

NON-COMPETE CLAUSES IN DEALER AGREEMENTS AND VERTICAL INTEGRATION: A DOCTRINAL ANALYSIS OF THE NORMATIVE INTERACTION BETWEEN ARTICLE 14 AND ARTICLE 19 OF INDONESIAN COMPETITION LAW IN LIGHT OF KPPU DECISION NO. 18/KPPU-L/2024 (SANY TRUCK CASE)

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Abstract

This research analyzes the normative ambiguity surrounding the concurrent application of Article 14 (vertical integration prohibition) and Article 19 (market control prohibition) under Indonesian Law No. 5/1999 in the context of dealer agreements with non-compete clauses. Through doctrinal legal analysis of KPPU Decision No. 18/KPPU-L/2024, which imposed Indonesia's largest competition law fine of Rp. 449 billion for simultaneous Article 14-19 violations, this study identifies substantial evidentiary overlap and legal characterization uncertainty. A comparative analysis of the competition law frameworks of Singapore, the European Union, and the United States reveals transferable principles, including market-share safe harbors, duration-based assessments of non-compete clauses, and structured foreclosure analyses. Findings demonstrate that existing Indonesian statutory provisions lack clear criteria to distinguish structural foreclosure (Article 14) from behavioral exclusion (Article 19), and that KPPU enforcement practice is inconsistent with the procedural requirements under Perkom 5/2010. The research proposes a normative clarification framework that establishes interpretive criteria for concurrent application and recommends regulatory amendments introducing market-share thresholds, a mandatory three-stage analysis, and limitations on the duration of non-compete clauses to enhance legal certainty and enforcement consistency.

Keywords: *Vertical Integration; Non-Compete Clause; Dealer Agreement; Article 14; Article 19; KPPU.*

INTRODUCTION

Vertical integration is a fundamental business strategy in which enterprises establish control across multiple stages of production and distribution, generating both efficiency gains and potential competitive concerns. Economic theory recognizes that vertical integration may reduce transaction costs, eliminate double marginalization, and facilitate coordinated quality control. By internalizing market exchanges, vertically integrated firms can minimize negotiation costs and coordination problems inherent in arm's-length transactions while eliminating the pricing inefficiencies that arise when independent monopolies operate at successive stages of production. (Williamson, 1985). Conversely, vertical integration structures pose market foreclosure risks when dominant firms leverage upstream market power to exclude downstream competitors or implement customer foreclosure strategies restricting rivals' access to distribution channels. (Rey & Tirole, 2007).

Indonesian competition law addresses vertical integration through dual statutory provisions under Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Article 14 specifically prohibits business actors from entering into agreements that control production across chains when such arrangements may cause unfair competition or societal harm. This provision targets vertical integration agreements where business actors seek to control multiple products within a production chain, whether through direct or indirect linkages, with each production stage representing an end product of processing or further processing. Concurrently, Article 19 prohibits various market-control activities, including impeding competitors, foreclosing customers, restricting distribution, and engaging in discriminatory practices. Recent enforcement developments underscore the practical significance of the interaction between Articles 14 and 19. KPPU Decision No. 18/KPPU-L/2024 imposed administrative penalties totaling Rp. 449 billion (approximately USD 27.6 million) against Sany Group entities for concurrent violations of Article 14 and Article 19 letters a-d in the context of dump truck dealer

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agreements containing non-compete clauses (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2024). This landmark decision represents Indonesia's largest aggregate competition law fine to date, with the individual penalty against PT Sany Indonesia Machinery (Rp. 449 billion) constituting the highest single-entity fine in KPPU enforcement history. The decision establishes a critical precedent on concurrent application methodology, demonstrating that vertical integration agreements that result in market foreclosure can constitute separate violations under both structural (Article 14) and conduct-based (Article 19) prohibitions. The Sany case presents a central doctrinal tension: when dealer agreements contain non-compete clauses within vertically integrated structures, should such arrangements be characterized as violations of Article 14, Article 19, or both? Existing Indonesian competition law scholarship exhibits substantial gaps regarding Article 14-19 normative interaction. Prior research on Article 14 has focused on standalone vertical integration analysis, without a systematic examination of concurrent application scenarios. Studies addressing Article 19 emphasize predatory pricing and discrimination in horizontal contexts rather than vertical integration structures. Literature on vertical restraints predominantly focuses on Article 15 (exclusive dealing) rather than the Article 14-19 intersection. (Dewi et al., 2023).

Three specific scholarly gaps emerge from the literature review. First, no systematic doctrinal analysis examines the normative construction of the interaction between Articles 14-19 when dealer agreements containing non-compete clauses form components of integrated vertical structures. Second, no scholarly evaluation addresses the overlap in evidentiary elements and the legal characterization criteria that distinguish structural integration violations from behavioral market control violations. Third, no comparative doctrinal study systematically links Indonesian frameworks to international vertical integration assessment approaches in comparable jurisdictions. This research provides the first comprehensive doctrinal analysis of Article 14-19 normative interaction through four original contributions. First, it systematically deconstructs the normative elements of Articles 14 and 19, identifying specific areas of evidentiary overlap that create legal uncertainty. Second, it analyzes KPPU Decision No. 18/KPPU-L/2024 as a doctrinal case study, evaluating enforcement reasoning and interpretive approaches to concurrent application. Third, it conducts a comparative legal analysis examining how the competition authorities of Singapore, the European Union, and the United States assess vertical integration in dealer distribution structures, extracting transferable doctrinal principles. Fourth, it proposes an original normative clarification framework that establishes interpretive criteria to distinguish between applications of Article 14 and Article 19 in vertical-restraint contexts.

METHOD

Research Type

This research employs a doctrinal legal methodology, classified within legal scholarship as normative juridical research, focusing on statutory interpretation and conceptual analysis. The research analyzes legal texts, regulatory provisions, and judicial decisions through systematic interpretive methods to resolve normative ambiguities in Indonesian competition law. The scope is exclusively library-based, examining published legal materials without empirical data collection, field research, interviews, or surveys.

Legal Materials

Primary legal materials comprise Law Number 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, KPPU Regulation Number 5 Year 2010 on Guidelines for Application of Article 14, KPPU Decision No. 18/KPPU-L/2024, and relevant implementing regulations. Secondary legal materials include academic journals, scholarly monographs, comparative competition law statutes from Singapore, the European Union, and the United States, enforcement guidelines from competition authorities in comparative jurisdictions, and legal commentaries on Indonesian competition law. Data collection utilized official legal databases including JDIH (Jaringan Dokumentasi dan Informasi Hukum), the KPPU official website, academic databases (Scopus, Google Scholar, JSTOR), and official competition authority websites (Competition and Consumer Commission of Singapore, European Commission DG Competition, US Federal Trade Commission, US Department of Justice Antitrust Division). Document selection criteria required academic sources to be peer-reviewed publications from 2019 onward, ensuring currency and scholarly rigor.

