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## Reformulation of Competition Law Policy From The Perspective of The Implementation of The Green Economy

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**Abstract:** The necessity to balance economic interests and environmental protection calls for reform in multiple policy frameworks, including legal instruments that regulate business interactions in the market. This research is qualitative in nature, chosen to explore in depth the relationship between competition law and the implementation of a green economy in Indonesia, by analyzing legal documents, regulations, KPPU decisions, academic literature, and best practices in other jurisdictions. The relevant national regulations are the Law on Prohibition of Monopolistic Practices and Unfair Business Competition, in conjunction with Law No. 11 of 2020 on Job Creation, which have not provided regulations that provide legal certainty and are in line with the environmental interests of the green economy. There is an urgent need to reformulate competition law policy to be more adaptive, accompanied by strengthening the role and capacity of the KPPU as an independent institution that conducts competition supervision in a professional, transparent manner, and in line with the sustainable economy agenda. The implementation of Articles 50 and 51 of the Monopoly Practices Law regarding exemptions and state monopolies in strategic sectors needs to be optimized through clearer guidelines so that each exemption remains oriented towards efficiency, sustainability, and the public interest.

**Keywords:** Reformulation Of Policy, Unfair Business Competition, Green Economy

### INTRODUCTION

The notion of sustainable development in Indonesia has been around since the 1970s, but its implementation to date has been dominated by an orientation toward economic development, particularly short-term economic growth. This condition has led to a decline in the quality of economic growth, especially given the country's limited fiscal capacity and available resources. In such a situation, it is not surprising that policymakers tend to choose development strategies that are instantaneous, oriented towards quick results, and do not take

into account aspects of long-term sustainability.<sup>1</sup> The essence of national development is development in all areas that must be carried out in a sustainable manner. In this case, Manan mentions sustainable economic development by stating that development is not a partial change. Linked to the structure of society, industrialization also invites qualitative changes.<sup>2</sup>

The concept of sustainable development, also known as the Sustainable Development Goals or SDGs, was announced at the 1972 Stockholm Conference on the Human Environment (UN Conference on Human Environment 1972). The SDGs strategy is implemented based on the Indonesian constitution and basic legal framework. This principle is regulated in Article 33 Paragraph (4) of the 1945 Constitution, which states that the country's economy is based on economic freedom, which includes cooperation, efficiency, justice, sustainability, environmental friendliness, freedom, and the principles of management, balanced growth, and national economic integration.<sup>3</sup> This concept is a principle of development as a human right because it encompasses all parties and everything, which in this case includes the right to a healthy environment.<sup>4</sup>

Sustainable development has three main pillars that are interrelated, including:

1. Economic growth, namely, maintaining stable economic growth by restructuring the productive system to conserve resources and energy.
2. Social sustainability, namely ensuring social justice in the distribution of wealth and social services.
3. Environmental sustainability, namely by maintaining a comfortable and safe living environment through zero emissions.

The three principles above, namely the principle of state responsibility, the principle of sustainable development, and the principle of benefits, with the aim of realizing environmentally-friendly sustainable development, are closely interrelated and reflect integrated (holistic) interests in various dimensions.

Regarding business competition, current regulations governing this issue do not explicitly include environmental dimensions, particularly the principle of a green economy.<sup>5</sup> This corresponds with economic perspectives, indicating that sustainability-based products still have lower competitiveness compared to conventional products, primarily due to their higher production costs.<sup>6</sup> This condition is also linked to environmental externalities that are not factored into market prices, making environmentally friendly products appear less competitive and potentially facing various structural barriers in competition.<sup>7</sup> As a result, the existence of sustainable products has not been fully accommodated in the legal framework of business competition, which is oriented solely toward economic efficiency.

However, although Law No. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition regulates mechanisms to maintain fair competition, this law does not include environmental protection or sustainability as part of its legal considerations. The focus of regulation remains on economic efficiency, prices, output,

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<sup>1</sup> Adiningsih, S. (2007). Pembangunan berkelanjutan di Indonesia ditinjau dari aspek ekonomi. Paper presented at the Scientific Seminar of the First National Conference of the Indonesian Environmental Scholars Association, Jakarta, November 24.

