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COMPARATIVE STUDY ON THE APPLICATION OF EXTRATERRITORIAL JURISDICTION IN COMPETITION LAW BETWEEN INDONESIA AND US ANTI-TRUST LAW

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Abstract: *The USA as a pioneer has published Antitrust Law since the XIX century. Indonesia also has business competition laws which are regulated in Law No. 5 of 1999. However, the scope of the definition of business actors in Indonesia is still very narrow. It does not strictly regulate the extraterritorial principle in Article 1 paragraph 5 so that there are legal loopholes for business actors who are outside the jurisdiction. However, KPPU has already made decisions on business actors domiciled abroad from the case Temasek Holdings, Ltd. (No. 07/KPPU-L/2007) and VLCC (No. 07/KPPU-L/2004). Problem formulation of this research is: how is the definition of a business actor based on Indonesian law and USA law; and how is the application of Extraterritorial Jurisdiction in Indonesia law and USA law? The methodology of this research is normative legal research with library research method by tracing secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Data were analyzed using qualitative analysis. The results of this study, there are differences in the understanding of business actors in Law No.5 of 1999 and Antitrust Law. Uncertainty regarding foreign elements in Law No.5 of 1999 makes judges use "Effect Doctrine" and "Single Economy Entity" in categorizing business actors who are outside the jurisdiction of Indonesia. From the existing problems, the Indonesian government should amend the definition of business actors in Law No. 5 of 1999 and provide the principle of extraterritoriality in the duties and powers of the KPPU.*

Keywords*: application extrateritorrial jurusdiction; competition law; business actor*

1. INTRODUCTION

In the middle of the 21st century, we can experience very rapid economic growth as a result of trade liberalization (Amalya, 2020:172). At the same time, the role of

multinational companies in carrying out cross-border business activities is increasingly important, even occupying a dominant position in several sectors. The main objective of the law on business competition is to prevent conflicts between business actors and to become the basis for legal rules for enforcing regulations in order to create healthy business competition behavior.

At the macro level, currently, there is a tendency for many countries to adopt a free market, where business actors can "freely" meet consumer needs by providing diverse and efficient products (Rokan, 2012:1). Business actors are required to always innovate to create, package, market good quality products, goods, or services to attract consumers so that there is competition (Rokan, 2012:8). The competition will only occur if two business actors offer each other their products with a variety of attractive choices in terms of price, quality, and service (Sabrina, 2020: 128). So that it will create a perfect competitive market atmosphere. However, the existence of this free market can make business actors carry out behaviors that make the market monopolistic or oligopolistic as a manifestation of conditions of unfair business competition. With the impact that can be caused by the existence of a free market, the State uses the legal umbrella to prevent unfair competition behavior.

Indonesia has entered a free market society, so market coverage and economic practices must involve regional and international communities (Fadhilah, 2019: 7). Right after the enactment of Asean Free Trade (AFTA) in the Asian region in 1967, the Indonesian government began to be ready to participate in regional and international trade, especially from a legal umbrella that could protect business competition in Indonesia. Currently, Indonesia has passed the Anti-Monopoly Law on February 18, 1999, in the Plenary Session of the Dewan Perwakilan Rakyat (DPR) at the initiative of the DPR. Then it was promulgated by President Baharuddin Jusuf Habibie on March 5, 1999, which became known as Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Associations (Ibrahim, 2009: 5). State institutions that have authority for the implementation of business competition law in Indonesia are an institution called Komisi Pengawas Persaingan Usaha (KPPU).

Apart from Indonesia, several other countries have already implemented the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition. An example is a country that pioneered the law in the United States of America (USA). In 1980, United States congressional Republican senator John Sherman approved a bill entitled *"Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies"* or better known as the Sherman Act. After going through several amendments to strengthen the applicable law, the food was given a name *"Antitrust Law"*. (Lamaj, 2017: 154) The United States itself has 2 (two) institutions that specifically oversee all matters related to Business Competition, namely the United State Department of Justice (DOJ) and The Federal Trade Commission (FTC), both of which are subject to Competition Law (Economides, et.al., 2020: 20).