Analytical Framework

The research employs three complementary analytical methods. First, statutory interpretation uses grammatical, systematic, historical, and teleological methods, consistent with Indonesian legal methodology. Grammatical interpretation examines the plain textual meaning of Article 14 and Article 19 provisions. Systematic interpretation analyzes the relationships among provisions within the overall statutory structure of Law No. 5/1999.

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Historical interpretation considers legislative intent by examining elucidation materials. A teleological interpretation assesses the alignment of provisions with the statutory objectives set out in Article 3 of Law No. 5/1999. Second, doctrinal case analysis examines KPPU Decision No. 18/KPPU-L/2024 by critically evaluating the legal reasoning, evidentiary foundations, and interpretive approaches. Analysis focuses on how KPPU characterized concurrent violations, applied Perkom 5/2010 analytical frameworks, and justified simultaneous Article 14-19 enforcement. Third, functional comparative legal analysis examines vertical integration assessment doctrines in Singapore, the European Union, and the United States jurisdictions. The functional approach identifies comparable legal problems across jurisdictions (e.g., the assessment of vertical integration foreclosures). It analyzes how different legal systems resolve analogous issues, enabling the extraction of transferable doctrinal principles compatible with Indonesian statutory frameworks.

RESULTS AND DISCUSSION

Doctrinal Framework: Article 14 and Article 19 Under Law No. 5/1999

1. Article 14: Vertical Integration Prohibition

Article 14 of Law No. 5/1999 establishes Indonesia's primary statutory prohibition on vertical integration, stating: "Business actors shall be prohibited from entering into agreements with other business actors to control the production of several goods constituting products which are included in the production chain of certain related goods and or services whereby each production series is the end product of processing or further processing, either in a direct or indirect series, which may potentially cause unfair business competition and or may be harmful to society". Systematic textual analysis identifies three constituent elements establishing Article 14 violations. First, the provision requires an agreement between business actors, defined under Article 1(7) as "the act of one or more business actors to bind themselves with one or more other business actors under any name, either in writing or in non-written form." This definition encompasses both formal contracts and coordinated conduct establishing vertical relationships. Second, Article 14 requires agreements to control production across chains, whereby "each production series is the end product of processing or further processing." The elucidation clarifies that production chains include integrated sequences from raw material extraction through manufacturing, distribution, and retail stages (Republic of Indonesia, 1999). Third, the provision requires that controlled integration "may potentially cause unfair business competition and or may be harmful to society," establishing a prospective-harm standard that requires competitive effects analysis (Widjaja, 2021).

The statutory elucidation explicitly adopts a rule-of-reason analytical approach, stating that vertical integration is "not per se illegal" and that it requires analysis of competitive effects to distinguish efficiency-enhancing integration from foreclosure-causing integration. This interpretive guidance reflects a fundamental recognition that vertical integration produces ambiguous competitive effects, necessitating case-specific economic analysis rather than a categorical prohibition. (Ngabut & Silalahi, 2025). KPPU Regulation Number 5 Year 2010 operationalizes Article 14's rule of reason approach through a structured analytical framework (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2010). The regulation requires capability analysis assessing whether integrated entities possess market power in upstream or downstream markets sufficient to implement foreclosure strategies, with relevant factors including market shares, barriers to entry, and countervailing buyer power. It further mandates an incentive analysis examining whether integrated firms have economic incentives to foreclose competitors, comparing the profitability of foreclosure with the continued supply relationship. Finally, the regulation requires a consumer impact analysis that assesses net welfare effects by weighing consumer harm from reduced competition against efficiency gains from integration.

A critical normative question arises regarding the hierarchical status of Regulation 5/2010: does the analytical framework constitute binding procedural law or merely discretionary guidance? A teleological interpretation of Article 14's elucidation supports its mandatory status. If Article 14 adopts rule-of-reason analysis to distinguish harmful from beneficial integration, and Regulation 5/2010 operationalizes the required economic analysis, then the regulation's analytical framework becomes inherent to proper Article 14 enforcement rather than an optional methodology. Deviation from structured analysis would render Article 14's rule-of-reason approach effectively unworkable, as competitive harm cannot be proven without a systematic economic assessment. (Ngabut & Silalahi, 2025). Legislative intent further supports the limited scope of Article 14. Article 3 of Law No. 5/1999 establishes statutory objectives, including safeguarding public interest, enhancing national economic efficiency, and ensuring equal business opportunities. Teleological reading indicates that Article 14 prohibits only net-harmful integration that produces competitive foreclosure that exceeds efficiency justifications, not all vertical integration arrangements. (Raychaudhuri, 2011).

Article 19: Market Control Prohibition

Article 19 of Law No. 5/1999 prohibits four categories of market control conduct (Republic of Indonesia, 1999). Article 19(a) prohibits business actors from "reject[ing] and or imped[ing] certain other business actors in conducting the same business activities in the relevant market"; Article 19(b) prohibits "imped[ing] consumers or customers of their competitors in engaging in a business relationship with such business competitors"; Article 19(c) prohibits "restrain[ing] the distribution and or sales of goods and or services in the relevant market"; and Article 19(d) prohibits "engag[ing] in discriminatory practices against certain business actors." Article 19's structural characteristics distinguish it from Article 14's agreement-based prohibition. First, Article 19 adopts a conduct-based approach covering activities rather than formal agreements, applying to unilateral conduct and coordinated behavior alike. The distinction is evident in the statutory structure: Article 14 falls under Chapter III ("Prohibited Agreements") and requires business actors to "enter into agreements," while Article 19 is categorized under Chapter IV ("Prohibited Activities") and applies to business actors "engaging in one or several activities." Second, unlike Article 25, which requires a dominant position where one business actor controls more than 50% of the market share, Article 19 applies regardless of market position, establishing behavior-focused prohibitions without dominance thresholds (Dewi et al., 2023). Third, Article 19 incorporates rule-of-reason analysis through the phrase "may cause monopolistic practices and or unfair business competition," requiring proof of competitive harm rather than presuming illegality.

The statutory elucidation provides limited guidance on the scope of Article 19. Regarding Article 19(a), the elucidation states prohibitions apply to conduct that is "not allowed to reject or impede certain business actors in an unreasonable manner or for non-economic reasons, for example, due to differences in ethnic group, race, social status, and others." (Republic of Indonesia, 1999). This emphasis on non-economic grounds indicates Article 19(a) targets arbitrary exclusion rather than pro-competitive refusals based on legitimate commercial considerations. Systematic interpretation reveals Article 19's relationship to other provisions of Law No. 5/1999. Article 17 prohibits monopoly defined as "control[ling] the production and or marketing of goods and or services which may cause monopolistic practices and or unfair business competition," addressing structural market dominance. Article 25 prohibits abuse of a dominant position, defined as business actors holding positions where "no substantial competitors" exist in the relevant market or as those holding "the highest position among its competitors in the relevant market." Article 19 differs by focusing on specific exclusionary conduct rather than requiring structural dominance and by establishing behavioral prohibitions applicable to firms that lack the dominant position characteristics of Article 25.

