

Procedural Handling of Monopoly Practices and Unfair Business Competition Cases after the Enactment of Business Competition Supervisory Commission Regulation No. 2 of 2023

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Abstract

The enactment of Regulation No. 2 of 2023 issued by the Business Competition Supervisory Commission marks a significant reform in the procedural law governing the handling of monopoly practices and unfair business competition cases in Indonesia. This regulation restructures the procedural framework applied by the Business Competition Supervisory Commission, particularly with regard to case initiation, investigation, examination, adjudication, and the enforcement of administrative decisions. This study aims to examine the procedural implications of Regulation No. 2 of 2023 and its contribution to enhancing due process of law, legal certainty, and the effectiveness of competition law enforcement. This study employs a normative juridical method by analyzing statutory regulations, legal doctrines, and principles relevant to administrative adjudication and competition law procedures. The findings indicate that Regulation No. 2 of 2023 introduces clearer procedural stages and strengthens procedural safeguards, thereby promoting transparency and accountability in the handling of competition cases by the Business Competition Supervisory Commission. Nevertheless, several challenges remain, particularly concerning the balance between administrative efficiency and the protection of business actors' procedural rights, including the right to defense and the right to a fair hearing. This study concludes that Regulation No. 2 of 2023 plays a crucial role in the development of procedural competition law in Indonesia. However,

continuous evaluation and refinement are necessary to ensure consistency with fundamental principles of due process and good governance in competition law enforcement.

Keywords

Procedural Law; Competition Law Enforcement; Monopoly Practices; Unfair Business Competition; Business Competition Supervisory Commission.

Introduction

Fair business competition constitutes a fundamental pillar of a market-based economy, as it promotes efficiency, innovation, and consumer welfare. Conversely, monopoly practices and unfair business competition may distort market mechanisms, restrict access to markets, and cause significant harm to consumers and economic development.¹ For this reason, effective competition law enforcement requires not only substantive legal norms but also a clear, fair, and predictable procedural framework to ensure legal certainty and the protection of parties' rights.²

In Indonesia, the authority to enforce competition law is vested in the Business Competition Supervisory Commission, an independent institution entrusted with supervisory, investigative, and adjudicative functions in competition cases.³ In carrying out these functions, the

¹ Kevin Coates dan Dirk Middelschulte, "Getting Consumer Welfare Right: The Competition Law Implications of Market-Driven Sustainability Initiatives," *European Competition Journal* 15, no. 2–3 (2019): 318–26, <https://doi.org/10.1080/17441056.2019.1665940>.

² Xin Huang dkk., "The innovation effects of the fair competition review system on peer enterprises," *Management Decision*, Emerald Publishing Limited, 2025, <https://www.emerald.com/insight/content/doi/10.1108/MD-11-2024-2547/full/html>.

³ Ayup Suran Ningsih, "Business Competition Supervisory Institution: A Comparison between Indonesia and Thailand," *Jurnal Hukum Novelty* (1412-6834) 13, no. 2 (2022), <https://www.academia.edu/download/99664686/20631-67397-1-PB.pdf>.

Business Competition Supervisory Commission operates as an administrative adjudicatory body with quasi-judicial characteristics.⁴ Consequently, procedural law plays a crucial role in ensuring the legitimacy of case handling, safeguarding due process of law, and maintaining public confidence in competition law enforcement.⁵

Prior to the enactment of Regulation No. 2 of 2023, the procedural handling of monopoly practices and unfair business competition cases by the Business Competition Supervisory Commission was subject to various legal and practical challenges.⁶ These challenges included ambiguities in procedural stages, inconsistencies in examination processes, and ongoing debates regarding the fulfillment of due process of law, particularly in relation to the rights of defense and the right to a fair hearing. Such procedural shortcomings risked undermining legal certainty and the effectiveness of competition law enforcement.⁷

In response to these concerns, the Business Competition Supervisory Commission enacted Regulation No. 2 of 2023, which

⁴ Rifqon Khairazi, "The Objectivity Of The Business Competition Supervisory Commission In Deciding Business Competition Cases In Indonesia," *Indonesia Private Law Review* 2, no. 1 (2021): 1–10.

⁵ Pieter Van Cleynenbreugel, "Effectiveness through fairness? 'Due process' as an institutional precondition for effective decentralized EU competition law enforcement," dalam *Procedural Fairness in Competition Proceedings* (Edward Elgar Publishing, 2015), <https://www.elgaronline.com/downloadpdf/edcollchap/edcoll/9781785360053/9781785360053.00010.pdf>.

