes unfair competition because it is carried out through dishonest and unlawful means. Although such conduct does not automatically violate intellectual property laws, it nevertheless qualifies as an unlawful act within the framework of competition law.[29] This form of collusion disrupts the principle of a level playing field by granting a disproportionate competitive advantage. It also creates entry barriers for new market participants who do not have access to comparable information. Such distortions harm not only the victimized firm but also the integrity of the competitive process itself. Therefore, information collusion is a form of unfair competition that must be prevented as part of efforts to protect market structure.

Based on the foregoing discussion, it can be concluded that the elements of Article 23 must be proven through a rule of reason approach by demonstrating the unlawful acquisition of confidential information that results in competitive harm. The combined normative and economic analysis shows that violations of Article 23 produce direct

[27] Wulandari et al., "Analisis Yuridis Persekongkolan Untuk Mendapatkan Rahasia Perusaan Pt Chidoya Kogyo Indonesia (Studi Kasus: Putusan No.08/Kppu-L/2024)."
[28] Ciuriak and Ptashkina, "Quantifying Trade Secret Theft : Policy Implications Dan Ciuriak and Maria Ptashkina."
[29] Hidayanti and Ridwan, "Perlindungan Hukum Terhadap Rahasia Perusahaan Di Indonesia."

impacts on lost sales, revenue decline, and structural market losses. The long-term effects such as innovation disincentives, productivity shifts, and structural distortions further reinforce that information collusion undermines the competitive mechanism. The facts of the PT Chiyoda case demonstrate a clear causal relationship between the unlawful acquisition of information and a 61% reduction in company turnover. The information collusion in this case also satisfies the characteristics of unfair competition because it was conducted through dishonest means. Therefore, the application of Article 23 in cases involving the misuse of confidential information serves as a crucial instrument for preserving market structure. Accordingly, the analysis of the first research problem shows that protecting confidential business information is integral to safeguarding a healthy and competitive market.

2. Analysis of the Commission Panel's Considerations in Imposing Liability in KPPU Decision Number 08/KPPU-L/2024

In order to ensure the effectiveness of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition in Indonesia, the existence of an independent supervisory body is a legal necessity. Accordingly, the Business Competition Supervisory Commission (KPPU) was established, as explicitly regulated in Articles 30 to 46 of the Law, with the primary function of monitoring and taking action against business actors engaging in monopolistic practices or unfair competition. KPPU operates independently of government or other external intervention and reports directly to the President in the execution of its duties. The existence of KPPU reflects the implementation of the economic democracy principle as mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia. Therefore, every action taken by KPPU in upholding fair competition principles is part of the effort to realize an economic order that is just, transparent, and oriented toward public welfare.[30] In carrying out its supervisory and enforcement functions, KPPU, through the Commission Panel, has examined various cases of competition law violations, one of which is reflected in Decision Number 08/KPPU-L/2024.

In examining liability under KPPU Decision No. 08/KPPU-L/2024, it is essential to situate the analysis within the legal construction of "business actors" as subjects responsible for conduct that has the potential to disrupt market competition.[31] The

[30] Mariani Sumarab, "Sengketa Persaingan Usaha Dalam Kegiatan Perdagangan Menurut Undang-Undang Nomor. 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat," *Lex Privatum* IX, no. 6 (2021): 151–60.

[31] Nadir, *Hukum Persaingan Usaha "Membidik Persaingan Tidak Sehat Dengan Hukum Anti Monopoli Dan Persaingan Tidak Sehat"* (Malang: Universitas Brawijaya Press (UB Press), 2015).

definition of a business actor encompasses any individual or business entity engaged in economic activity, thereby creating a broad scope of responsibility that extends to companies in various organizational forms. In this context, the relevance of the concept continues to be scrutinized in light of globalization and the increasingly complex structure of modern corporations.[32] The Commission Panel found that Respondents I (PT Maruka Indonesia) and II (Hiroo Yoshida) fulfilled the qualification of business actors who may be held liable because their conduct was undertaken in their corporate capacities. This decision reinforces the normative premise that corporations are obligated to bear responsibility for anti-competitive conduct.