2. Normative Ambiguity: Overlap Between Article 14 and Article 19

Systematic analysis of Articles 14 and 19 reveals three zones of normative ambiguity that create legal uncertainty in concurrent application scenarios. The first ambiguity concerns the distinction between agreement and activity. Article 14, positioned within Chapter III titled "Prohibited Agreements," establishes agreement-based prohibitions requiring formal or coordinated arrangements between business actors. Article 19, positioned within Chapter IV titled "Prohibited Activities," establishes activity-based prohibitions applying to unilateral and coordinated conduct. (Republic of Indonesia, 1999). When vertical integration agreements create foreclosure effects, normative uncertainty arises: does the agreement character trigger Article 14 exclusively, or do resulting exclusionary activities concurrently trigger Article 19? The second ambiguity concerns the overlap between foreclosure analysis and other analyses. Article 14 addresses production chain control that causes structural foreclosure, whereby integrated entities' control across vertical stages creates barriers that prevent competitors from accessing inputs or distribution channels. Article 19(a) addresses refusals to deal, causing behavioral foreclosure, whereby firms reject or impede competitors' market participation. Distinguishing criteria remain unclear: at what point does Article 14's structural foreclosure through integrated control become Article 19(a)'s behavioral foreclosure through refusal to deal? The statutory text provides no explicit threshold to distinguish between structural and behavioral exclusion. This analytical challenge reflects broader theoretical difficulties in competition economics, where foreclosure mechanisms resist clear categorical separation despite their distinct operational characteristics. (Rey & Tirole, 2007). The third ambiguity concerns the characterization of non-compete clauses. Non-compete clauses in dealer agreements potentially violate multiple provisions simultaneously. Under Article 14, non-compete clauses may constitute integration elements by controlling distribution chains and limiting dealers' ability to carry competing products. Under Article 15, identical clauses may constitute exclusive dealing restraints that are prohibited when they cause unfair competition. Under Article

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19(b), non-compete clauses may cause customer foreclosure by preventing consumers from accessing competing products through dealers. Under Article 19(d), clauses may cause discriminatory treatment when some dealers face restrictions while others receive preferential terms. A single contractual provision thus supports four alternative legal characterizations, with no clear statutory criteria to determine the applicable provisions (Hanni, 2019). A comparison of evidentiary elements further demonstrates overlap zones. Article 14 requires an agreement *forma production chain control object*, an implied market power assessment through effect analysis, the "may potentially cause" harm standard, and the Perkom 5/2010 analytical framework for ambiguous mandatory status. Article 19 applies to agreements or unilateral conduct, to specific exclusionary acts as objects, without a market power requirement, to a "may cause" harm standard, and to no specific analytical guidelines. Recent enforcement demonstrates practical ambiguity: in KPPU Decision No. 18/KPPU-L/2024, parties extensively disputed whether Perkom 5/2010's three-stage analytical framework—comprising ability analysis, incentive analysis, and consumer impact analysis—constituted mandatory requirements for establishing Article 14 violations, with the Commission ultimately affirming their necessity while acknowledging interpretive uncertainty (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2024). Identical conduct—such as supply cessation through vertically integrated dealer networks that impose non-compete restrictions—simultaneously satisfies multiple provisions' elements without clear criteria for differentiation.

Four specific normative questions emerge from identified ambiguities. First, can a single conduct simultaneously violate Article 14 and Article 19, or does Article 14's application preclude Article 19? Second, what criteria distinguish structural foreclosure warranting Article 14 application from behavioral exclusion triggering Article 19? Third, how can enforcement prevent double-counting identical anti-competitive effects when imposing concurrent penalties? Fourth, does Article 19 constitute a residual provision applying only when Article 14 is inapplicable, or a concurrent provision applying alongside Article 14? Law No. 5/1999's statutory silence exacerbates identified ambiguities. The statute provides no explicit provisions clarifying relationships between Chapter III (Prohibited Agreements) and Chapter IV (Prohibited Activities). Comprehensive review of all fifty-three articles and the official elucidation reveals no provisions addressing concurrent application, priority rules, or hierarchical relationships between chapters. No KPPU implementing regulations systematically address concurrent application methodology or establish priority rules. While KPPU Regulation No. 2 of 2023 governs procedural matters in case handling, it contains no substantive guidance on assessing multiple provisions simultaneously or preventing double-counting of anti-competitive effects (Ma'ruf & Beny Mukti Setiyawan, 2020). The consequence is substantial legal uncertainty for business actors structuring vertical relationships and risk of arbitrary enforcement depending on KPPU's case-by-case characterization choices without consistent interpretive frameworks.

Doctrinal Case Study: KPPU Decision No. 18/KPPU-L/2024 (Sany Truck Case)

1. Case Overview and Legal Issues

KPPU Decision No. 18/KPPU-L/2024 addresses concurrent Article 14-19 violations in the context of dump truck dealer agreements containing non-compete restrictions (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2024). The respondents comprised four Sany Group entities: Sany International Development Ltd. (Terlapor I, Hong Kong-based international trading entity), PT Sany Indonesia Machinery (Terlapor II), PT Sany Heavy Industry Indonesia (Terlapor III), and PT Sany Indonesia Heavy Equipment (Terlapor IV), collectively constituting Indonesian importers and distributors. The complainant, PT Pusaka Bumi Transportasi, operated as an authorized dealer within Sany's Indonesian distribution network. The case involved a vertically integrated structure spanning multiple production and distribution stages. Sany Group's manufacturing facilities in China produced dump trucks, which Terlapor I (Hong Kong international trading entity) procured and distributed internationally. Terlapor II, III, and IV imported dump trucks into Indonesia and established dealer networks through distribution agreements. PT Pusaka Bumi Transportasi and other dealers sold trucks to end consumers in Indonesia's mining industry. This vertical structure integrates manufacturing, international trading, import, distribution, and retail functions under common ownership and coordinated control. The dealer agreement between Sany entities and PT PBT contained non-compete clauses prohibiting dealers from selling competing dump truck brands during the 2020-2024 term. Additional contractual terms established sales targets, territorial allocations, and penalty provisions for non-performance. The central legal question concerned whether this integrated structure and non-compete restrictions violated Article 14, Article 19, or both provisions concurrently under Indonesia's Law Number 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Republic of Indonesia, 1999).

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KPPU's final decision found concurrent violations of Article 14 (vertical integration) and Article 19 letters a, b, and d—specifically impeding competitors, customer foreclosure, and discrimination—while finding no violation of Article 19 letter c regarding distribution restraint (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2024). The decision imposed total administrative penalties of Rp. 449 billion: Rp. 360 billion against Terlapor II, Rp. 57 billion against Terlapor III, and Rp. 32 billion against Terlapor IV. This represents Indonesia's largest competition law fine to date, exceeding the previous record of Rp. 49 billion imposed in the 2020 Grab case by nearly tenfold. The decision potentially establishes important precedent for concurrent application methodology in vertical integration cases, though its precedential value will depend on subsequent judicial review and KPPU enforcement practice (Angraini et al., 2024).