<sup>2</sup> Manan, A. (2014). Peranan hukum dalam pembangunan ekonomi (p. 24). Kencana.

<sup>3</sup> Surbakti, A. H., Wahyuningsih, S. K., Batubara, M. H., Ratih, R., Br Ginting, M. A., & Nurmalina, N. (2023). "Edukasi Dan Sosialisasi Demokrasi Dan Politik Indonesia". *JPMA - Jurnal Pengabdian Masyarakat As-Salam*, 3(1). <https://doi.org/10.37249/jpma.v3i1.462>

<sup>4</sup> Christmas, S. K., Hardiyanti, M., & Prawira, S. A. (2021). Role in the Forest Village Community-Based Forest Management Sustainable Development. *Journal of Judicial Review*, 23(1). <https://doi.org/10.37253/jjr.v23i1.4387>

<sup>5</sup> Hamidi, M. P., Fadli, M. A., & Wilion, Y. W. (2022). Tinjauan green economy dalam hukum persaingan usaha di Indonesia. *Jurnal Persaingan Usaha*, 2(1), 1–25.

<sup>6</sup> A.T. Kearney. (2020). Consumers and sustainability survey report.

<sup>7</sup> Loiseau, E., et al. (2016). Green economy and related concepts: An overview. *Journal of Cleaner Production*, 139, 361–371.

and consumer welfare in the conventional sense, without integrating ecological aspects that are increasingly urgent amid global climate change and environmental degradation.<sup>8</sup> This condition has resulted in a lack of legal basis for the Business Competition Supervisory Commission (KPPU) to consider environmental impacts in its case analysis, including in assessing whether the behavior of business actors hinders or encourages environmentally friendly innovation.<sup>9</sup>

The absence of regulations that incorporate environmental aspects into competition law is even more apparent when we look at Article 50 of Law No. 5 of 1999, which reads: “*Excepted from the provisions of this law are:*

- a) *acts and/or agreements aimed at implementing applicable laws and regulations; or*
- b) *agreements relating to intellectual property rights such as licenses, patents, trademarks, copyrights, industrial product designs, integrated electronic circuits, and trade secrets, as well as agreements relating to franchises; or*
- c) *agreements establishing technical standards for goods and/or services that do not restrict and/or prevent competition; or*
- d) *agreements in the context of agency that do not contain provisions for resupplying goods and/or services at prices lower than those agreed upon; or*
- e) *research cooperation agreements for the improvement or enhancement of the standard of living of the wider community; or*
- f) *international agreements that have been ratified by the Government of the Republic of Indonesia; or*
- g) *agreements and/or actions aimed at export that do not interfere with domestic market needs and/or supply; or*
- h) *business operators classified as small businesses; or*
- i) *cooperative business activities that specifically aim to serve its members”.*

#### Article 51

*“Monopolies and/or concentration of activities related to the production and/or marketing of goods and/or services that control the livelihoods of many people and branches of production that are important to the state are regulated by law and administered by State-Owned Enterprises and/or agencies or institutions established or appointed by the Government.”*

There are no exceptions that allow for cooperation between business actors aimed at protecting the environment or supporting sustainable development. As a result, if companies want to work together to reduce emissions, improve energy efficiency, or stop the circulation of environmentally unfriendly products, such cooperation could be considered an act that restricts competition. In fact, such cooperation provides great benefits to the environment and society. This regulatory vacuum shows that Article 50 has not yet adapted to the needs of the transition to a green economy. Therefore, there needs to be an update or reformulation of business competition policy in order to support environmental conservation and sustainable development efforts.

On this basis, there appears to be a gap between the normative objectives of sustainable development mandated by the constitution and various laws and regulations in the field of the environment, and the design and implementation of competition law, which is still oriented towards the conventional economic paradigm. This condition emphasizes the urgency of reformulating competition law policy so that it can function not only as an instrument for maintaining market efficiency, but also as a means of supporting the transformation towards

<sup>8</sup> Hermansyah. (2008). Pokok-pokok hukum persaingan usaha di Indonesia (hlm. 2). Kencana Prenada Media Group.