⁶ Rahayu Hartini dkk., "Implementation of Business Competition Compliance Program to Prevent Unfair Business Competition Practices Against Business Enterprises," *Audito Comparative Law Journal (ACLJ)* 5, no. 1 (2024): 42–55.

⁷ Yannis Katsoulacos dan David Ulph, "Legal Uncertainty, Competition Law Enforcement Procedures and Optimal Penalties," *European Journal of Law and Economics* 41, no. 2 (2016): 255–82, <https://doi.org/10.1007/s10657-015-9504-1>.

specifically regulates the procedural handling of monopoly practices and unfair business competition cases.⁸ This regulation seeks to restructure and standardize procedural stages, encompassing case initiation, investigation, examination, adjudication, and the enforcement of administrative decisions.⁹ Through this reform, Regulation No. 2 of 2023 is intended to enhance transparency, accountability, and procedural consistency within the competition law enforcement system.¹⁰

Nevertheless, the implementation of Regulation No. 2 of 2023 also raises important legal implications that warrant further examination, particularly from a procedural law perspective.¹¹ While procedural efficiency is essential for effective enforcement, it must not come at the expense of fundamental procedural rights.¹² Accordingly, assessing the balance between administrative efficiency and the

⁸ Alwi Mohamad Shahab dkk., “Monopoly Supervision and Competition Law Enforcement in the Natural Resources Sector,” *Journal of Social Science Studies* 4, no. 1 (2024): 145–54.

⁹ Emily S. Bremer, “The Rediscovered Stages of Agency Adjudication,” *Wash. UL Rev.* 99 (2021): 377.

¹⁰ Herwig CH Hofmann dan Isabella Lorenzoni, “Future Challenges for Automation in Competition Law Enforcement,” *Stan. Computational Antitrust* 3 (2023): 36.

¹¹ Daniel Sarmiento dkk., “Yearbook on Procedural Law of the Court of Justice of the European Union Fourth Edition–2022,” *MPILux Research Paper*, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4367894.

¹² Pieter Van Cleynenbreugel, “Effectiveness through fairness? ‘Due process’ as an institutional precondition for effective decentralized EU competition law enforcement,” dalam *Procedural Fairness in Competition Proceedings* (Edward Elgar Publishing, 2015), <https://www.elgaronline.com/downloadpdf/edcollchap/edcoll/9781785360053/9781785360053.00010.pdf>.

protection of due process of law remains a central issue in evaluating the regulation's effectiveness.¹³

This study focuses on analyzing the procedural framework governing the handling of monopoly practices and unfair business competition cases following the enactment of Regulation No. 2 of 2023. Unlike previous studies that primarily emphasize substantive competition law, this research concentrates on the procedural dimensions of administrative adjudication conducted by the Business Competition Supervisory Commission. By doing so, the study aims to contribute both theoretically and practically to the development of procedural competition law in Indonesia.

Method

This study employs a normative juridical research method, which is commonly used in legal scholarship to examine statutory regulations, legal doctrines, and principles in a systematic and analytical manner.¹⁴ The research specifically focuses on the procedural framework governing the handling of monopoly practices and unfair business competition cases following the enactment of Regulation No. 2 of 2023 issued by the Business Competition Supervisory Commission.¹⁵ The study relies primarily on secondary legal materials, including primary

¹³ Armando Alvares-García Júnior, "Regulatory Challenges in Sustainable Markets: Assessing the Impact of Regulation (EU) 1781/2024 on European Competitiveness," *Journal of Law, Market & Innovation* 4, no. 3 (2025): 410–43.

¹⁴ Urmi Roy, "Doctrinal and Non-Doctrinal Methods of Research: A Comparative Analysis of Both within the Field of Legal Research," *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

¹⁵ Rahayu Hartini dkk., "Implementation of Business Competition Compliance Program to Prevent Unfair Business Competition Practices Against Business Enterprises," *Audito Comparative Law Journal (ACLJ)* 5, no. 1 (2024): 42–55.

legal sources such as Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition and Regulation No. 2 of 2023, which regulates procedural aspects of competition case handling.¹⁶ Secondary sources include academic textbooks, journal articles, and legal commentaries addressing administrative adjudication, procedural law, and competition law enforcement, as well as prior studies analyzing procedural challenges and reforms in Indonesian competition law.¹⁷ Tertiary sources, such as official reports and guidelines issued by the Business Competition Supervisory Commission, are also examined to provide clarification on procedural implementation.

