

**MECHANISM OF EXAMINATION AND PROOF IN THE SETTLEMENT
OF BUSINESS COMPETITION DISPUTES BY THE BUSINESS
COMPETITION SUPERVISORY COMMISSION (STUDY OF DECISION
No.04/ICC- I/2016)**

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ABSTRACT

Healthy business competition is an important element in realizing a fair and efficient economy. However, in practice, there are still violations of business competition laws, especially the practice of pricing that has the potential to cause unfair business competition. To enforce these provisions, Law Number 5 of 1999 establishes the Business Competition Supervisory Commission (ICC) as an independent institution that is authorized to conduct examinations and proofs of business actors who are suspected of violating the provisions of the competition law. This study aims to analyze the mechanism of examination and proof by ICC in resolving business competition disputes through a study of Decision Number 04/ICC-I/2016. The research method used is normative legal research with a legislative approach and a case approach.

The results of the study show that the examination and proof mechanism carried out by ICC has been carried out in accordance with the provisions of the applicable laws and regulations. In the process, ICC uses evidence in the form of witness statements, expert statements, letters and documents, instructions, and statements from business actors, including the application of indirect evidence in pricing cases. Decision No. 04/ICC-I/2016 shows that the use of indirect evidence can strengthen the confidence of the commission panel in proving the existence of violations, although in practice there is still debate regarding evidentiary standards and legal certainty for business actors.

Keywords: Business Competition, ICC, Examination,

A. Introduction

Indonesia, which is a developing country, continues to strive to advance the national economy, one of which is by participating in global trade. This policy encourages the flow of

goods and services from abroad to the domestic market. In the midst of globalization and advances in digital technology, trade between countries has become a must and makes it easier for foreign business people to operate and influence the market in Indonesia. This causes economic activities in the country to be carried out not only by local actors, but also by foreign actors (Endik & Wahyu, 2021).

Business competition is a crucial element in the market economy because it can increase efficiency, encourage innovation, and provide a wide selection of products that are beneficial to consumers. However, in practice, this competition is often carried out in an unhealthy way, one of which is through the practice of joint pricing or price fixing among business actors.

This practice is contrary to the ideal of healthy competition, which should lower the price of goods or services and provide benefits to consumers. In accordance with article 11 of Law No. 5 of 1999 concerning Antimonopoly, the agreement is made by competing business actors with the intention of influencing the price and regulating the production and marketing of a good or service, which can ultimately lead to monopolistic practices (Putri et al., 2020). To prevent these harmful practices, the government then passed Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.

Referring to the mandate of Law No. 5 of 1999, an institution was formed that functions to supervise the implementation of the law, namely the Business Competition Supervisory Commission (ICC). ICC is an independent institution that is not affected by the government and other parties and has the power to carry out supervision of business competition. ICC functions as a Quasi-Judicial institution that has power equivalent to judicial institutions and has the right to impose sanctions. (Ridel, 2020).

The settlement of business competition disputes at the initial stage is carried out outside the general court by the Business Competition Supervisory Commission (ICC). The authority examines and decides through a commission decision (ICC decision) as a form of supervision and protection of business competition law (Gloria, 2021).

The legal arrangements for the settlement of business competition cases at ICC are regulated in ICC Regulation No. 1 of 2019 which regulates several stages of case settlement, starting from the existence of reports/initiatives, preliminary examinations, decisions on

preliminary examinations, follow-up examinations, local examinations, and decisions (Dwi, 2023) Where the examination process is administrative but contains adjudicative elements.

In the process of handling business competition cases, it is often necessary to examine a very large number of documents that require significant time, energy, and costs, while the law has set a time limit for resolving cases, which is about five months at the ICC level and about two months each at the District Court and the Supreme Court. In such limited time conditions, especially in cartel cases carried out behind closed doors, the evidence used is often indirect evidence because it is difficult to obtain direct evidence of agreements between business actors. (Liani, 2023) So that proof requires economic analysis and market behavior to assess the existence of anti-competitive agreements or practices.