<sup>9</sup> Hamidi, M. P., Fadli, M. A., & Wilion, Y. W. (2022). Tinjauan green economy dalam hukum persaingan usaha di Indonesia. *Jurnal Persaingan Usaha*, 2(1), 1–25.

sustainable economic development based on a green economy. Therefore, the issues that will be raised in this scientific paper are: How Does Business Competition Law Regulation in Indonesia Support Green Economy-Based Sustainable Economic Development? and How Should Business Competition Law Be Reformulated in the Future to Support Green Economy-Based Sustainable Economic Development?

## METHOD

The type of research used is qualitative research, which is a type of research used to study objects in their natural conditions, where the researcher acts as the main instrument in the data collection and analysis process.<sup>10</sup> The qualitative approach was chosen to explore in depth the relationship between competition law and the implementation of a green economy in Indonesia, by analyzing legal documents, regulations, KPPU decisions, academic literature, and best practices in other jurisdictions. This method allows for contextual interpretation of data and the formulation of policy recommendations that are relevant to social, economic, and environmental dynamics. The data used is secondary data, which is data obtained through reference materials. Data collection was carried out through library research, namely by studying regulations and books related to the research. The secondary data collected consists of primary legal materials, secondary legal materials, and tertiary legal materials.<sup>11</sup> The data analysis technique used in this research is the interactive model of analysis, as described by Miles and Huberman.<sup>12</sup>

## RESULTS AND DISCUSSION

### **Business Competition Law Regulations in Indonesia in Support of Sustainable Economic Development Based on the Green Economy**

Currently, the influence of shifts and changes in the legal system due to global political, social, and economic dynamics demands significant changes in order to harmonize and adjust various realities of human relationships, which are currently dominated by various activities in the virtual world. Law has become the most important and strategic instrument in organizing social interaction and other social changes, as well as institutions, in the current era.<sup>13</sup>

The SDGs serve as a global framework for achieving inclusive, equitable, and sustainable development. These challenges encompass not only physical infrastructure development but also improvements in the quality of life, education, and healthcare systems, as well as effective and fair law enforcement. The role of law is crucial in achieving the SDGs. In addition to the three main legal instruments of regulations, legal institutions, and legal education, regulations must also evolve to encompass new cultural knowledge.<sup>14</sup> This is crucial because the law is not only a tool for enforcing regulations but also a mechanism for creating cultural awareness and knowledge in society. Therefore, legal development must be integrated with other factors such as economics, social, culture, religion, and politics.

In the context of competition law in Indonesia, the underlying norm is Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Article 3 of the law sets out the objective of creating a healthy and efficient business competition climate to improve public welfare and encourage stable economic development.

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<sup>10</sup> Abdul Fattah Nasution, *Metode Penelitian Kualitatif* (Jakarta: Harfa Creative, 2023), p. 34.

<sup>11</sup> Bahder Johan, *Metode Penelitian Ilmu Hukum* (Semarang: Mandar Maju, 2004), p. 23.

<sup>12</sup> Miles MB, Huberman M. *Analisis Data Kualitatif: Buku Sumber Metode Baru*. 2. (Beverly Hills, CA: Sage Publications; 1994)

<sup>13</sup> Khairazi, F. (2018). Implementasi Demokrasi dan Hak Asasi Manusia di Indonesia. *Inovatif: Jurnal Ilmu Hukum*, 8(1).

<sup>14</sup> Christmas, S. K., Muhajir, I., & Wicaksono, I. (2020). Implementation of the recognition and respect of the Dayak Iban Semunying customary law community in human rights and SDGs. *Jurnal Hukum Volkgeist*, 4(2). <https://doi.org/10.35326/volkgeist.v4i2.427>

This law is designed to ensure equal business opportunities among business actors. This law also aims to avoid economic concentration and prevent monopolistic practices and unfair competition that are detrimental to consumers and small and medium-sized enterprises (SMEs).<sup>15</sup>

Article 2 of Law No. 5 of 1999 states that: “Business operators in Indonesia shall conduct their business activities based on economic democracy, taking into account the balance between the interests of business operators and the public interest.” With such provisions, Law No. 5 of 1999 plays a significant role in maintaining a healthy competitive climate. To date, the law still focuses on regulating business competition without directly regulating aspects of sustainable economic development in a more comprehensive manner.