Using a doctrinal approach, the study analyzes the normative content of Regulation No. 2 of 2023, focusing on procedural stages established by the regulation, its alignment with the principles of due process of law, and its potential impact on transparency, accountability, and legal certainty in administrative adjudication.¹⁸ This approach allows the research to provide a conceptual and systematic understanding of how procedural law governs competition cases in Indonesia. The findings are expected to identify the strengths, challenges, and potential areas for improvement in the procedural enforcement framework of the Business Competition Supervisory Commission, contributing both to

¹⁶ Akalanka Nuwan Thilakarathna dan Kamani P. Mathotaarachchi, "Doctrinal Legal Research in Common Law: The Good, the Bad, and the Ugly," *Technium Soc. Sci. J.* 75 (2025): 118.

¹⁷ Imam Hidayat dkk., "Preparatory Examination in Civil Procedure Law: Strategies for Swift and Efficient Justice," *Indonesia Law Reform Journal* 4, no. 2 (2024): 171–98.

¹⁸ Wang Kun, "Impact of Mandatory Provisions on the Validity of Juristic Acts: A Path for Legal Policy Analysis," *Contemporary Social Sciences*, no. 6 (2023).

academic knowledge and practical guidance in competition law enforcement.¹⁹

Result And Discussion

1. Procedural Stage Reforms under Regulation No. 2 of 2023

The enactment of Regulation No. 2 of 2023 by the Business Competition Supervisory Commission marks a significant advancement in the procedural framework governing monopoly practices and unfair business competition cases in Indonesia. The regulation establishes clear, structured, and standardized procedural stages, which include case initiation, investigation, examination, adjudication, and the execution of administrative decisions. This reform addresses the long-standing criticisms of procedural ambiguity, inconsistency, and lack of transparency that were prevalent under previous regulatory frameworks.²⁰

Case initiation under the new regulation provides explicit guidance on the submission, registration, and preliminary assessment of complaints. The regulation clarifies the criteria for admissibility, the necessary documentation, and the verification process, ensuring that only cases with sufficient factual and legal basis proceed to

¹⁹ Ismail Rumadan, "Creating an Appropriate Legal Procedure in Handling Unfair Competition under Indonesian Job Creation Regime," *International Journal of Public Law and Policy* 11, no. 2 (2025): 145–60, <https://doi.org/10.1504/IJPLAP.2025.145282>.

²⁰ Tifanny Nur Yacub, "Case Analysis of Tender Contracts in Violation of Law Number 5 of 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition," *Journal Social Sciences and Humanioran Review* 1, no. 03 (2024): 132–49.

formal investigation. Analysts should critically examine whether these criteria are sufficiently objective to prevent arbitrary dismissal of complaints or overburdening of the commission with unsubstantiated claims.²¹

During the investigation stage, the regulation delineates the responsibilities of investigators, the scope of evidence collection, and the rights of parties to be notified and to respond. A critical analysis should assess whether these provisions adequately safeguard the rights of business actors while maintaining the efficiency of the investigative process. For example, analysts could examine potential tensions between comprehensive evidence collection and the risk of procedural delays, as well as the adequacy of mechanisms to protect confidential business information.

The examination and adjudication stages formalize the conduct of hearings, submission of evidence, and deliberation processes. Analysts should evaluate whether these procedures strike an appropriate balance between the quasi-judicial authority of the Business Competition Supervisory Commission and the due process rights of the parties. Key points of critique include the transparency of deliberation processes, the sufficiency of notice to parties, and the clarity of procedural rules to prevent discretionary or inconsistent decision-making.²²

²¹ Mohamed Paleker, “The initiation of civil suits-a comparative perspective,” dalam *Comparative Civil Procedure* (Edward Elgar Publishing, 2025).

²² Emily S. Bremer, “The Rediscovered Stages of Agency Adjudication,” *Wash. UL Rev.* 99 (2021): 377.

Finally, the execution of decisions, including administrative sanctions, is now more standardized, ensuring enforceability and legal certainty. Critical analysis should focus on whether the regulation provides effective mechanisms for monitoring and enforcing compliance, as well as how these mechanisms reconcile efficiency with fairness to the affected business actors.²³

The reforms introduced by Regulation No. 2 of 2023 by the Business Competition Supervisory Commission reflect a structured attempt to clarify procedural stages in handling monopoly practices and unfair business competition cases. A critical examination begins with the clarity and sufficiency of procedural steps. While the regulation provides detailed stages for case initiation, investigation, examination, adjudication, and execution, questions remain regarding potential overlaps or gaps, particularly in transitional processes between investigation and formal adjudication. Analysts must evaluate whether these stages are not only clearly defined in law but also operationally feasible in practice, avoiding procedural ambiguities that could delay case resolution or create room for discretionary interpretation.²⁴

Another key aspect for analysis is the balance between administrative efficiency and procedural fairness. Regulation

²³ Antonio Prencipe, “Accountability between compliance and legitimacy: Rethinking governance for corporate sustainability,” *Sustainability* 17, no. 20 (2025): 9305.