The limited time available has also caused the process of handling business competition cases not to be carried out optimally, and it is not uncommon in the process of proving that it often takes shortcuts, which are sometimes not in accordance with the rules that apply in business competition law in general.

ICC has great authority in the enforcement of competition law, but institutionally it is not a judicial institution. In practice, ICC's decisions are often objected to in court, where data shows that the majority of ICC decisions are objected to in court by reported business actors (Irna, 2023). This condition has caused a debate about legal certainty and the protection of the rights of business actors, especially related to the effectiveness of ICC decisions and the legal position of ICC in the business competition justice system in Indonesia.

This condition shows that there are fundamental problems in the competition law enforcement system in Indonesia, especially related to the balance between the effectiveness of law enforcement and the protection of the rights of business actors. On the one hand, ICC is required to act quickly and decisively in cracking down on unfair business competition practices in order to maintain a healthy business climate. However, on the other hand, broad authority and strict examination time limits have the potential to cause procedural problems in the examination and proving case process. This issue becomes increasingly crucial when ICC uses indirect evidence that requires high caution so as not to cause legal uncertainty for business actors.

ICC Decision Number 04/KPPU-I/2016 related to the alleged pricing of two-wheeled vehicles between Yamaha and Honda is used as a decision study in this study. Although the case concerns the alleged price cartel in the 110-125 cc automatic two-wheeled vehicle segment

controlled by the two business actors, the discussion is not focused on proving the substance of the cartel alone, but is directed to assess the examination and proof mechanism carried out by ICC. Through this decision, it can be analyzed how ICC exercises its examination authority, uses evidence, and prepares legal considerations within the time limit determined by laws and regulations, as well as assesses the procedural challenges faced by ICC in producing decisions that have legal force and legal certainty.

The selection of ICC Decision Number 04/ICC-I/2016 as the object of the research was based on the consideration that the case not only had an economic impact, but also had a high legal significance in the development of business competition law in Indonesia. This decision is one of the important examples of the application of cartel evidence based on indirect evidence by ICC, which is then tested through the objection mechanism in court. Therefore, the research on the examination and evidentiary mechanism in this decision is relevant to assess the extent to which the procedures applied by ICC are in line with the principles of procedural justice, legal certainty, and the protection of the rights of business actors in the national competition legal system.

Based on the above description, the author feels that this issue needs to be studied in depth with the consideration that to obtain benefits can be practiced by adhering to the existing legal rules. So this research is entitled "**Examination and Proof Mechanism in the Settlement of Business Competition Disputes by the Business Competition Supervisory Commission (Study Decision No.04/KPPU-I/2016)**"

B. Research Methods

A study cannot be called research if it does not have a research method.¹ Research methods are one of the factors of a problem that will be discussed. The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.²

C. Discussion

¹ Hanifah, I., Hariyanto, H., Ginting, L., Koto, I., & Syafriana, R. (2026). Legal Protection of Indonesia's Fisheries from Foreign Investment: A Social-State Approach. *Jurnal IUS Kajian Hukum dan Keadilan*, 14(1).

² Simatupang, R. S. A., Hanifah, I., & Mansar, A. (2025). The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 3554-3462.

1. The Mechanism for Examining Business Competition Cases Applied by the Business Competition Supervisory Commission in Decision Number 04/ICC/2016)

Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is the main legal basis for the Business Competition Supervisory Commission (ICC) in carrying out the function of supervision and enforcement of business competition laws in Indonesia. This law is a product of legal reform that aims to maintain a fair, competitive, and non-discriminatory business climate, and affirms the establishment of ICC as an independent institution tasked with ensuring the creation of healthy and fair business competition.