Furthermore, in 2020, Indonesia enacted Law No. 11 of 2020 concerning Job Creation (often referred to as the “Ciptaker Law”), which amended Law No. 5 of 1999, particularly in terms of dispute resolution procedures, sanctions, and the implementation of competition law. The Ciptaker Law does not completely repeal Law No. 5 of 1999, but rather makes substantial amendments to the legal framework for business competition in terms of sanctions, settlement mechanisms, and policy implementation, so that it is in line with efforts to create a favorable business environment and investment climate.

In addition, various other national policies and regulations also indicate the direction of state policy, which increasingly emphasizes the importance of the green economy and sustainable development, including through Presidential Regulation No. 98 of 2021 concerning the Implementation of Carbon Economic Value, as well as Indonesia's commitment in the Enhanced Nationally Determined Contribution (ENDC) document. These regulations affirm that the transition to a low-carbon economy is a national agenda that requires cross-sectoral support, including adjustments to the legal framework for business competition.<sup>16</sup>

However, these economic regulations and business competition are still oriented towards market efficiency and economic stability without comprehensively integrating the principle of environmental sustainability.<sup>17</sup> This situation has resulted in ecological aspects such as carbon emissions, pollution, exploitation of natural resources, and ecosystem damage not being considered key components in the assessment of economic policy and business competition.<sup>18</sup> At the same time, modern economic dynamics such as extractive industries, the digital economy, global logistics, and energy transition require a legal framework that can directly and systematically link economic activities with environmental protection.<sup>19</sup>

Reflecting on one example of business competition in the European Union, namely case AT.40178 - Car Emissions Cartel<sup>20</sup>, cases directly related to environmental and sustainable economic issues. In this case, the European Commission found that three major German car manufacturers, Volkswagen Group (VW), BMW, and Daimler, had colluded for years to limit the development of NOx emission reduction technology in diesel vehicles.<sup>21</sup> The collusion took place through regular technical meetings where the companies agreed to set minimum standards for the use of AdBlue, a liquid used to reduce harmful emissions from diesel engines.

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<sup>15</sup> Sumadibrata, M. S., Nasution, N. H., Putri, P. P., Hutahayan, S. A., & Sulastri. (2024). Persaingan usaha. *Jurnal Hukum dan Kewarganegaraan*, 8(7). <https://doi.org/10.3783/causa.v2i9.2461>

<sup>16</sup> Peraturan Presiden Nomor 98 Tahun 2021 tentang Penyelenggaraan Nilai Ekonomi Karbon. <https://peraturan.bpk.go.id/Details/177123/perpres-no-98-tahun-2021>

<sup>17</sup> Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional. (2020). *Indonesia Sustainable Development Goals roadmap*. Bappenas.

<sup>18</sup> Kementerian Lingkungan Hidup dan Kehutanan. (2021). *Status lingkungan hidup Indonesia*. KLHK.

<sup>19</sup> Wahana Lingkungan Hidup Indonesia. (2022). *Catatan akhir tahun: Krisis lingkungan dan tantangan ekonomi hijau*. WALHI.

<sup>20</sup> European Commission. (2021). *Commission decision of 8 July 2021 in Case AT.40178 – Car emissions*. European Commission.

<sup>21</sup> Geradin, D., & Katsoulacos, Y. (2021). Sustainability and EU competition law: An economic perspective. *Journal of Antitrust Enforcement*.

Instead of competing to improve environmentally friendly technology, these companies agreed not to improve the technology, thereby hindering innovation that could have improved air quality and reduced pollution.