Hereinafter referred to as Law No.5 of 1999. The limitations of business actors themselves have actually been regulated in the definition of business actors in Article 1 paragraph 5 of Law No.5 of 1999. However, there are still weaknesses regarding the extraterritorial principle in terms of business actors. Article 1 paragraph 5 does not

clearly explain the status of a business actor who is established and/or runs a business outside the jurisdiction of Indonesia. When compared with the USA Antitrust Law, which clearly regulates the extraterritorial principle in the sense of a business actor, it is felt that it provides legal certainty. However, in this case, the KPPU has already made decisions in cases concerning extraterritorial jurisdiction.

Regarding the alleged dominant position in the ownership of Temasek Holdings, L.td shares (No. 07/KPPU-L/2007) and the alleged Tender Conspiracy Very Large Crude Carrier or VLCC (No. 07/KPPU-L/2004). It is interesting because KPPU is deemed as authorized in this decision and KPPU has also sentenced foreign business actors to witnesses Temasek Holdings, L.td, and VLCC cases. It is not known with certainty how the parameters of the principle of extraterritorial jurisdiction in the definition of foreign business actors in Article 1 number 5 of Law No. 5 of 1999. Because Indonesia in deciding business competition cases refers to Law No. 5 of 1999 so that KPPU in supervising, adjudicating, and deciding the two cases has limitations in defining VLCC and Temasek as business actors because the two companies were not established under Indonesian law, however, the panel of judges who conducted legal discoveries through business law doctrine was Effect Doctrine and Single Economy Entity (SEE) Doctrine (Ali, 2017: 113). Therefore this research, focuses on two main questions, as follows:

1) How is definition of a business actor based on Indonesian competition law and USA Antitrust Law?
2) How is the application of extraterritorial jurisdiction in the Indonesian competition law and USA Antitrust Law?

2. METHODS

The method of research used in this study is normative legal research, regarding the positive legal norms that exist and apply in Indonesian legislation and society. This research will focus on the application of the principle of extra-territorial jurisdiction to business actor in competition law by analyzing the KPPU's decision in the Temasek Holdings case L.td and VLCC, which will then be compared with the US Antitrust Law, as well as to obtain data sources contained in libraries, legal journals, websites and so on. The source of data used in this study are secondary data obtained indirectly through library research, which legal materials consist of:

a. Primary legal materials, namely materials which are binding in nature related to the object of research.
b. Secondary legal materials, namely legal materials that serve to explain primary legal materials such as doctrinal or expert opinions, books, Criminal Code literature, legal journals, and electronic data.
c. Tertiary legal materials, namely legal materials obtained which function to explain primary legal materials and secondary legal materials consisting of Encyclopedia and Black's Law Dictionary.

In order to obtain the necessary data, researchers collected data in the following ways: (1) Literature study, namely by examining various laws and regulations or

literature related to the problem under study; (2) Electronic media, namely internet sites with sources of e-journals and e-books related to local law, especially limited liability law, In addition the method of the data collection uses document studies, which means the data are collected by learning from the document in taking the data or information, which is related to the related to the research. The research approach method used is a normative juridical based on one or two interrelated variables on general theories or concepts that are applied to explain a set of data with other data sets.

3. RESULTS AND DISCUSSION

3.1. General Overview of Competition Law

3.1.1 Competition Law in Indonesia

The IMF is willing to assist with US$ 43 billion on the condition that Indonesia must implement economic reforms and governing Economic Laws (Usman, 2013:2). However, the agreement between the Indonesian government and the IMF was not the only reason for the drafting of the Antimonopoly Law (Lubis, 2017: 12). First, based on the socio-economic foundation. Due to the imbalance of government attention between conglomerates and small business people. Second, based on the juridical basis. Regulations regarding business competition already exist in various laws, but they are not yet harmonious and complete. Third, based on Political and International. The political will of elite businessmen became an obstacle to the formation of the business competition law during the New Order. (Rokan, *op.cit*., 17)

The legislature proposed the Anti-Monopoly Law by exercising its right of initiative on February 18, 1999. Likewise with the enactment of the Decree of the Majelis Permusyawaratan Rakyat (MPR) Number X/MPR/1998 and MPR Decree Number XVI/MPR/1998. Then it was promulgated by President Baharuddin Jusuf Habibie on March 5, 1999, known as Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Associations. The regulation consisting of 11 Chapters and 53 Articles which cover the legal material for business competition contained in Law No.5 of 1999 (Usman, *op.cit*., 6).