The Commission Panel found that the respondents' conduct met the characteristics of prohibited activities under competition law doctrine because it restricted competitors and harmed other business actors within the relevant market. The transfer of the MPK project from the Complainant to Respondent I (PT Maruka Indonesia) and Respondent III (PT USI) was viewed as part of a behavioral pattern that exerted competitive pressure through unauthorized access to strategic information, thereby constituting a form of market control that resulted in harm to rival firms.[33] Accordingly, the elements of Article 23 are interpreted not solely from the act of acquiring trade-related corporate information, but also from its legal consequences namely, the deprivation of a fair competitive opportunity, as the information-based collusion created entry barriers and disrupted market equilibrium. To assess these effects, the Panel employed a rule of reason approach to demonstrate that the acquisition and use of proprietary information had a tangible impact on competition.[34] This approach underscores that anti-competitive effects need not be proven mathematically or through quantifiable financial loss; rather, they may be identified through indicators such as changes in market behavior, entry barriers, and strategic coordination among business actors, as reflected in Perket No. 2 of 2023. The Panel concluded that the information collusion eliminated strategic uncertainty, heightened the risk of collusion, and impaired market mechanisms, thereby fulfilling the element of negative competitive impact and supporting the establishment of an Article 23 violation even in the absence of precisely calculable nominal losses.

Corporate liability thus becomes the primary basis for imposing sanctions on Respondent I, PT Maruka Indonesia, as modern legal doctrine recognizes corporations as entities capable of committing violations and bearing responsibility for them. Under Law

[32] Nadir.
[33] salinan Putusan Nomor: 08/KPPU-L/2024.
[34] Muhammad Iqbal Pratama, "Pendekatan Pembuktian Dalam Penegakan Hukum Persaingan Usaha Berdasarkan," *Hukum Dan Kesejahteraan Universitas Al Azhar Indonesia* 09 (2024): 24–36.

No. 5 of 1999, a corporation may be subjected to administrative sanctions when actions undertaken by its officers or corporate officials are directed toward the company's interests, because such individuals constitute the *directing mind* of the legal entity.[35] The Commission Panel considered that the conduct of Hiroo Yoshida, a senior official serving as President Director of PT USI a subsidiary of PT Maruka Indonesia could be attributed to and deemed representative of PT Maruka Indonesia's will. Consequently, the administrative sanction in the form of a fine was imposed on the corporation rather than the individual, reflecting the principle that liability attaches to acts performed within the scope of one's official capacity. This reasoning aligns with the *identification theory*, which posits that the acts of senior officers are effectively the acts of the corporation itself.[36]

In addition to the identification theory, the Commission Panel also implicitly reflects the *vicarious liability* approach, under which a corporation is held responsible for the acts of its agents or employees when such acts are performed within the scope of their duties.[37] This approach affirms that the conduct of individuals within an organizational structure may be attributed to the corporation when carried out in furtherance of corporate interests. In this case, the act of obtaining the Complainant's confidential information was undertaken to advance the commercial interests of PT Maruka Indonesia. Accordingly, PT Maruka Indonesia is deemed to have benefited from the conduct and is therefore appropriately subjected to legal consequences. The *vicarious liability* model further reinforces that it is unnecessary to establish a deep inquiry into fault at the corporate level, as the core focus rests on the nexus between the agent's conduct and the corporation's business interests.