The European Commission has confirmed that even if there is no agreement on prices or market sharing, agreements to limit innovation are still considered a violation of Article 101 of the Treaty on the Functioning of the European Union (TFEU), which prohibits any form of agreement that could potentially harm competition.<sup>22</sup> This practice is considered detrimental to consumers and society because cleaner and more efficient technologies are deliberately held back. Accordingly, this case changes the perspective on business competition: anti-competitive conduct is not only measured by its impact on prices and output, but also by its impact on the environment and long-term sustainability.<sup>23</sup>

The Commission then imposed fines totaling €875 million, with Volkswagen fined €502 million and BMW €372 million, while Daimler was exempted from fines for disclosing the cartel through a leniency program. This ruling is the first antitrust ruling in the world to explicitly state that barriers to green innovation are a form of cartel violation. Consequently, this case sets an important precedent that competition law can and should be used to promote environmentally friendly technologies as part of global efforts to achieve sustainable economic development.

This case demonstrates that competition law can be used not only to maintain market structure, but also to protect the environment and support sustainable economic development. In this case, the European Commission stated that collusion between BMW, Volkswagen, and Daimler hindered environmentally friendly innovation, namely NOx emission reduction technology (AdBlue), and was therefore considered a form of cartel violation even though it did not involve prices. This approach confirms that healthy competition can be a key driver of green innovation, and that actions that hinder green technology can harm consumers and society ecologically. As such, the European Union positions competition law as an instrument that supports the implementation of the European Green Deal and the broader sustainable economic agenda.

Regarding the limitations of Article 50 of Law No. 5 of 1999, these become increasingly apparent when compared to developments in competition law in the European Union. One important example is the Washing Machine case, in which a number of washing machine manufacturers and importers agreed to no longer market energy-inefficient washing machines because they were considered environmentally unfriendly. In terms of business competition theory, this agreement can be categorized as a barrier to entry for conventional washing machine manufacturers, and therefore has the potential to be viewed as a form of cartel. However, the European Union competition authorities approved the agreement because the environmental benefits far outweighed the potential reduction in competition.

In other words, the European Union recognizes that pro-environmental cooperation is justified as long as it provides significant ecological benefits to society. This approach differs from Indonesia's because, in this context, Article 50 in Indonesia does not appear to provide adequate legal tools for pro-environmental collaboration, while international jurisdictions and institutions increasingly view competition and sustainability goals as complementary domains, rather than necessarily conflicting ones. Therefore, this comparison reinforces the argument that a reformulation of Article 50 (or its implementing guidelines) is necessary to ensure that Indonesian competition law accommodates cooperation that stimulates green innovation without sacrificing the principles of fair competition.

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<sup>22</sup> European Commission. (2021). Commission decision of 8 July 2021 in Case AT.40178 — Car emissions. European Commission.

<sup>23</sup> Geradin, D., & Katsoulacos, Y. (2021). Sustainability and EU competition law: An economic perspective. *Journal of Antitrust Enforcement*.

This weakness, evident in the application of case No. 24/KPPU-I/2009 concerning the cooking oil cartel, is an important example that demonstrates the urgency of incorporating environmental elements into Indonesian competition law. This case involved large companies in the palm oil industry, a sector widely recognized as a major contributor to deforestation in Indonesia. In this case, KPPU<sup>24</sup> proved the existence of price coordination for cooking oil between major producers such as PT Musim Mas, PT Asianagro Agung Jaya, and other corporate groups. KPPU stated that business actors were found to have colluded to set prices and regulate the supply of cooking oil, thereby harming consumers.<sup>25</sup> Although the KPPU's decision assessed only economic aspects and consumer losses, the industry at issue has a significant environmental impact, particularly through oil palm expansion, carbon emissions, and biodiversity loss.

Judging from the two decisions above, the European Union has proven that integration can be achieved through specific guidelines such as the Horizontal Sustainability Agreements Guidelines, which enable business actors to collaborate on green innovation without violating competition law. Indonesia can adopt a similar approach by placing “environmental interests” as one of the considerations in competition analysis. This can facilitate collaboration between business actors in renewable energy projects, the circular economy, low-emission technologies, and other sustainability initiatives. Thus, competition law becomes an instrument that not only keeps the market competitive but also strengthens the achievement of SDG 7, SDG 9, SDG 12, and SDG 13.