The settings section is regulate prohibited agreements, such as Oligopoly, price fixing, zoning, boycotts, cartels, trusts, oligopsony, vertical integration, closed agreements, and agreements with foreign parties. Then the activities that are prohibited, such as Monopoly, Monopsony, Market Control, Conflict, and Dominant Position (Wifiya, 2014: 668). To maintain the enforcement of regulations, the State needs to give special authority to implement regulations in the field of business competition or by another name auxiliary state organ. KPPU is an auxiliary state organ is a State institution formed outside the constitution and is to assist in the implementation of the main tasks of the State institution. Compared with the courts, in settling business competition laws, it is necessary to have people who understand very well the business and market mechanisms. KPPU which is an independent body, has also regulated this matter in the provisions of Article 30 paragraph of Law No. 5 of 1999

which was later confirmed in Article 1 paragraph (2) of Presidential Decree No. 75 of 1999 as amended in KPPU Regulation No. 1 of 2019. Responsible to the President this is also explained in the KPPU Regulation No. 1 of 2014. KPPU can act as an Investigation Function, investigator, examiner, prosecuting, function, adjudication, and also consultative function (Laila, 2017: 69). According to Article 2 of KPPU Regulation No. 1 of 2015, KPPU has the function of supervising and enforcing laws prohibiting monopolistic practices and unfair business competition, as for the main duties as stipulated in Article 35 of Law No.5 of 1999. KPPU's has authority that is regulated in Article 36 divided into two, namely passive and active authority (Rokan, *op.cit*., 278).

3.1.2. USA Antitrust Law

USA is the country that pioneered the establishment of the business competition and anti-monopoly law in 1980 (Knebel, 2017: 183). This was motivated by the advancement of the industrial sector in the XIX century which resulted in economic development. Besides, there are two factors that can be the reasons behind the birth of the Antitrust (Susanti, 2014: 67). First, Economic Factors. This imbalance occurs where the dominant position has the power to dominate the market economy public (*ibid*, 70). Second, the Philosophical Factor. Departing from the ideology of the USA itself which embraces Liberal Capitalist by upholding the freedom of every person in trying to get what he wants (*ibid*, 67).

USA has several regulations regarding business competition called the Antitrust Law. The law was proposed by Senator from the Republican Party John Sherman as former Minister of Finance in 1980 under the name "*Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies*" (Lamaj, 2017: 155). Previously, this law was better known by "Sherman Act" and this law has undergone several amendments in the following order: Sherman Antitrust Act (1980), Clayton Act (1914), Federal Trade Commision Act (1934), Robinson-Patman Act (1934), Celler-Kefauver Anti Merger Act (1950), Hart-Scott-Rodino Antitrust Improvement Act (1976), International Antitrust Enforcement Assistance Act (1994) (Derizal, et.al., 2015: 10).

The Sherman Act (1890) is present in business competition negotiations in USA to regulate monopoly issues, monopoly trials, unreasonable contract agreements, and price-fixing (Sawyer, 2019: 2). The Clayton Act (1914) by Congress aimed more at offensive practices including those concerning price discrimination (Carlton, 2020: 2). This Clayton Act is intended to regulate matters that have not been regulated in the Sherman Act. Based on its content, which regulates unfair action in the competition of the Federal Trade Commission, the Supreme Court considers that the violations contained in the Sherman Act are the same as violating the provisions of the FTC. These International Guidelines only concern the Commission's antitrust enforcement authorities under Article 5 prohibiting unfair competition methods. Section 5 point (a) (3) of the FTC Act, added by the Foreign Trade Antitrust Improvements Act of 1982.