Through the concepts of *identification theory* and *vicarious liability*, although the KPPU Commission Panel in Decision No. 08/KPPU-L/2024 does not explicitly articulate the application of these theories, the structure of its legal reasoning reflects a model of corporate liability consistent with the principle that the acts of senior officers may be attributed to the corporation. Accordingly, it can be concluded that the relationship between an individual's corporate position and the advancement of the company's interests forms the basis for shifting responsibility from the individual to the legal entity, as is commonly practiced within Indonesia's competition law regime. This approach strengthens the Panel's legitimacy in imposing fines on PT Maruka Indonesia as the entity

[35] Andi Sukrianto, Vince Ratna Multiwijaya, and Aprima Suar, "Pertanggung Jawaban Korporasi Dalam Tindak Pidana Persaingan Usaha Di Indonesia," *Ensiklopedia Social Review* 6, no. 3 (2024): 79–85.
[36] Sukrianto, Multiwijaya, and Suar.
[37] Rika Wulandari and Holijah, "Tanggung Jawab Korporasi Atas Pelanggaran Hukum Persaingan Usaha: Perspektif Hukum Perdata Dan Pidana," 2024, 1–16.

that benefited from the anti-competitive conduct. Nevertheless, the effectiveness of this model remains limited because liability attaches only to the corporation and not to the individuals involved, thereby reducing the deterrent impact on key decision-makers. In this regard, the KPPU's construction of liability is normatively sound but not yet optimal from a preventive standpoint.

On the other hand, the Commission Panel rejected the complainant's claim for damages amounting to IDR 63.7 billion and non-material losses of IDR 2 billion on the grounds that such losses could not be proven in a concrete manner. The Panel took into account that the complainant's decline in revenue was also influenced by the COVID-19 pandemic, which had a substantial impact on the national economy, as declared under Presidential Decree No. 12 of 2020.[38] This assessment underscores that the calculation of damages in competition law must consider significant external factors. In addition, the Panel found that the transfer of the MPK project lacked sufficiently convincing evidence to demonstrate that the claimed losses were actually incurred by the complainant. This reasoning aligns with evidentiary principles requiring the demonstration of *actual loss*, rather than *expected loss*, when determining compensation.[39] Although insufficient to substantiate damages, the fact of the project transfer remained relevant for establishing the existence of collusive conduct as an element of the violation. Thus, the legal consequences of such actions were still taken into consideration, even though the claim for compensation had to be denied.

There are also inherent limitations in the authority of the KPPU, particularly because the Commission is empowered only to impose administrative sanctions and lacks the authority to compel the payment of damages or to impose criminal penalties on individuals.[40] In this case, for instance, the respondents were subjected solely to administrative fines, with no possibility of assigning personal liability to the individuals who engaged in the collusive conduct. The KPPU likewise does not have the authority to impose imprisonment, personal fines, or disqualification from office on individual actors. Although Law No. 5 of 1999 provides for criminal sanctions, their enforcement falls within the jurisdiction of the general courts and cannot be executed by the KPPU.[41] As a result, administrative sanctions remain the only effective instrument available, even though empirical evidence suggests that fines alone are insufficient to deter repeated

[38] salinan Putusan Nomor: 08/KPPU-L/2024.
[39] RIVALDHY HARMI, "Tanggung Jawab Pemerintah Dalam Perbuatan Melawan Hukum Menurut Perspektif Hukum Persaingan Usaha (Putusan Mahkamah Agung Nomor 1495 K/Pdt.Sus-KPPU/2017)" (Universitas Islam Indonesia Yogyakarta, 2020).
[40] HARMI.
[41] Hidayanti and Ridwan, "Perlindungan Hukum Terhadap Rahasia Perusahaan Di Indonesia."

violations. This structural weakness creates room for moral hazard, as individuals may still take risks without the threat of personal sanctions. This condition illustrates that the enforcement regime of competition law in Indonesia remains institutional rather than personal in nature.