However, to date, KPPU does not yet have guidelines that explicitly regulate exceptions for cooperation oriented towards sustainability. KPPU still tends to interpret efficiency solely in economic terms, rather than in social and ecological terms.<sup>26</sup> In fact, in many countries, including the Netherlands and Germany, competition authorities have begun expanding the scope of their analyses to include sustainability objectives. The OECD also emphasizes that cooperation between business actors that supports sustainability can be considered legitimate as long as it provides tangible benefits to society and does not significantly hinder competition.

### **Reformulation of Business Competition Law in the Future to Support Green Economy-Based Sustainable Economic Development**

Economics is a discipline that discusses how individuals and societies use limited resources to meet their needs and desires. At the macroeconomic level, analysis focuses on issues such as economic growth, inflation, unemployment, and fiscal and monetary policy.<sup>27</sup> Environmental economics is a branch of science that studies how humans utilize limited natural resources and the environment so that their ecological functions are maintained and can be used sustainably. This field highlights the relationship between economic activity and the environment, including human interaction with other living things and physical elements such as water, soil, and air.<sup>28</sup>

The green economy is an economic approach that seeks to improve public welfare by minimizing carbon emissions and other negative environmental impacts. This approach emphasizes the efficient use of natural resources, reduction of waste and pollution, and development of renewable energy (UNEP). The concept of a Green Economy is understood as

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<sup>24</sup> Karim, E. (2016). Penegakan hukum persaingan usaha oleh Komisi Pengawas Persaingan Usaha (KPPU) berdasarkan Undang-Undang Nomor 5 Tahun 1999 tentang larangan praktik monopoli dan persaingan usaha tidak sehat. *Lex Et Societatis*, 4(9). <https://doi.org/10.35796/les.v4i9.14340>

<sup>25</sup> KPPU, Putusan No. 24/KPPU-I/2009 tentang Kartel Minyak Goreng, 2009.

<sup>26</sup> KPPU. (2023). *Pedoman pelaksanaan hukum persaingan usaha di sektor energi dan infrastruktur*. Jakarta: KPPU RI.

<sup>27</sup> Priyono, & Candra, T. (2016). *Esensi ekonomi makro*. Journal of Chemical Information and Modeling.

<sup>28</sup> Danhas, Y., & Dan Muchtar, B. (2021). *Ekonomi Lingkungan*. Deepublish.

an environmentally friendly, ecologically oriented economic system that supports social welfare and is considered an alternative path to more sustainable economic development.<sup>29</sup>

The reformulation of competition law in Indonesia is becoming increasingly urgent, given that the current regulatory framework, particularly Law No. 5 of 1999, has not integrated sustainability and green economy objectives as part of its competition analysis. The regulation still focuses on conventional economic efficiency, so it does not provide space to assess environmental benefits in anti-competition cases or in merger supervision. In fact, various Indonesian literary works show that future economic development requires integrating business activities with ecological sustainability. Munadiya, for example, states that competition law must adapt to developments in global sustainability issues, because without a legal framework that allows for sustainability agreements, business actors will be hesitant to engage in green collaboration to reduce emissions or increase energy efficiency.<sup>30</sup>

In addition, structural weaknesses in the KPPU's authority, including the absence of guidelines for assessing environmental impact in competition cases, are a major obstacle to the transformation towards a green economy.<sup>31</sup> Accordingly, the reformulation of competition law should be directed towards adding sustainability objectives to legislation, establishing technical guidelines for evaluating environmental benefits in rule-of-reason analysis, and regulating limited exceptions to cooperation between business actors that clearly support sustainable development targets. This idea is also in line with the findings of economic law scholars such as Emirzon, who emphasizes that national economic law must evolve to balance market efficiency with the protection of natural resources as part of the constitutional mandate and sustainable development.<sup>32</sup> The reformulation is expected to enable Indonesian competition law to serve not only as an instrument for maintaining market structure, but also as a driver of low-carbon innovation and acceleration of the transition to a green economy.