USA has an agency that has the authority to handle business competition such as the United States Department of Justice (DOJ), the antitrust division and the Federal

Trade Commission (FTC), their respective states, and the private sector (Abbott, 2005: 2). FTC is an independent body that reports directly to Congress and belongs to the state auxiliary organ. FTC has powers covering legislative, administrative, and other functions (Crane, 2011: 30). Unlike the KPPU, within the FTC there are special bureaus divided by tasks. FTC consists of 4 parts: Bureau of Consumer Protection ,This consumer protection bureau has the duty to protect consumers from unfair, deceptive or dishonest practices; Bureau of Competition, The Competition Bureau is tasked with preventing mergers that have implications for the absence of competition and other anti-competitive business practices; Bureau of Economics, The Bureau of Economics is tasked with helping the FTC evaluate the economic effects of an act; and Regional Offices or known as FTC representative offices in the regions (Lubis, *op.cit*., 384). Meanwhile, the DOJ can be said to be the Ministry of Forestry in USA. The DOJ has the power to enforce Sherman Act prohibitions through criminal or civil action (Abbot, *loc.cit*).

3.2. Definition of Business Actor

3.2.1. Indonesian Business Actor

The provisions regarding the statements of business actors in Law No.5 of 1999 have been regulated in Article 1 paragraph 5 of Law No.5 of 1999, to be able to categorized as a business actor, there are elements that must be fulfilled cumulatively (Ibrahim, *op.cit*, 5). The definition of business actor in this law is divided into four elements as in the following points: Any person or business entity, established and domiciled or doing activities within the jurisdiction of the Republic of Indonesia, either alone or jointly by means of an agreement, and carry out various business activities in the economic field. The description one by one the elements contained in article 1 paragraph 5 are as follows:

1. Any person, Any person, in this case, is sulking to a competent individual according to Article 39 paragraph 1 UU No.2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public: "*The appearer must meet the following requirements: a. at least 18 (eighteen) years old or married; and b. capable of doing legal actions*."
2. Business Entity. According to Sadono Sukirno, companies are divided into individual, partnership, and limited liability companies (Utami, 2020: 6). the types of companies can be divided into two, in terms of total ownership there are individual companies and partnership company and in terms of ownership status there are private companies and state companies, or what is commonly referred to as State-Owned Enterprises (BUMN).
    a. In terms of legal form:
        1) Business entities in the form of legal entities: Limited Liability Company or PT (Law No. 40 of 2007), BUMD, BUMDES or Village-owned enterprises (Law No. 32 of 2004 and PP No. 72 of 2005), and BUMN (Law No.19 of 2003).

2) Business entities that are not in the form of legal entities according to Ministry of Law and Human Rights Regulation No. 17 of 2018, there are various kinds: partnership (*maatschap*), firm, and limited partnership (*Commander Venootschap* or CV).

3. Established and domiciled or doing activities within the jurisdiction of the Republic of Indonesia. Article 1 paragraph 5 adheres to two territorial principles in the division of territorial jurisdiction (Fabriyanto, 2013: 10). First, the principle of the subjective area is an association that carries out its profession continuously and each partner acts on its behalf and is responsible for third parties. Second, the principle of the objective area is an association that carries out its profession continuously and each of its allies acts on its behalf and is responsible for third parties (Hansen, 2002: 55).
4. Either alone or jointly by means of an agreement
5. Carry out various business activities in the economic field.

Definition of business actor according to Article 1 point 8 Law No. 11 of 2020 concerning Job Creation Act is also not much different, the article reads: "*Business Actors are individuals or business entities that carry out business activities in certain fields*." However, both in Law No.5 of 1999 and Law No. 11 of 2020 still do not contain foreign elements in it. Moreover, in the substance of Law No. 5 of 1999, there are still many elements of "unclearness" even though the explanation of the law is "quite clear".

3.2.2. USA Business Actor

Regulations regarding the meaning of business actors in the USA Antitrust Law are contained in the Sherman Act and Clayton Act, it reads as follows:

Table 1. Business Actor in USA Antitrust Law

No.	ARTICLE	THE CONTENTS OF THE ARTICLE
1.	15 U.S.C. § 1 Sherman Act - Trusts, etc., in restraint of trade illegal; penalty.	Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.
2.	15 U.S.C. § 2	Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the

	Sherman Act - Monopolizing trade a felony; penalty.	several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.
3.	15 U.S.C. § 12 Clayton Act - Definitions; short title.	… The word 'person' or 'persons' wherever used in ths act Shall be deemed to include corporations existing under or authorized bu the law of either the United States, the laws of any of the Territories, the laws of any States, or the laws of any foreign country.