2. KPPU's Article 14 Legal Reasoning

KPPU's Article 14 analysis interpreted each statutory element broadly to encompass Sany's integrated structure. Regarding the "agreement" element, KPPU read the dealer agreement between Terlapor I and PT PBT, combined with corporate structure relationships among Terlapor I-IV, as constituting a vertical integration agreement within Article 1(7)'s definition (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2024). This interpretive approach adopted an expansive reading under which formal contractual relationships, together with coordinated conduct among related entities, satisfied Article 14's agreement requirement. Regarding the "controlling production in production chain" element, KPPU found that Sany Group controlled manufacturing in China, international trading through Terlapor I, importation through Terlapor II-IV, and distribution through dealer agreements. KPPU characterized each stage as an "end product of processing or further processing" that satisfies Article 14's definition of the production chain. Manufacturing produced finished trucks, importation processed trucks for Indonesian market entry, and distribution processed trucks for retail sale, collectively constituting an integrated production-distribution chain under KPPU's interpretation.

Regarding the competitive harm element, KPPU found that vertical integration potentially caused unfair competition and societal harm through three mechanisms: market foreclosure, which created barriers for competing dealers unable to access Sany truck supply; supply disruption, which harmed PT PBT's business operations; and reduced product availability, which harmed consumers requiring dump trucks for mining operations. KPPU's analysis emphasized identifying qualitative harm rather than measuring quantitative economic effects.

A critical evaluation of the Perkom 5/2010 application reveals significant analytical gaps. Respondents argued that KPPU's Investigation Report (Laporan Dugaan Pelanggaran) lacked comprehensive capability, incentive, and consumer impact analyses as mandated by Perkom 5/2010, rendering the investigation procedurally defective. Specifically, respondents contended the investigation omitted quantitative market power analysis, profitability calculations of foreclosure strategies, price and output effects measurement, and efficiency gains consideration (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2010). KPPU's position suggested that a three-stage analysis was conducted but not fully documented, with enforcement focusing on qualitative harm assessment rather than the quantitative economic analysis required by the explicit framework of Perkom 5/2010. This approach creates a fundamental doctrinal tension. Article 14's elucidation establishes that vertical integration practices are prohibited if they cause unfair competition or societal harm, thereby requiring a rule-of-reason analysis rather than per se prohibition. Rule of reason inherently requires economic analysis of competitive effects, balancing anticompetitive harms against procompetitive justifications to determine net welfare impact (Lubis et al., 2017). If Article 14 mandates rule-of-reason analysis and rule of reason inherently requires economic analysis of competitive effects, then Perkom 5/2010's three-stage framework should constitute mandatory procedural requirements rather than discretionary guidelines. Omitting the required analysis would render Article 14's rule-of-reason approach effectively unenforceable without a systematic economic assessment methodology. The normative question of Perkom 5/2010's hierarchical status remains contested but legally determinable. As a KPPU regulation implementing statutory provisions, Perkom 5/2010 holds a lower hierarchical position than Law No. 5/1999 itself but a higher position than internal KPPU guidelines that lack regulatory status (Republic of Indonesia, 1999). If KPPU may deviate from self-issued implementing regulations, businesses lack predictable enforcement standards and procedural protections against arbitrary decision-making. Comparative practice suggests that principles of self-limitation and legitimate expectations impose normative constraints on the discretion of competition authorities. In European Union jurisdictions, competition authorities generally follow published enforcement guidelines, guided by the principles of legal certainty and legitimate expectations. However, these operate as normative standards rather than absolute legal requirements, with courts affording

authorities significant enforcement discretion (Brook & Cseres, 2024). While both the EU and US systems balance guideline adherence with prosecutorial discretion, the degree of procedural constraints and judicial oversight of guideline compliance is more developed in these jurisdictions than in current Indonesian enforcement practice.

3. KPPU's Article 19 Legal Reasoning

KPPU's concurrent Article 19 application addressed four distinct behavioral violations under Indonesian Law No. 5/1999. Article 19 prohibits business actors from engaging in activities that cause monopolistic practices or unfair competition through: (a) rejecting or impeding competitors from conducting business activities; (b) impeding customers from engaging with competitors; (c) restraining distribution or sales of goods and services; and (d) engaging in discriminatory practices against specific business actors (Republic of Indonesia, 1999). Under Article 19(a), the KPPU found that a supply disruption and cessation to PT PBT, while maintaining supply to other dealers, constituted impeding specific competitors in conducting business activities. The legal characterization treated differential supply allocation as refusal to deal satisfying Article 19(a)'s prohibition on rejecting or impeding competitors. Evidentiary overlap with Article 14 emerged, as identical conduct—supply control through integrated structures—supported both structural integration and behavioral exclusion findings. This concurrent application approach, while employed by KPPU in multiple enforcement actions, has generated interpretive challenges within the Indonesian judiciary. Under Article 19(b), KPPU found that non-compete clauses preventing PT PBT from offering competing products constituted customer foreclosure. PT PBT's mining company customers were unable to purchase competitor brands through PT PBT because of exclusive-dealing restrictions. KPPU characterized this arrangement as impeding customers from engaging in business relationships with competitors, satisfying Article 19(b)'s customer foreclosure prohibition. Doctrinal tension arises with Article 15's exclusive dealing prohibition, raising the question: what threshold distinguishes Article 15's contractual restraints from Article 19(b)'s market control? KPPU's implicit rationale suggested Article 19(b) applies when exclusivity clauses cause market-wide foreclosure effects rather than merely bilateral contractual restrictions.

Under Article 19(c), the KPPU found that the cessation of supply reduced Sany's dump truck availability in Indonesian markets, thereby constituting an artificial limitation on product circulation and a restraint of distribution that satisfies Article 19(c)'s prohibition. This finding presents doctrinal problems. Sany's integrated entities reduced their own product supply, raising the question: how does a manufacturer-initiated supply reduction violate Article 19(c)'s distribution-restraint prohibition? A possible rationale is market dominance: if Sany held a substantial market share, reducing supply to maintain prices would constitute an artificial scarcity that harms consumers. However, KPPU's decision did not establish Article 25 dominant position violations or calculate precise market shares, thereby weakening the theoretical foundation for the application of Article 19(c). Under Article 19(d), KPPU found differential treatment—supplying other dealers while restricting PT PBT—constituted discriminatory practices against specific business actors. This finding represents KPPU's most defensible Article 19 application, as clear discriminatory conduct (unequal treatment of similarly situated dealers without objective justification) directly satisfies the plain language of Article 19(d). While the statutory elucidation to Article 19(d) states "self-explanatory," the elucidation to Article 19(a) clarifies that rejection or impediment conducted "in an unreasonable manner or for non-economic reasons, for example due to difference in ethnic group, race, social status, and others" is prohibited, providing interpretive guidance applicable across Article 19's discrimination provisions.