In the context of sustainable economic development, the application of green economy principles is becoming increasingly vital. The green economy emphasizes environmentally friendly economic activities, efficient use of resources, and a focus on ecological sustainability. However, current business competition regulations, particularly Article 50 of the Business Competition Law, still focus on competition and anti-monopoly aspects, without considering environmental impacts. This article provides exceptions for agreements or cooperation between business actors that do not harm competition, but does not include criteria for environmental benefits as a basis for consideration.

Furthermore, the reformulation of business competition law based on the green economy not only requires substantive changes to the law but also an update to the analytical approach and institutional capacity of the business competition authority. In this context, the Business Competition Supervisory Commission (KPPU) needs to develop an assessment method that balances the impact of competition and environmental benefits (a balancing test). The rule of reason approach used in competition cases can be expanded to include sustainability factors, such as contributions to carbon emission reduction, energy efficiency, natural resource conservation, and long-term impacts on environmental quality. Consequently, competition analysis is no longer solely oriented towards price efficiency and market structure, but also towards dynamic efficiency that supports green innovation and national economic sustainability.

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<sup>29</sup> Fulai, S., Flomenhoft, G., Downs, T. J., Grande-Ortiz, M., Graef, D., Scholtens, B., ... & Ancev, T. (2011). Is the concept of a green economy a useful way of framing policy discussions and policymaking to promote sustainable development? *Natural Resources Forum*, 35(1), 63–72.

<sup>30</sup> Munadiya, R. (2022). Isu keberlanjutan dan persaingan usaha: Kapan otoritas harus campur tangan? *Jurnal Persaingan Usaha*.

<sup>31</sup> Quddus, M. S. (2025). Urgensi penguatan kewenangan KPPU dalam penegakan hukum persaingan. *SEV Journal*.

<sup>32</sup> Emirzon, J. (2019). Pembaharuan hukum ekonomi dalam perspektif pembangunan berkelanjutan di Indonesia. *Jurnal Hukum dan Pembangunan, Universitas Sriwijaya*.

Thus, the reformulation of competition law in Indonesia needs to be positioned as an integral part of a sustainable economic development strategy. Competition law not only serves to keep market mechanisms competitive, but also as a means of social engineering to encourage ecologically and socially responsible business behavior. The integration of green economy principles into competition law is in line with the social justice values of Pancasila and the mandate of Article 33 of the 1945 Constitution, which places control of economic resources for the greatest prosperity of the people, including the rights of future generations to a healthy and sustainable environment.

By way of comparison, in the context of European Union competition law, the integration of sustainability and green economy principles is not achieved through changes to the basic norms prohibiting competition, but rather through flexible exemption mechanisms based on benefit assessments. This framework can be found in Article 101 of the Treaty on the Functioning of the European Union (TFEU), which in paragraph (1) explicitly prohibits agreements between business actors that restrict or damage competition, such as price cartels or production restrictions.

Article 101(3) TFEU states that the prohibition referred to in paragraph (1) does not apply to agreements that contribute to increasing the production or distribution of goods, or to promoting technical and economic progress, provided that consumers receive a fair share of the resulting benefits, the resulting restrictions of competition are necessary and proportionate, and they do not eliminate competition substantially in the relevant market. Although this provision does not explicitly mention the environment or sustainability, the European Commission, in its latest practice and guidelines, has begun to interpret “technical and economic progress” and “efficiency” broadly, including environmental efficiency and green innovation. Thus, benefits such as carbon emission reductions, increased energy efficiency, or the development of environmentally friendly technologies can be positioned as a legitimate form of efficiency within the framework of Article 101(3) TFEU.

The European Commission considers that the agreement for an environmental protection initiative entered into by the manufacturers and importers of washing machines qualifies for an exemption from the prohibition on restrictions on competition as provided for in Article 81(3) TEC (now Article 101(3) TFEU), because:<sup>33</sup>

- 1) The agreement contributes to increased production and technical progress, in the form of more energy-efficient products with advanced and environmentally friendly technology;
- 2) The high purchase cost of these energy-efficient washing machines will be offset by lower electricity bills, as they use less energy. It is known that these high purchase costs are due to the costs of replacing production infrastructure and adopting energy-efficient technologies for the production process. Nevertheless, buyers will still receive a fair share of the technical advances resulting from the agreement between washing machine manufacturers and importers, namely in the form of more energy-efficient products and lower electricity bills.;
- 3) Restrictions on competition are only imposed to achieve the objectives of technical progress and increased production of energy-efficient washing machines; and
- 4) The agreement does not eliminate strong competition in the market and does not prevent third-party imports into Europe.