From the table above it is known that at 15 U.S.C. § 1 Sherman Act on the point "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal ...." there is an explanation of extraterritorial jurisdiction which emphasizes the word "foreign nation". Then further described at 15 U.S.C. § 2 Sherman Act provisions regarding extraterritorial jurisdiction regarding the authority of the State to try cases that have a relationship outside the jurisdiction of the State there is an explanation in the sentence "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations." In this case, USA Antitrust Law also clearly states that "Anyone" who has the intention to monopolize or try to monopolize and combine or conspire with business actors at home or abroad are deemed guilty and the provisions regarding sanctions are explained in the next sentence. For further explanation regarding Business Actor or Business Actor, we can see more clearly at 15 U.S.C. § 12 Clayton Act - If taken from the point of view of extraterritorial jurisdiction, it relates to companies that are established under the laws of other countries that have economic activity relations with the parent country. Section 12 of the Clayton Act explains that USA has the authority to adjudicate disputes related to the jurisdiction of other countries, as long as it still has economic relations with the United States as the Host Country.

From the description of the definition of a business actor according to Indonesian and USA Antitrust Law above, it is found that the different meanings of each country in regulating business actors when drawn through the principle of extraterritoriality. So far, if there is a foreign party in a business competition case, before declaring a company or a person as a business actor, there are criteria in Article 1 paragraph 5 that must be met, namely Individual/Business Entity in the form of a Legal Entity/Non-Legal Entity, Established and domiciled in the jurisdiction of the Republic of Indonesia or conducting activities within the jurisdiction of the Republic of Indonesia, Either individually or collectively through an agreement to carry out various business activities

in the economic sector. As for the Antitrust Law, foreign elements as business actors are clearly regulated in 15 U.S.C. §1 and 15 U.S.C. §2 Sherman Act later clarified in 15 U.S.C. § 12 Clayton Act which contains the meaning of "person" or "any person" whether it stands in USA Antitrust Law or any foreign country law but is found guilty if it is proven to be involved in monopoly or unfair business competition, so that the provisions contained in Antitrust make it easier for USA to execute the verdict.

3.3. Application of Extraterritorial Jurisdiction in Indonesian Law and USA Antitrust Law

A State must have a jurisdiction that is subject to the laws of the State. Jurisdiction is the power of States to take action in determining their national laws and implementing those rules. The term extraterritorial obviously indicates something along the lines of "beyond the territorial limits" (Colangelo, 2014: 1312). The principle of extraterritorial jurisdiction was first introduced to the USA Antitrust Law through the "Effect Doctrine" period. Effect Doctrine begins with the claim of extraterritorial jurisdiction, where the State claims jurisdiction over legal actions outside the State's territory. If the legal action results in the creation of monopoly or unfair business competition within the jurisdiction of the State, then this can be said to be the "Doctrine Effect" (Hutapea, 2018: 79). So that claims of extraterritoriality can only apply if there is a negative impact on the State. The doctrine of "effects" was originally introduced during the Alcoa Case on the opinion of Judge Learned Hand (Safaee, 2018: 9).

Apart from the Effect Doctrine, in solving extraterritorial jurisdiction cases, it is also handled by Single Economy Entity (SEE). SEE theory is a theory that regulates the separation of authority and responsibility from shareholders towards the company where business actors invest their shares. The background of the use of the SEE doctrine in business competition law is an effort to resolve business competition disputes carried out by business actors conducting their activities in Host Country, but the business actor company is not domiciled inside the jurisdiction. In the Indonesian business competition law, the principle of extraterritorial jurisdiction of business actors domiciled outside the jurisdiction of the State can be held accountable if one of the elements in article 1 paragraph 5 of Law No. 5 of 1999 has been fulfilled, namely both legal persons/entities and carrying out economic activities that have an impact in the State. (Zainal, 2018)