KPPU justified concurrent application by distinguishing vertical integration structure (Article 14) as systemic violations from specific exclusionary acts (Article 19 letters a-d) as behavioral violations. The decision's logic treated structure plus conduct as multiple violations warranting separate penalties. This analytical framework permits concurrent findings when integrated structures create anticompetitive capability while specific behaviors implement market foreclosure (Widiyanti et al., 2019). A critical evaluation reveals the strengths and weaknesses of this approach. The strength lies in recognizing conduct possesses multiple legal dimensions—structural integration creating foreclosure capacity and specific behavioral acts implementing foreclosure. The weakness involves a lack of a clear methodology for distinguishing structural harm from behavioral harm and for preventing double penalties for identical anti-competitive effects. Scholarly analysis confirms that "the ambiguity of norms causes various interpretations in the consideration of decisions in the case of vertical integration," with numerous KPPU decisions being annulled by district courts due to these interpretive inconsistencies. This enforcement pattern demonstrates systemic challenges rather than isolated adjudicative errors.

The Sany decision confirms normative ambiguity identified through statutory analysis. Identical facts—integrated vertical structure implementing non-compete restrictions and supply discrimination—support multiple concurrent legal characterizations without clear interpretive criteria distinguishing applicable provisions. This indeterminacy creates unpredictability in enforcement and raises fundamental questions about burden allocation and due process in competition law adjudication.

4. Procedural Analysis: Perkom 5/2010 Compliance

Respondents' procedural challenge centered on deficiencies in the Investigation Report. Respondents argued the LDP (Laporan Dugaan Pelanggaran) was "procedurally defective" (cacat hukum) for lacking comprehensive three-stage analysis mandated by Perkom 5/2010. Specific alleged deficiencies included the absence of a quantitative market power analysis establishing the capability to foreclose, missing profitability calculations demonstrating foreclosure incentives, omitted price and output effects measurements proving consumer harm, and failure to consider efficiency gains justifying integration. The normative status of Perkom 5/2010 requires systematic interpretation. Hierarchically, KPPU regulations that implement statutory provisions rank lower than Law No. 5/1999 itself but function as binding regulatory instruments with greater authority than internal guidelines that lack regulatory character. The regulation explicitly establishes itself as "minimum standards" binding on KPPU and all parties in vertical integration proceedings (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2010). Legal interpretation supports mandatory status for Perkom 5/2010's analytical framework. If Article 14 adopts rule of reason approach per statutory elucidation, and Perkom 5/2010 operationalizes required economic analysis, then the regulation's three-stage framework becomes mandatory for proper Article 14 enforcement (Pasaribu, 2016). Rule of reason analysis inherently requires an economic assessment methodology—competitive harm cannot be proven without analyses of systematic capability, incentives, and welfare effects. KPPU cannot simultaneously claim that Article 14 requires rule-of-reason analysis while treating operationalizing regulations as discretionary.

Non-compliance implications extend to procedural defects, evidentiary insufficiencies, and concerns about legal certainty. Procedurally, Investigation Reports failing to meet regulatory analytical standards constitute defective foundational documents for enforcement actions. Evidentiary insufficiency arises when competitive harm findings lack a systematic economic analysis to support the conclusions. Legal certainty concerns arise when KPPU deviates from published regulations, as businesses lose predictable enforcement standards for structuring vertical relationships. Comparative context reinforces mandatory interpretation. European Union practice establishes that the European Commission operates under self-limitation principles, whereby published guidelines create legitimate expectations for businesses and provide grounds for judicial review when authorities deviate from established enforcement standards (Cuyvers et al., 2022). United States agencies face due process constraints under administrative law requiring better disclosure of evidence, participation rights, and protection of procedural and substantive rights in antitrust enforcement (Yoo et al., 2021). Indonesian practice should adopt analogous principles treating Perkom 5/2010 as binding procedural law, with omissions of required analysis constituting reviewable procedural errors subject to judicial correction.

Comparative Doctrinal Analysis: Vertical Integration Assessment Frameworks

1. Singapore: Rule of Reason with Safe Harbor Threshold

Singapore's competition law framework provides instructive comparative insights as a Commonwealth jurisdiction with legal traditions similar to Indonesia's civil law system. Section 34 of Singapore's Competition Act 2004 prohibits agreements that prevent, restrict, or distort competition. Section 35 and the Third Schedule (Paragraph 9) provide exemptions for agreements promoting economic efficiency when benefits outweigh competitive restrictions, establishing Singapore's statutory rule of reason framework analogous to Indonesian Article 14's approach (Ong, 2015). The Competition and Consumer Commission of Singapore has developed structured guidance on vertical agreements assessment (Competition and Consumer Commission of Singapore, 2016). The CCCS Guidelines on Section 34 Prohibition establish market-share safe harbors, under which vertical agreements between parties with less than 25% market share are unlikely to infringe Section 34. This threshold creates rebuttable presumptions of lawfulness, directing enforcement resources toward high-market-share cases that pose genuine foreclosure risks while providing legal certainty for small and medium-sized enterprises. CCCS's foreclosure analysis framework for vertical restraints requires assessing the restraining party's market power, the ability to foreclose competitors through the restraint, and the likelihood that foreclosure will occur given market conditions. The burden of proof rests with competition authorities to demonstrate these elements.

Parties may rebut prima facie violations by demonstrating pro-competitive benefits, including efficiency gains, quality improvements, or innovation incentives, that outweigh the competitive restrictions. Regarding non-compete clauses specifically, CCCS treats restrictions in vertical relationships as subject to rule-of-reason analysis, considering their duration, necessity for business relationships, and market foreclosure effects. Following principles established in comparable Commonwealth jurisdictions, competition authorities generally permit non-compete clauses with durations up to five years, absent dominant position, reflecting recognition that reasonable duration restrictions protect supplier investments in dealer training, brand development, and market penetration while avoiding permanent foreclosure (UK Competition & Authority, 2022). Transferable doctrinal principles for Indonesian competition law emerge from Singapore's structured approach. First, adopting a market-share threshold would enhance legal certainty in Indonesia. Indonesia could incorporate 25-30% safe harbors into the revised KPPU Regulation No. 5 of 2010, creating presumptions that vertical integration by firms below thresholds complies with Article 14, absent hardcore restrictions or demonstrated foreclosure. Second, Singapore's structured sequential analysis—market power assessment, foreclosure ability determination, and efficiency balancing—provides a systematic methodology currently lacking in Indonesian enforcement practice. Third, legal certainty benefits would accrue to businesses operating below thresholds while focusing KPPU resources on genuinely problematic high-market-share integration scenarios (Anggraini et al., 2024).

2. European Union: Block Exemption and Hardcore Restrictions

European Union competition law provides the most developed categorical framework for assessing vertical restraints. Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) prohibits anti-competitive agreements, while Article 101(3) provides exemptions for agreements that promote economic progress and benefit consumers. Commission Regulation (EU) No. 330/2010 (Vertical Block Exemption Regulation or VBER)—subsequently replaced by Regulation (EU) 2022/720, effective June 1, 2022—operationalizes these provisions through automatic exemptions for qualifying vertical agreements (European Commission, 2010). VBER Article 3 establishes the block exemption threshold: vertical agreements are automatically exempt from the Article 101(1) prohibition when each party has less than 30% of the market share in the relevant market. This threshold reflects economic analysis demonstrating that parties lacking substantial market power cannot implement effective foreclosure strategies. The legal effect is an automatic exemption that does not require an individual competition assessment, substantially reducing compliance costs and enforcement burdens. The EU framework distinguishes hardcore restrictions, which are never permitted regardless of market share, from non-hardcore vertical restraints, which are subject to rule-of-reason analysis. Hardcore restrictions include fixed or minimum resale price maintenance, territorial restrictions on active sales, restrictions on end-user sales, and certain selective distribution limitations (European Commission, 2010). These restrictions are excluded from the block exemption due to consensus that competitive harms invariably outweigh any efficiency justifications, establishing them as particularly serious infringements of competition law (Dunne, 2020).