As a legal instrument, Law No. 5 of 1999 contains a prohibition on various forms of monopolistic practices and unfair business competition, including conspiracy, exclusive market domination, and price-fixing practices that have the potential to harm other business actors and consumers. To anticipate and take action against these practices, this law gives ICC the authority to conduct supervision and inspections, and law enforcement against alleged violations of business competition provisions (Iqbal, 2024).

Based on Article 35 and Article 36 of Law Number 5 of 1999, the Business Competition Supervisory Commission (ICC) has a fairly broad authority, namely not only to supervise and assess the activities of Business Actors, but also to be authorized to receive reports, conduct investigations and examinations of alleged violations of business competition, and impose administrative sanctions on business actors who are proven to violate the provisions of business competition. Thus, The process of examining cases by ICC has juridical legitimacy that comes directly from the law (Gloriya, 132).

2. Proof Mechanism Used by the Business Competition Supervisory Commission in Decision Number. 04/KPPU-1/2016

Proof is one of the crucial aspects in the process of enforcing business competition laws. In the absence of valid and convincing evidence, an act of infringement cannot be legally established, even if the act has substantially caused harm to the market and consumers. In the context of competition law, the proof mechanism is not only legal formal, but also contains elements of economic analysis to show the negative impact on market structure, economic efficiency, and consumer welfare.

In proving at ICC, interested parties are not only limited to the complainant. The Commission Panel has the authority to determine which party is burdened with the burden of proof, both the complainant and the Reported Business Actor. Thus, the evidentiary system in business competition cases does not adhere to a rigid division of the burden of proof.

The task of the inspection team or the Commission Assembly is to investigate whether the legal relationship that is the subject of the case really exists or not. The legal relationship must be proven before the Commission, while the prosecution investigator and the Reported Party are obliged to submit the necessary evidentiary materials to assist the Commission Panel in assessing whether or not the alleged violation is proven.

In principle, proof is only required for matters that are denied by the Reported Party. If a postulate or fact is not refuted by the Reported, then no further proof is required. This principle is in line with Article 163 of the Herziene Indonesisch Reglement (HIR), which states that whoever claims to have a right or proposes an event to strengthen his rights or deny the rights of others, then the party is obliged to prove the truth of the event or the right he has stated.

In the evidentiary system, the Commission Panel has full authority to determine the validity of evidence, including the authority to assess the extent to which evidence can be categorized as instructive evidence that can be used in trial. Thus, the Commission Assembly has the right to determine whether evidence has relevance and force

proof in order to prove the elements of violation of business competition law (Miftahul, 2021).

3. The Application of the Principles of Due Process of Law and Rights Defense of the parties in the examination and proof process on ICC Decision Number 04/ICC-I/2016

The principle of procedural justice (due process of law) is one of the fundamental principles in the state of law that requires that every law enforcement process be carried out based on legal, fair, transparent, objective procedures, and provides protection for the rights of the parties. This principle does not only emphasize the final result in the form of a verdict, but rather focuses on how the examination and proof process is carried out. In the context of business competition law, the principle of due process of law is very important considering that the Business Competition Supervisory Commission (ICC), although institutionally qualified as an administrative institution, carries out the function of examining and deciding cases that are

quasi-judicial in nature and have direct implications for the legal rights and interests of business actors.

Normatively, the existence and authority of ICC as a quasi-judicial institution is regulated in Law Number 5 of 1999, which gives ICC the authority to conduct investigations, examinations, assessments of evidence, and impose administrative sanctions. However, this broad authority must be exercised while upholding the principle of procedural justice so as not to give the impression that ICC acts as an institution that has absolute power without adequate supervision. Therefore, the application of due process of law becomes

an important instrument in maintaining a balance between ICC's authority and the protection of the Reported Party's rights.

One of the main manifestations of the principle of due process of law is the principle of the right to be heard (*audi et alteram partem*), which requires that each party suspected of committing an offence be given a proper opportunity to present his or her answers, objections, and defences before a verdict is rendered. This principle serves to prevent unilateral decision-making and ensure a balance between the authority of law enforcement agencies and the rights of the Reported Party in the process of examining business competition cases.