3.3.1 The Authority of Indonesian Business and USA Competition Supervisory Commission of Several Extraterritorial Cases.

Table 2. Extraterritorial Business Competition Cases in Indonesia

No	CASES	
1	Temasek Holdings in KPPU decision No.07/KPPU-L/2007	The Temasek holding case is related to share ownership, namely Temasek Holdings Pte. Ltd., with its subsidiaries Singapore Technologies Telemedia Pte. Ltd. (STT), STT Communication Ltd. (STTC), Asia Mobile Holding Company Pte. Ltd. (AMHC), Indonesia Communications Limited. (ICL), Indonesia Communications Pte, Ltd

		(ICPL), Singapore Telecommunications Ltd. (SingTel), Singapore Telecom Mobile Pte. Ltd. (SingTel Mobile), PT Telekomunikasi Seluler As a suspect in the alleged violation of article 27 letter a uu number 5 of 1999. In this case, it is suspected that Temasek has majority shares in two companies carrying out business activities in the same field, namely the cellular telecommunications company PT Telkomsel and PT Indosat. It is known that 89% of the Indonesian telecommunication market share has been controlled by Temasek Ltd with 35% shares in Telkomsel and 40.77% in Indosat share owned by ICL and ICPL. This case was proven to have violated Article 27 letter (a) of Law No. 05 of 1999. Temasek and its subsidiaries were also proven to have violated Article 17 paragraph (1) and Article 25 paragraph (1) letter b Law No. 5 of 1999. It is known that Temasek Holdings is a multinational company which is established and domiciled under the laws of Singapore. So that during the case examination, the Temasek group had briefly defended that the KPPU was not authorized to examine the companies included in the Temasek group because they were not established under Indonesian law and did not have direct activities in Indonesia. However, KPPU dismissed it by SEE Doctrine which confirmed the responsibility of the parent company for violations committed by its subsidiaries. So that the responsibility of the parent company can also be stated absolutely for violations or losses committed or suffered by its subsidiaries (EU Antitrust Fines and the Single Economic Entity, 22). Proven Temasek Holding (Private) Limited, through its subsidiary have control 89% market share or at least more than 50% market share in the market for cellular telecommunication services throughout Indonesia. According to host country law in the principle of territorial jurisdiction, business actors participating in business activities in that State must also comply with business competition regulations in that State. In this case, it is Indonesia's business competition regulation. Thus regarding to Effect Doctrine, Temasek Holdings, together with STT, STTC, AMHC, ICL, ICPL, SingTel, SingTel Mobile is classified as a business actor carrying out business activities in Indonesia, where the economic activities of Temasek Holdings are included in Indonesian sovereignty. Indonesia as a State has the

		right to regulate business competition and regulate its law enforcement in Indonesia. KPPU decided to terminate the action of share ownership in Telkomsel and Indosat by releasing all of its share ownership in one of the companies, namely Telkomsel or Indosat, within a maximum period of 2 (two) years from the time this decision has permanent legal force and each pay a fine of Rp. 25,000,000,000.00 (twenty-five billion rupiahs).
2	Very Large Crude Carrier (VLCC) in KPPU decision No.07/KPPU-L/2004	The settlement that occurred by KPPU in decision No: 07/KPPU-L/2004, stated that in this case PT Pertamina (Persero) as Reported Party I, Goldman Sachs (Singapore), Pte. as Reported Party II, Frontline Ltd as Reported Party III, PT Corvine Mitrakreasi as Reported Party IV, and PT Equinox Shipping Company as Reported Party V in this case proven legally violating Article 22 of Law No. 5 of 1999. It was proven that there had been a conspiracy between Pertamina and Goldman Sachs to win Frontline, with evidence of a conspiracy to provide an opportunity for Frontline through a broker, PT Equinox to submit a third bid when the deadline for submitting bids had closed on June 7, 2004. This was evident from the existence of e-mail correspondence. PT Equinox as a broker with Frontline on June 9, 2004. In the third offer, Frontline was slightly different, amounting to the US $ 500 thousand with the second offer from Essar. The opening of the envelope of Frontline's third bid was not conducted in front of a Notary as stipulated in the tender provisions made by Goldman Sachs. As a result, there was a loss of between the US $ 20 million-US $ 56 million for 2 VLCC units because the price obtained was the only US $ 184 million for 2 VLCC tankers, far below the market price at that time (July 2004) which was around the US $ 204-240 million for 2 VLCC units. In making its decision, KPPU takes the elements contained in Article 22 of Law No.5 of 1999. First, business actor. Described in Article 1 point 5 is any individual or entity in the form of a legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, either individually or collectively through an agreement, carrying out various activities. business in the economic sector. Even though in this case Reported Parties II and III are companies domiciled in Singapore