Non-compete clauses receive specialized treatment in EU doctrine. Clauses are generally permitted when the duration does not exceed five years, a restriction is necessary to protect supplier investments in dealer training or brand development, and no foreclosure effects result. Post-termination non-compete obligations face stricter limitations, with maximum one-year duration after agreement termination preventing permanent dealer foreclosure (*Expedia Inc. v Autorité de la concurrence and Others*, 2013). Duration limitations balance supplier interests in protecting investments against dealer autonomy and market access for competing suppliers. EU Guidelines on Vertical Restraints establish a four-step analytical framework for assessing restrictions (European Commission, 2010). Step one calculates market shares to determine whether any party exceeds the 30% threshold. Step two identifies hardcore restrictions triggering per se prohibition. Step three assesses foreclosure likelihood through input foreclosure (limiting competitors' access to inputs) or customer foreclosure (limiting competitors' access to customers) analysis. Step four balances efficiency gains against competitive restrictions through Article 101(3) efficiency defense. Article 101(3) efficiency defense requires four cumulative conditions to be satisfied. Business actors bear the burden of proving: (1) efficiency gains, including cost reductions or quality improvements, (2) consumer benefits through pass-through of efficiency gains, (3) indispensability, showing restrictions are necessary for achieving efficiencies, and (4) that restrictions do not eliminate competition in substantial portions of relevant markets (Organisation for Economic Co-operation, 2023). Once an agreement is found to restrict competition under Article 101(1), undertakings invoking Article 101(3) exemption must demonstrate that all four conditions are met.

Three transferable principles emerge for Indonesian competition law. First, clearer categorization, distinguishing hardcore restrictions (always prohibited) from rule-of-reason restraints (assessed on a case-by-case basis), would enhance legal certainty. Indonesia could establish that non-compete clauses exceeding five years constitute hardcore restrictions subject to per se prohibition, while clauses of five years or less are subject to rule-of-reason analysis, considering necessity and foreclosure effects. Second, the 30% market-share threshold provides objective bright-line rules that reduce interpretive discretion and the unpredictability of enforcement. Third, structured burden allocation—where the competition authority proves an Article 101(1) violation, and the business actor must present an Article 101(3) efficiency defense demonstrating all four cumulative conditions—ensures procedural fairness absent in current Indonesian practice.

3. United States: Chicago School Efficiency Presumption

United States antitrust doctrine reflects substantial Chicago School economic influence, emphasizing the efficiency-enhancing properties of vertical restraints. Section 1 of the Sherman Act prohibits contracts, combinations, and conspiracies in restraint of trade, applying to vertical agreements between manufacturers and distributors (Sherman Antitrust Act., 1890). Supreme Court jurisprudence has evolved from a per se prohibition of many vertical restraints to a comprehensive rule-of-reason analysis that presumes pro-competitive effects. *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977), established the foundational rule-of-reason doctrine for non-price vertical restraints, overruling the prior per se standard. The Court held that territorial restrictions and other non-price restraints must be assessed under rule-of-reason analysis rather than per se prohibition, reasoning that vertical restraints may enhance interbrand competition (competition between different brands) even while restricting intrabrand competition (competition between dealers of the same brand). The economic rationale emphasized that vertical restraints encourage dealer investments in promotional activities, customer service, and brand development by protecting dealers from free-riding competitors. *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007), extended rule of reason treatment to resale price maintenance (RPM), overruling nearly a century-old per se prohibition established in *Dr. Miles Medical Co. v. John D. Park & Sons Co.* The Court reasoned that RPM may generate pro-competitive benefits including incentivizing dealer services, facilitating market entry for new products, and reducing intrabrand free-riding. This jurisprudential evolution reflects presumption that vertical restraints are presumptively lawful absent clear proof of anti-competitive harm.

United States Department of Justice and Federal Trade Commission Vertical Merger Guidelines (2020) formalize efficiency presumption in vertical integration contexts (U.S. Department of Justice & Federal Trade Commission, 2020). The Guidelines establish an analytical framework that requires market definition and concentration assessment, articulation of foreclosure theory (input foreclosure or customer foreclosure), demonstration of market power, and consideration of efficiency. The enforcement agencies have indicated they are unlikely to challenge mergers and integrations by firms with less than 20% market share absent extraordinary circumstances, creating a de facto safe harbor below this threshold. Foreclosure analysis standards allocate heavy burdens to plaintiffs, reflecting theoretical and empirical understanding of vertical integration effects. Government enforcement or private plaintiff litigation must prove three elements: market power by integrating parties, a foreclosure mechanism whereby integration creates barriers to competitors' market access, and the absence of offsetting efficiencies that would justify integration. This burden allocation reflects presumption favoring vertical integration as efficiency mechanism, departing from European Union's more balanced approach (Pitofsky & Robert, 2008). Two transferable principles emerge for Indonesian competition law. First, recognizing the distinction between interbrand and intrabrand competition would enrich analyses of Indonesian enforcement. Non-compete clauses restricting intrabrand competition (preventing dealers from selling the same brand through competing channels) may be justified when they enhance interbrand competition by encouraging dealer investments that promote brands against competitors. Indonesia's framework should incorporate this dynamic efficiency consideration, which is absent from current enforcement practice. Second, rebuttable presumptions favoring integration below market-share thresholds would align Indonesian practice with the international consensus that low-market-share integration rarely produces foreclosure harms that justify prohibition. Important limitations must be noted. United States doctrine heavily prioritizes efficiency over distributional concerns reflecting Chicago School ideological commitments. Indonesian statutory framework balances efficiency with additional objectives including equal business opportunities for small-scale actors and consumer protection ((Republic of Indonesia, 1999)). Direct transplantation of United States efficiency presumptions would conflict with Indonesia's statutory mandates, which require adaptations to preserve distributional equity.