In addition, the principle of due process of law also includes the right to a fair hearing, which is an examination that is carried out objectively, non-discriminatory, and in accordance with the procedures and stages specified in laws and regulations. A fair examination requires the Commission Panel to assess all facts and evidence carefully and proportionately, without any presumption of guilt against the Reported. This principle is important given the characteristics of business competition cases that often involve the assessment of market behavior and complex economic analysis.

due process of law also guarantees the right of the Reported Party to submit evidence and witnesses, including expert testimony, as an integral part of the right to defense. The fulfillment of this right is an absolute requirement so that the examination process is not one-sided and so that the Reported Party has an equal opportunity to prove its defense postulates.

Another principle that is inseparable from due process of law is the right to a reasoned decision, which is a decision that is prepared based on clear, rational, and accountable legal considerations. A reasoned decision provides legal certainty for the parties and allows

testing to be carried out through the objection legal remedy mechanism at the Commercial Court.

In ICC Decision No. 04/ICC-I/2016, the examination mechanism has been carried out through the stages of preliminary examination, follow-up examination, deliberation of the Commission Assembly, and reading of the decision. When viewed from the perspective of the procedural law of business competition, these stages have been carried out in accordance with the provisions of Law Number 5 of 1999 and the applicable ICC Regulations. The reported party was given the opportunity to attend the trial, submit statements, present witnesses and/or experts, and submit a written defense and conclusion. This shows that procedurally, the principle of *audi et alteram partem* has been applied by ICC.

Based on the analysis of the ICC decision which is the object of this research, it can be seen that the principle of due process of law as described normatively has been applied in the entire series of case examinations. First, the fulfillment of the principle of *audi et alteram partem* is reflected in the opportunity to be given the opportunity to the Reported Party to submit an answer to the Report of Alleged Violations submitted by the ICC Investigator. The answer is submitted in an examination forum and is considered by the Commission Panel in assessing whether or not there is a violation of the competition law.

Second, from the aspect of fair examination, the process of examining a quo cases is carried out in accordance with the stages of examination regulated in the laws and regulations and internal regulations of ICC. The Commission Panel does not necessarily make a decision based on the initial findings, but first examines the parties' statements, evidence, and facts revealed during the trial.

Third, the Reported Party's right to submit evidence and witnesses has been adequately provided. In the examination process, the Reported Party had the opportunity to present witnesses and/or experts to support its defense arguments. The testimony of witnesses and experts is assessed and considered by the Commission Panel along with other evidence, so that the evidentiary process is not one-sided.

Fourth, the Reported Party was also given the opportunity to submit conclusions at the final stage of the examination. This opportunity provides space for the Reported Party to summarize all factual and juridical arguments that have been submitted during the trial before the Commission Panel makes its decision. Fifth, from the perspective of transparency and accountability, the examination of cases is carried out openly, except in certain cases as

determined by laws and regulations. The openness of this trial is a manifestation of the principle of procedural justice and allows for public supervision of the examination process.

Furthermore, the Commission Panel in a quo decision has prepared a reasoned legal decision, by systematically describing the facts that are considered proven, the evidence that is considered valid and convincing, and the application of the provisions of Law Number 5 of 1999 to the Reported Party's acts. Thus, the verdict not only contains a verdict, but also a clear and accountable legal argument.

Although procedurally the application of the principle of due process of law in ICC Decision Number 04/ICC-I/2016 has been seen, if analyzed more deeply, there is still room for evaluation in its implementation, especially related to the authority structure of ICC as a quasi-judicial institution. ICC carries out the functions of investigation, prosecution, and termination of cases in one institution, which theoretically has the potential to cause vulnerability to the principle of impartiality. This condition does not necessarily make the ICC decision legally flawed, but requires the application of stricter procedural and evidentiary standards to ensure the objectivity of the Commission Panel in examining and deciding cases.