The limitations of KPPU sanctions become even more apparent when assessed through the lens of deterrence theory, which emphasizes that the primary purpose of punishment is prevention.[42] Deterrence requires sanctions to possess sufficient disincentive power so that offenders are discouraged from repeating anti-competitive conduct; however, in the absence of criminal penalties or personal sanctions, administrative fines alone are inadequate. Offenders tend to weigh the potential gains against the expected losses from sanctions; if the fine is lower than the economic benefit derived from the violation, the misconduct remains rational from an economic standpoint. In this case, the IDR 3 billion fine may be considered proportionate in relation to the violation, but it fails to restore market equilibrium or generate deterrent effects, as the project value and strategic advantages obtained far exceeded the fine imposed. H.L. Hart emphasizes that proportionality is a component of both justice and utility, and that sanctions must account for the economic value of the infringement.[43] This assessment demonstrates that Indonesia's sanctioning model has not yet created sufficiently strong negative incentives for violators and remains consistent with the structural weaknesses of Law No. 5 of 1999, which does not provide for turnover-based fines. Consequently, the principle of effective deterrence has not been fully achieved.

International approaches illustrate that Indonesia's model of corporate liability remains underdeveloped compared to the enforcement regimes of the United States and the European Union. OECD reports note that in the U.S., information exchange may constitute a violation of Section 1 of the Sherman Act when it facilitates either explicit or tacit collusion.[44] This regime allows authorities to impose criminal sanctions on individuals involved in the exchange of strategic information. Such a model exerts significantly stronger psychological and legal pressure on offenders, thereby creating a far more robust deterrent effect. In contrast, Indonesia recognizes only administrative sanctions imposed on corporations and lacks the authority to impose criminal penalties

[42] Christiansen Karl O, *Some Consideration on the Possibility of a Rational Criminal Policy*, Resource Material Series 7 (Tokyo: UNAFEI, 1974).
[43] Igor Primoratz, "The Judge as a Prole: Hare's 'Two-Level Theory' and the Problem of Punishment," *ARSP: Archiv Für Rechts- Und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy* 74, n (1988), https://www.jstor.org/stable/23680298.
[44] OECD, "Information Exchanges between Competitors under Competition Law," *Series Roundtables on Competition Policy*, vol. DAF/COMP(2010)37, (2010).

on individuals through the KPPU. This discrepancy explains why the Indonesian regime exhibits lower effectiveness in preventing similar conduct. In the context of Article 23, the U.S. model provides a compelling reference demonstrating that personal sanctions substantially enhance deterrence.

The European Union adopts a different yet significantly stricter approach than Indonesia, as the EU classifies the exchange of information concerning future individualised intentions on prices or quantities as a restriction by object.[45] This means that such conduct is deemed inherently harmful without requiring proof of actual effects, given its nature of eliminating strategic uncertainty among market participants. The EU also applies a far more rigorous fining mechanism through turnover-based fines, calculated as a percentage of the undertaking's total global turnover, up to a maximum of 10% of the company's annual revenue.[46] This mechanism ensures that the amount of the fine directly reflects the firm's economic capacity and the potential gains derived from anti-competitive behaviour. Consequently, fines are not fixed nominal amounts but are proportional to the economic scale of the infringing undertaking, thereby removing the incentive for companies to treat sanctions merely as operational costs. In addition, the EU incorporates aggravating factors such as acting as a cartel initiator or engaging in continuous infringements that may substantially increase the fine, thus creating strong preventive pressure on corporations not to repeat violations. By contrast, Indonesia limits administrative sanctions to a maximum nominal amount under Article 47 of Law No. 5 of 1999 and does not employ a turnover-based fining scheme. The absence of such proportionality results in KPPU fines that do not always correspond to the strategic benefits gained from information collusion, leading to a significantly weaker deterrent effect compared with the European Union's standards.

A comparison with international practice demonstrates that the KPPU's inability to impose personal sanctions substantially weakens the deterrent capacity of Indonesia's competition law regime. In the United States, infringements involving the exchange of strategic information may result in imprisonment for the executives involved, while in the European Union, the imposition of very substantial fines is designed to eliminate any economic gains arising from coordinated conduct. Indonesia has not yet fully adopted either approach, resulting in relatively low legal risks for individuals engaging in the unlawful appropriation and collusive use of trade secrets, which in turn shapes market participants' expectations regarding the consequences of their actions. Normatively, Law

[45] OECD.
[46] OECD.