4. Comparative Synthesis

Functional comparative analysis extracts four transferable principles compatible with Indonesian legal frameworks. First, market share safe harbors consistently appear across analyzed jurisdictions as threshold mechanisms for distinguishing agreements warranting detailed scrutiny from those presumed competitively benign. The EU Vertical Block Exemption Regulation establishes a 30% market share threshold for automatic exemption of vertical agreements under Article 101(3) TFEU, while Singapore's Competition and Consumer Commission applies a 25% threshold for agreements between non-competitors (European Commission, 2022; Competition and Consumer Commission of Singapore, 2016). Although the United States does not maintain formal market-share safe harbors for vertical integration comparable to the EU and Singapore frameworks, U.S. enforcement practice generally subjects vertical arrangements by firms with modest market positions to less-intensive review under rule-of-reason analysis. Indonesia should consider adopting a 30% threshold, aligned with EU practice in the revised Perkom 5/2010, to create rebuttable presumptions that vertical integration by firms below this threshold complies with Article 14, absent hardcore restrictions or demonstrated foreclosure effects. Second, duration limitations on non-compete clauses provide categorical clarity in distinguishing reasonable contractual protection from anticompetitive foreclosure. EU competition law permits non-compete obligations with maximum duration of five years to benefit from block exemption, recognizing that reasonable temporal limits protect supplier investments in relationship-specific assets without creating permanent market foreclosure (European Commission, 2010). Beyond five years, non-compete obligations are assessed individually under Article 101(1) and (3) criteria, with extended durations requiring substantial efficiency justification. Indonesia should incorporate analogous temporal distinctions in amended implementing regulations, establishing presumptive permissibility for clauses of five years or less, while requiring enhanced scrutiny and a demonstration of efficiency for longer durations.

Third, structured foreclosure analysis frameworks are universally present in mature competition law systems. Modern economic analysis of vertical foreclosure requires sequential assessment examining: (1) market power in upstream or downstream markets; (2) technical ability to foreclose rivals through denial of access to critical inputs or customers; (3) economic incentive to sacrifice short-term profits from rival foreclosure to achieve long-term monopolization gains; and (4) net welfare effects balancing potential efficiencies against competitive harm (Rey & Tirole, 2007). This framework structures the analysis mandated by KPPU Regulation No. 5/2010 for Article 14 cases. Indonesia should elevate this systematic analytical approach to binding procedural requirement rather than discretionary guidance, ensuring consistent application across enforcement proceedings and providing business actors with greater certainty regarding analytical standards. Fourth, efficiency defense availability with explicit burden allocation promotes procedural fairness while maintaining enforcement efficacy. EU Article 101(3) permits undertakings to rebut prima facie anticompetitive findings by demonstrating that agreements generate objective economic benefits—including technical or economic progress and consumer welfare gains—that outweigh competitive harm, with undertakings bearing the burden of establishing all four Article 101(3) criteria (Kalintiri, 2015). Similarly, U.S. rule-of-reason analysis permits respondents to introduce efficiency justifications, though the burden-shifting dynamics depend on the strength of the plaintiff's prima facie case. Indonesian enforcement practice should formalize analogous procedures through amended KPPU regulations, clarifying that business actors may present efficiency evidence to rebut allegations of violations of Article 14. At the same time, KPPU retains ultimate burden of proving net competitive harm and societal detriment.

The functional compatibility assessment demonstrates substantial alignment between the extracted principles and Indonesian legal foundations. Article 14's statutory language prohibits vertical integration agreements "which may potentially cause unfair business competition and or may be harmful to society," establishing an effects-based analytical framework rather than per se prohibition (Republic of Indonesia, 1999). The Article 14 Elucidation acknowledges the potential for efficiency, noting that "vertical integration practices may result in low priced goods and services," while emphasizing prohibition where practices "cause unfair business competition and or are harmful to society." Although this formulation does not establish a comprehensive rule-of-reason framework with structured efficiency defenses comparable to Article 101(3) TFEU, it provides a textual foundation for an effects-based analysis that incorporates welfare considerations. Proposed amendments would operationalize these latent analytical requirements through explicit procedural frameworks and evidentiary standards, enhancing consistency with international best practices while respecting Indonesia's distinctive statutory objectives, which balance allocative efficiency with distributive equity and comprehensive consumer protection.

Proposed Normative Clarification Framework

1. Interpretive Criteria for Distinguishing Article 14 and Article 19

Resolution of identified normative ambiguities requires a systematic interpretive framework that establishes clear criteria for legal characterization. The proposed framework adopts primary versus residual application principles addressing when provisions apply independently or concurrently, consistent with Indonesian competition law's rule of reason approach that requires interpretation considering competitive factors and market effects (Lubis et al., 2017). Article 14 should serve as the primary provision when conduct centers on structural integration through agreements creating unified production-distribution chains. Three indicators establish Article 14 primacy: multiple agreements forming integrated networks (manufacturing-import-distribution-retail relationships), corporate structures showing ownership or control across production chain stages, and strategic intent to control vertically related markets (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2010). When these indicators are present, Article 14 provides the appropriate legal basis for addressing structural foreclosure inherent in integrated arrangements. The regulation requires a three-stage analysis examining capability (market power across production stages), incentive (benefits from foreclosure), and consumer impact (harm to market-wide welfare) to establish violations of vertical integration.

Article 19 should apply concurrently when integration is implemented through specific exclusionary acts targeting particular competitors or dealers beyond structural integration's inherent effects. Three indicators establish Article 19 concurrent application: discriminatory treatment providing some dealers preferential terms while restricting others without objective justification, refusal to deal with specific market participants based on non-commercial criteria, and artificial output restrictions harming market-wide availability beyond legitimate inventory management (Republic of Indonesia, 1999). Article 19 applies on its own when exclusionary conduct occurs outside integrated structures, such as when non-integrated firms discriminate against dealers in spot market transactions. Evidentiary differentiation criteria clarify appropriate charging decisions. KPPU should charge only Article 14 when conduct constitutes structural integration without discrete exclusionary acts exceeding integration's inherent effects. For example, a manufacturer establishing a wholly-owned distribution subsidiary (vertical integration) while supplying all independent dealers equally involves integration without discrimination, warranting Article 14 application alone. KPPU should charge only Article 19 when conduct constitutes specific exclusionary acts outside integrated structures. For example, a non-integrated wholesaler refusing to supply a particular retailer on discriminatory grounds constitutes behavioral exclusion without structural integration, warranting an Article 19 application alone.

KPPU should charge both Article 14 and Article 19 when integration structure coexists with additional discriminatory or exclusionary conduct. Although not explicitly codified in regulations, KPPU practice demonstrates the requirement to establish separate competitive harms: Article 14 harm from market-wide foreclosure through integrated control and Article 19 harm from discrete damage to specific competitors beyond structural foreclosure. For example, vertical integration that forecloses competitors' access to input (Article 14), combined with a discriminatory refusal to supply a particular dealer without objective justification (Article 19(d)), involves two distinct competitive harms that support concurrent application. Non-compete clause characterization requires decision-tree analysis. Question one asks whether the non-compete clause forms part of a vertical integration agreement. Affirmative answers suggest Article 14 consideration, while negative answers suggest Article 15 or Article 19. Question two asks whether the clause causes foreclosure effects beyond bilateral contractual restraint. Affirmative answers indicate Article 14 or Article 19(b) applications, while negative answers suggest Article 15 exclusive dealing analysis. Question three asks whether the clause discriminates among dealers. Affirmative answers support Article 19(d) applicability, while negative answers limit analysis to Article 14 or Article 15. Question four asks whether the clause duration is five years or less and reasonably necessary to protect supplier investments. While not explicitly codified in Indonesian Law No. 5/1999, the five-year threshold reflects international best practice from EU competition law's Vertical Block Exemption Regulation, which exempts non-compete obligations limited to five years maximum duration (European Commission, 2010). Affirmative answers suggest likely lawfulness with efficiency justification, while negative answers suggest likely unlawfulness. The application to the Sany case demonstrates the framework's operation. Sany Group's integrated structure (manufacturer-importer-distributor) controlling production chains constitutes a structural violation under Article 14. Supply cessation to PT Pusaka Bumi Transportasi (PT PBT) while supplying other dealers constitutes a specific refusal to deal, separate from structural integration, supporting the application of Article 19(a). Discriminatory treatment of PT PBT, including shortened payment terms compared to affiliated

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entities, represents a discrete behavioral violation supporting Article 19(d) (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2024). The decision, imposing a total of IDR 449 billion in fines, confirms that concurrent application is justified when KPPU proves that Article 19 violations caused additional harm beyond Article 14's structural foreclosure.