		but the business activities resulting from their involvement in the VLCC case can affect the economy of the State of Indonesia. However, there is a Doctrine Effect that can be applied in handling VLCC cases. As already explained, the definition of (effect doctrine) previously, is where every anti-competition actor in Indonesia can be charged under the Indonesian business competition law or is under the jurisdiction of Indonesian law if it is proven to cause monopoly or business competition unhealthy in its jurisdiction be it coincidence or premeditated. Second, Conspiracy. The receipt of the triple bid allows Frontline to become the winner of the tender. With that, Goldman Sachs is allowing Pertamina to act inappropriately to win the tender. With this, the element of dispute is fulfilled. Third, Other Party. In this case, Reported Parties I, II, III, V are other parties. Fourth, Set and/or determine the winner. An act of the parties involved in the tender process in conspiracy with the aim of eliminating other business actors as competitors. Business actor I, II,III,IV and V are proven to set and/or determine the winner of the tender. Fifth, Resulting in unfair business competition. Whereas with the receipt of the third bid, PT Pertamina, Goldman Sachs, Frontline, and PT Equinox have illegally prevented other tender participants from winning the VLCC Divestment tender by not allowing Essar and OSG to make a higher bid.

Table 3. The Authority for Extraterritorial Antitrust Cases in USA

No	CASES	
1	United States v. Watchmakers of Switzerland Info. Center, Inc (1955)	On this case, USA as a Plaintiff and The Watchmakers of Switzerland Information Center, Inc.; Federation Suisse Des Associations De Fabricants D'Horlogerie; Ebauches, S.A.; Foote, Cone & Belding; American Watch Association, Inc.; Bulova Watch Company, Inc.; Benrus Watch Company; Gruen Watch Company; Longines-Wittnauer Watch Company; Gruen Watch Manufacturing Company, S.A.; Eterna, A.G. Uhrenfabrik; Wittnauer et Cie, S.A.; Montres Rolex, S.A.; Concord Watch Co.; Eterna Watch Company of America; Diethelm and Keller (USA) Ltd.; The American Rolex Watch Corporation; Rodana Watch Company, Inc.; Movado Watch Agency, Inc.; Jean R. Graef, Inc.; Norman M. Morris Corporation; The Henry Stern Watch Agency, Inc.; Cyma Watch Co., Inc.; Wyler Watch Agency, Inc., as Defendants. In the action, several Swiss and American organizations

		were accused of violating USCA Article 15 § 1, they were alleged to have improperly combined and detained the manufacture of watches, parts, and spare parts to restrict trade and trade between states and abroad, and also violated Wilson Tariff Act (USCA 15). §8. Roughly summed up as the idea of a Swiss organization forcing American companies to restrict the manufacture and export of American-made watches and parts so that they can buy Swiss watches and parts. The two strongest powers in Switzerland are the Swiss Federation of Fine Watchmaking (FH) and S.A. Ebauches. They are two mobile defendants who claim to be outside the jurisdiction of this court. According to Section 12 of the Clayton Act, 15 U.S.C.A. § 22 any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district, but also in any district wherein it may be found or transacts business. The USA government accused the USA and Swiss watchmakers of entering into illegal agreements to limit competition in the United States. The Swiss defendants argued that their actions were not only legal under Swiss law, but also encouraged by the Swiss government. The court rejected this defense because the lawsuit in Switzerland had a significant impact on trade with the United States.
2	United States v. Aluminum Co. of America, (‘‘Alcoa case’’)	In the Alcoa case, the foreign defendant Aluminum Co. of America is accused of violating the Sherman Act by establishing and executing an international aluminum cartel overseas. In the findings, it is known that defendant Alcoa has been controlled more than 90% of the ingot market, which represents the proportion of its output to imported "virgin" ingots. The defendant was guilty of illegal monopoly per se under violation of sections 1 and 2 of the Sherman Act. In addition to its action against the principal defendant, the government had also named Aluminum Limited, Alcoa's Canadian subsidiary, as a defendant. One issue was whether the Sherman Act extended to Aluminum Limited's acts outside the United States, which had effects on competition and the price of aluminum in the United States. On the other hand, laws have been enacted, and each state can impose responsibility for actions beyond its boundaries, even those who are not loyal to it, and such actions will be condemned by the state within its