From the point of view of proof, the use of indirect evidence in the form of economic evidence and communication evidence in a quo case can be understood as a special characteristic of a cartel case that is closed and difficult to prove through direct evidence. However, the use of indirect evidence must be done with caution and accompanied by transparent legal reasoning, given its highly dependent nature on interpretation and analysis of market behavior. From the perspective of due process of law, the standard of proof used must be able to provide sufficient confidence that the conclusions of the Commission Panel are not based solely on assumptions, but on a series of facts that are logically and consistently interrelated.

The aspect of the burden of proof is also an important part in assessing the fulfillment of the principle of procedural justice. In competition law, the burden of proof is not always placed rigidly on one party, but is dynamic in accordance with the development of the facts of the trial. However, this flexibility must still be limited by the principle of protecting the rights of the Reported Party so that there is no implicit reversal of the burden of proof that can harm the Reported Party's position. Therefore, the Commission Panel is required to explicitly explain the basis for the assessment of evidence and juridical reasons in drawing conclusions of violation.

In addition, the limited time of examination as stipulated in Law Number 5 of 1999 also affects the quality of the implementation of due process of law. On the one hand, the time limit is intended to ensure legal certainty and prevent protracted settlement of cases. However, on the other hand, in business competition cases involving complex economic analysis, the time limitation has the potential to limit the deepening of the facts and evidence submitted by the parties. Therefore, the balance between process efficiency and audit quality is an important factor in assessing procedural fairness.

From the perspective of legal certainty, decisions produced through a process that upholds due process of law will have stronger legitimacy and minimize the potential for cancellation in legal remedies for objections in the Commercial Court. Thus, the application of the principle of procedural justice not only serves as a protection of the rights of the Reported Party, but also as an instrument to strengthen the authority and effectiveness of the enforcement of business competition laws by ICC.

By considering the entire series of examinations and proofs in ICC Decision Number 04/ICC-I/2016, it can be concluded that the principle of due process of law has basically been applied in accordance with the applicable legal framework. However, the optimization of the application of these principles still requires strengthening, especially in the aspects of separating law enforcement functions, affirming evidentiary standards, and deepening legal considerations. This strengthening is important to ensure a balance between the effectiveness of law enforcement and the protection of the rights of business actors in the national legal system.

D. Conclusion

The mechanism for examining business competition cases implemented by the Business Competition Supervisory Commission (ICC) in Decision Number 04/KPPU-I/2016 has in principle been implemented in accordance with the provisions of Law Number 5 of 1999 and its implementing regulations. The examination process began from preliminary examination, follow-up examination, deliberation of the Commission Assembly, to the reading of the decision in a session open to the public. The mechanism shows that ICC carries out its functions and authority as a quasi-judicial institution that has the authority to conduct examinations and impose administrative sanctions on business actors who are proven to violate the law on business competition.

The evidentiary mechanism used by ICC in Decision No. 04/ICC-I/2016 does not only rely on direct evidence, but also uses indirect evidence, such as economic evidence and communication evidence. The use of indirect evidence is relevant considering that cartel practices and pricing are generally carried out behind closed doors, making it difficult to prove with direct evidence. In this case, the Commission Panel assessed and related various evidence comprehensively to prove the fulfillment of the elements of violation of Law Number 5 of 1999.

The application of the principle of procedural justice (due process of law) and the right to defend the parties in the examination and proof process in ICC Decision Number 04/ICC-I/2016 has basically been implemented. This can be seen from the opportunity given to the Reported Party to attend the trial, submit responses, submit evidence, present witnesses and experts, and submit conclusions. However, the limited time of examination and the complexity of proving business competition cases remain challenges in realizing an ideal examination process and fully guaranteeing legal certainty for the parties.

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