In relation to the washing machine case, during the marketing process, manufacturers of energy-efficient washing machines are known to have promoted and raised awareness about the importance of using environmentally friendly products as part of efforts to minimize the negative impacts of climate change. Furthermore, importers are also known to be members of the agreement. Although these importers are known not to market these energy-efficient

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<sup>33</sup> Nowag, J. (2022, February 23). Antitrust and sustainability: An introduction to an ongoing debate. ProMarket. <https://www.promarket.org/2022/02/23/antitrust-sustainabilityclimate-change-debate-europe/>

washing machines in Europe, in this case, the European Commission considers that the agreement will still bring benefits to Europe, particularly in terms of reducing pollution emissions from power plants during the production process, because the production process for these energy-efficient products is carried out in Europe.

When compared to Indonesia, the fundamental difference lies in the absence of a similar normative basis in Law No. 5 of 1999. Article 50 of the Business Competition Law regulates exceptions to certain agreements, but these exceptions are limited and do not include environmental benefits or sustainability as assessment criteria. As a result, cooperation between business actors aimed at reducing environmental impact or promoting green innovation has the potential to still be classified as a violation of competition law, even though the social and ecological benefits are significant. It is at this point that Indonesia's plan to reformulate its business competition law can learn from the European Union's approach, particularly in designing exemption clauses based on a balancing test between competition impact and environmental benefits.

By adopting a similar approach, the reformulation of Indonesia's competition law need not sacrifice the basic principles of prohibiting cartels and anti-competitive practices, but rather expand the scope of assessment through measured, conditional exceptions. This integration will also strengthen the legitimacy of competition law as an instrument of sustainable development in line with the values of Pancasila and the mandate of Article 33 of the 1945 Constitution, without opening the door to anti-competitive practices under the guise of sustainability. The reformulation of the Competition Law based on the green economy focuses on:

1. Explicit recognition of environmental interests as part of the objectives of competition law.
2. Grants of limited exemptions for business cooperation that supports green innovation.
3. Integration of environmental impact analysis in merger and acquisition assessments.
4. Strengthening coordination between KPPU and environmental authorities.

This Law aims to create healthy, efficient, and sustainable business competition to support environmentally conscious national economic growth and ensure the welfare of current and future generations.

## CONCLUSION

In relation to the regulation of business competition in Indonesia in support of green economy-based sustainable economic development, Indonesia currently faces an urgent need to align its legal and institutional framework with the Sustainable Development Goals (SDGs). The relevant national regulations are the Law on Prohibition of Monopolistic Practices and Unfair Business Competition, in conjunction with Law No. 11 of 2020 on Job Creation, and Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Economic Value, which are considered not yet provide regulations that provide legal certainty and are in line with environmental interests. Therefore, to align with the SDGs, transparent and accountable governance, multi-stakeholder participation (government, private sector, academia, NGOs), diverse funding (public-private-international), strengthening of law enforcement institutions, including competition oversight, and adaptive legal education so that the law not only enforces rules but also shapes a culture and practices of sustainability. This is related to the reformulation of more adaptive regulations, accompanied by strengthening the role and capacity of the KPPU as an independent institution that carries out competition oversight in a professional, transparent manner, and in line with the sustainable economic agenda. Strengthening authority, technical capabilities, and cross-sector coordination will enable the KPPU to assess not only the economic impact but also the social and environmental consequences of business policies and practices. In addition, the scope provided by Articles 50 and 51 of Law No. 5 of 1999 concerning exemptions and state monopolies in strategic sectors should be optimized through

clearer guidelines to ensure that each exemption remains oriented towards efficiency, sustainability, and the public interest.

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