		boundaries; and Obligations are usually recognized by other countries. In the decision the Judge Hand held that: "*We should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States... On the other hand,* *... any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends*."

From the explanation of the two cases of American extraterritorial jurisdiction above, it can be concluded that American law has firmly regulated foreign elements in the USA Antitrust Law. As in the case of the *United States v. Watchmakers of Switzerland Info*. Center, Inc. was proven to have violated USC Article 15 § 1. Despite the refusal from The Watchmakers of Switzerland Information Center, Inc., etc. as a defense that their actions were legal under Swiss law, they still violated the US Antitrust Law because they had a significant impact on trade. with the United States. In the Alcoa Case where Aluminum Co. of America, Alcoa's Canadian subsidiary as a defendant is accused of violating the Sherman Act section 1 & 2 by establishing and executing an international aluminum cartel overseas by controlled more than 90% of the ingot market. In his decision, the judge said that the State can impose responsibility even upon persons, not within its allegiance.

With the strict regulation of foreign elements in the US Antitrust Law so that judges have a firm basis in deciding cases that have elements of extraterritorial jurisdiction. So even though currently extraterritorial jurisdiction cases can also be decided by the Indonesian Business Competition Law, they still pay attention to the elements of article 1 paragraph 5 whether a company can be called a business actor or not. This is because the definition of "Business Actor" in Indonesian business competition law does not explicitly include foreign elements in it so that this can be used as an opening for foreign business actors to conduct unfair business in Indonesia.

4. CONCLUSIONS

It can be conclude from the study:

First, the definition business actor is regulated in Law No. 5 of 1999 consists some elements: Any person or business entity, established and domiciled or doing activities within the jurisdiction of the Republic of Indonesia, either alone or jointly by means of an agreement, and carry out various business activities in the economic field. According to USA Antitrust Law the definition of a business actor can be found in 15 U.S.C. §1 and §2 Sherman Act, and 15 U.S. Code §12 Clayton Act. US Antitrust regulates business actors both within the jurisdiction and outside the jurisdiction. The definition of US Antitrust business actors includes every contract, combination in the

form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. However, the definition of business actors in Law No. 5 of 1999 needs to be amended. The amendment is needed to reinforce the legal position of Indonesian business competition which uses the doctrine of extraterritoriality in its enforcement as practiced in the cases of Temasek. Ltd. and VLCC.

Second, the application of extraterritorial jurisdiction based on Indonesian law still gets some debate due to the uncertainty of the governing law. However, when viewed from the cases of Temasek, Ltd, and VLCC, the application of Extraterritorial Jurisdiction to business actors must comply with one of the elements of Article 1 paragraph 5 of the Business Competition Law cumulatively. Additional doctrine is needed to strengthen the KPPU's authority in the execution of decisions, such as the application of the SEE doctrine and Effect. Unlike Indonesia, USA has included a foreign element in the definition of a business actor. Such as the 15 U.S.C. § 1 Sherman Act "among the several States, or with foreign nations, is declared to be illegal." Which was later clarified again in 15 U.S. Code § 12 Clayton Act "The word 'person' or 'persons' wherever used in this act Shall be deemed to include corporations existing under or authorized by the law of either the United States, the laws of any of the Territories, the laws of any States, or the laws of any foreign country. " So hereby explains that USA has the authority to adjudicate disputes related to the jurisdiction of other countries, as long as it still has economic relations with the United States as the Host Country. Therefore, the jurisdiction of the KPPU's authority must be clarified and expanded in the Amendment to the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition to apply the principle of extraterritoriality in enforcing business competition law.

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