2. Proposed Regulatory Clarification: Perkom 5/2010 Amendments

Identified doctrinal gaps require specific regulatory amendments enhancing enforcement clarity and consistency. Four priority amendments address core normative ambiguities. Amendment 1 proposes market share safe harbor stating: "Vertical integration by business actors with market share below 30% in both upstream and downstream relevant markets shall be presumed compliant with Article 14, unless: (a) Integration involves hardcore restrictions including fixed resale prices or indefinite non-compete clauses exceeding five years; or (b) Demonstrable foreclosure effects are proven through comprehensive capability and incentive analysis." The rationale aligns Indonesian practice with international standards: the European Union applies a 30% market share threshold under its Vertical Block Exemption Regulation for presuming the legality of vertical agreements (European Commission, 2022), while Singapore employs a 25% threshold for agreements between non-competing businesses. This approach reduces enforcement costs for low-risk cases and provides legal certainty for small and medium-sized enterprises lacking market power to implement effective foreclosures.

Amendment 2 proposes non-compete clause guidelines establishing permissibility criteria and categorical prohibitions. Permissible clauses would include those with durations of five years or less, a demonstrable need to protect supplier investments in dealer training or brand development, the absence of demonstrable foreclosure effects that harm competitors' market access, and objective business justifications for distinguishing treated dealers based on performance or investment levels. The five-year duration aligns with EU competition law treatment of non-compete obligations in vertical distribution agreements under block exemption provisions. Prohibited clauses would include those with indefinite duration or exceeding five years, lacking a necessary basis for legitimate business purposes, producing demonstrable foreclosure effects that prevent competitors from accessing distribution channels, and discriminating among dealers without objective justification. The rationale distinguishes legitimate restraints that protect pro-competitive investments from anti-competitive restrictions that foreclose markets, balances supplier interbrand competition interests against dealer autonomy, and provides clear compliance standards that reduce legal uncertainty.

Amendment 3 proposes mandatory three-stage analysis stating: "In assessing Article 14 violations, KPPU shall conduct and document in Investigation Report: (1) Capability Analysis assessing market power in upstream/downstream markets including market share calculations, barriers to entry evaluation, and countervailing power examination; (2) Incentive Analysis examining integrated firm's economic incentives to foreclose competitors, comparing foreclosure profitability against continued supply relationships; (3) Consumer Impact Analysis assessing net welfare effects including consumer harm from reduced competition, efficiency gains from integration reducing costs or improving quality, and pass-through of efficiency gains to consumers. Absence of comprehensive three-stage analysis renders Investigation Report procedurally deficient." This framework codifies existing analytical requirements under KPPU Regulation No. 5/2010, which mandates assessing an undertaking's ability to use market power, the incentive to engage in anticompetitive actions, and the negative impact on consumer welfare (Dewi et al., 2023). The three-stage approach mirrors the European Commission's methodology for assessing foreclosure in non-horizontal mergers, which examines ability to foreclose, incentive to foreclose, and likely impact on effective competition. The rationale clarifies that Perkom 5/2010 is binding procedural law rather than discretionary guidance, ensures the consistent application of Article 14's rule of reason standard, and provides a basis for judicial review of KPPU procedural compliance.

Amendment 4 proposes concurrent application guidelines stating: "Where conduct involves both vertical integration (Article 14) and market control activities (Article 19), KPPU shall: (a) Apply Article 14 as primary basis for structural integration effects creating foreclosure capacity; (b) Apply Article 19 for additional discrete exclusionary conduct with distinct evidentiary basis beyond structural integration effects; (c) Ensure penalties do not duplicate sanctions for identical anti-competitive effects; (d) Demonstrate in Investigation Report that Article 14 and Article 19 violations cause separate competitive harms justifying concurrent penalties." This addresses existing enforcement practice, as KPPU regularly investigates multiple antitrust violations simultaneously within the same proceeding, including documented cases involving concurrent application of Article 14 vertical integration prohibitions and Article 19 discrimination provisions. The rationale resolves normative ambiguity in

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concurrent application, prevents arbitrary enforcement and double-counting of identical effects, and ensures that penalties are proportional to actual competitive harm.

The implementation pathway requires a KPPU Commission Decision amending Perkom 5/2010 through the regulatory process. Effective implementation should include consultation with business associations and legal practitioners ensuring practical workability, publication of illustrative case examples demonstrating application to common vertical restraint scenarios, and transitional provisions allowing existing vertical agreements reasonable adjustment periods for compliance with amended standards.

CONCLUSION

This research demonstrates substantial normative ambiguity in the concurrent application of Article 14 (vertical integration) and Article 19 (market control) under Indonesian Law No. 5/1999 when dealer agreements contain non-compete clauses. Analysis of KPPU Decision No. 18/KPPU-L/2024, which imposed Indonesia's largest competition law fine of Rp. 449 billion, identifies three critical uncertainties: distinguishing agreement-based versus activity-based prohibitions, separating structural foreclosure from behavioral exclusion, and characterizing non-compete clauses that simultaneously satisfy multiple provisions. Comparative analysis reveals transferable principles from Singapore, the European Union, and the United States, including market-share safe harbors (25-30% thresholds), duration-based assessments (five-year maximum presumptive legality), and structured three-stage foreclosure analyses. This research advances Indonesian competition law scholarship through four original contributions: developing the first comprehensive framework analyzing Article 14-19 normative interaction, establishing interpretive criteria distinguishing structural from behavioral violations, enriching discourse through functional comparative analysis of mature competition law systems, and proposing a normative clarification framework with four priority amendments to Perkom 5/2010 introducing market-share safe harbors, duration guidelines, mandatory three-stage analysis requirements, and concurrent application protocols. Five methodological limitations require consideration. First, this study employs exclusively doctrinal legal methodology without empirical data collection or field research. Second, reliance on a single case study may not represent KPPU's full interpretive approach across diverse contexts. Third, comparative analysis is limited to three jurisdictions, excluding other potentially instructive frameworks. Fourth, the research focuses on normative legal analysis rather than quantitative economic modeling of foreclosure effects. Fifth, the study does not examine judicial review patterns in Indonesian courts addressing concurrent Article 14-19 applications.

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