No. 5 of 1999 does provide for criminal sanctions in the form of fines up to IDR 25 billion or imprisonment of up to five months, but the enforcement mechanism operates separately and is not integrated into KPPU proceedings.[47] This dualism between administrative and criminal processes renders criminal prosecution rare due to procedural complexity, making the criminal provisions more declaratory than operational. The absence of an effective mechanism linking KPPU findings to criminal enforcement further weakens the principle of deterrence, underscoring the significant gaps that remain between the national system and international standards.

Through this analysis, it can be concluded that the form of liability applied in the decision is consistent with modern corporate doctrine, particularly through the use of the identification theory and vicarious liability to attribute the conduct of individuals to the corporation.[48] Nevertheless, the absence of personal sanctions means that decision-makers face no direct pressure, thereby limiting the overall effectiveness of deterrence. Comparative insights show that the United States and the European Union adopt far stricter standards in sanctioning collusive information exchanges, especially through individual criminal penalties and turnover-based fines.[49] This disparity results in a significantly lower level of deterrence in Indonesia, indicating the need for regulatory reforms that would enable the KPPU to impose or initiate more robust sanctions. Decision No. 08/KPPU-L/2024 still carries important precedential value in affirming that collusion to obtain a competitor's confidential information constitutes a serious infringement of competition law, yet the effectiveness of enforcement remains constrained by the current limits of KPPU's authority. In this context, strengthening the available sanctioning instruments becomes a normative necessity to ensure the optimal protection of market structure.

Given these structural weaknesses, more concrete legal reforms are required to ensure that the enforcement of Article 23 carries coercive force comparable to international standards. One strategic measure is the adoption of a turnover-based fining system, as applied in the European Union, so that the magnitude of penalties reflects the economic gains derived from the violation and prevents firms from treating fines as a mere operational cost. In addition, consideration should be given to granting the KPPU authority to initiate criminal proceedings against individuals proven to have participated in strategic information collusion, as well as introducing personal sanctions such as

[47] Hidayanti and Ridwan, "Perlindungan Hukum Terhadap Rahasia Perusahaan Di Indonesia."
[48] Sukrianto, Multiwijaya, and Suar, "Pertanggung Jawaban Korporasi Dalam Tindak Pidana Persaingan Usaha Di Indonesia."
[49] OECD, "Information Exchanges between Competitors under Competition Law."

disqualification from managerial positions or temporary bans on serving as directors. These measures aim to strengthen deterrence and close the gaps that allow business actors to repeat anti-competitive conduct. Accordingly, the proposed policy recommendations are not merely declarative but operational, thereby enhancing the effectiveness of competition law enforcement and more substantively advancing the objectives of economic democracy.

CONCLUSION

This study concludes that the misappropriation of corporate confidential information through collusion, as illustrated by the PT Chiyoda case, constitutes a violation of Article 23 of Law No. 5 of 1999 and must be assessed through a rule of reason approach due to its demonstrable anti-competitive effects, including market share loss, structural distortion, and strategic harm to the victim firm. The findings reinforce the theoretical view that confidential business information is an economically valuable intangible asset forming part of the market structure that warrants protection, while collusive information sharing constitutes unfair competition that undermines market discipline and facilitates coordination. The analysis of Decision No. 08/KPPU-L/2024 shows that the Commission constructed corporate liability through identification theory and vicarious liability, attributing the conduct of senior officials to the corporation as an undertaking; however, the absence of mechanisms for individual sanctions limits deterrence and creates a significant gap compared to international practice. Consequently, this study underscores the need for concrete legal reforms, including the adoption of turnover-based and the expansion of KPPU's authority to initiate or recommend criminal action against individuals involved in the acquisition and use of confidential information, supported by personal sanctions such as disqualification from managerial roles. These measures would enhance deterrence, close moral hazard gaps, strengthen market integrity, and improve the overall effectiveness of Article 23 enforcement, thereby contributing substantively to the modernization of Indonesia's competition law regime.

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