²⁴ Wang Xianlin, “The Role of Competition Policy in Building a Rule of Law-Based Business Environment,” *Social Sciences in China* 45, no. 4 (2024): 185–202, <https://doi.org/10.1080/02529203.2024.2441575>.

No. 2 of 2023 aims to expedite case handling, but the need for thorough evidence collection and careful examination of parties' arguments may challenge efficiency. A critical perspective should assess whether the regulation successfully harmonizes rapid enforcement with the fundamental principle of due process, ensuring that speed does not compromise fairness.

The regulation also emphasizes safeguarding the rights of parties, including the rights to proper notification, defense, and confidentiality of sensitive business information. Analysts should examine the adequacy of these mechanisms, questioning whether they provide meaningful protection without overcomplicating procedures or allowing undue delay. The tension between transparency and the need to protect proprietary information is particularly noteworthy.²⁵

Transparency and accountability in decision-making represent another crucial dimension of analysis. The regulation prescribes formal procedures for hearings and deliberations, yet it is important to evaluate whether these measures ensure consistent and understandable outcomes. Critical scrutiny should explore the possibility of discretionary decision-making or inconsistencies arising from interpretation differences among Commission officials.

The enforceability and compliance of administrative sanctions also warrants detailed consideration. While the

²⁵ Dimitrios Sargiotis, "Data Security and Privacy: Protecting Sensitive Information," dalam *Data Governance*, oleh Dimitrios Sargiotis (Springer Nature Switzerland, 2024), https://doi.org/10.1007/978-3-031-67268-2_6.

regulation standardizes penalties and execution procedures, one must assess whether enforcement mechanisms are realistically implementable and free from legal ambiguities that could undermine effectiveness.

Finally, a comparative perspective highlights how Regulation No. 2 of 2023 improves upon previous procedural frameworks. It is important to analyze whether the regulation resolves prior deficiencies in clarity, transparency, and legal certainty, and whether it represents an effective balance between administrative control and the protection of parties' procedural rights.

Overall, although Regulation No. 2 of 2023 introduces comprehensive procedural reforms aimed at strengthening legal certainty, transparency, and accountability, its success ultimately depends on effective implementation, ongoing monitoring, and the Commission's ability to balance procedural efficiency with the protection of fundamental rights. Continuous evaluation is therefore essential to ensure that the procedural reforms achieve their intended outcomes in practice.

2. Ensuring Due Process of Law under Regulation No. 2 of 2023

A central objective of Regulation No. 2 of 2023 issued by the Business Competition Supervisory Commission is to reinforce the principle of due process of law in the adjudication of monopoly practices and unfair business competition cases. Due process guarantees that parties receive fair treatment, the opportunity to present their defense, and access to relevant

information during proceedings. This principle is particularly crucial in administrative adjudication, where the Commission exercises quasi-judicial authority, and the legitimacy of its decisions depends on both procedural fairness and transparency.

Regulation No. 2 of 2023 clearly outlines the rights of parties to receive formal notification, access to evidence, and participate in hearings. Compared to the previous procedural framework, where notifications and evidence-sharing were often informal and inconsistently applied, this regulation provides structured mechanisms designed to reduce ambiguity and enhance predictability. However, a critical assessment must consider whether these mechanisms are practically effective. For instance, notifications must reach all relevant parties reliably, and timelines must allow sufficient preparation for defense without causing undue delays in case resolution. This raises the question of whether procedural efficiency might still conflict with comprehensive protection of parties' rights.

Another important component is the right to defense and representation. Parties are entitled to submit written arguments, present oral testimony, and respond to opposing claims. From a critical standpoint, it is necessary to examine whether the regulation offers sufficient safeguards against procedural abuse, such as repetitive submissions or deliberate delays, and whether these rights are applied consistently across different types of cases. Analysts should also assess the adequacy of guidance provided to ensure that all parties, including small or less-resourced businesses, can exercise their rights meaningfully.

The regulation also addresses the protection of confidential information, which is vital for maintaining business

secrets. A detailed analysis should evaluate whether the balance between confidentiality and procedural transparency is appropriate. Excessive confidentiality might limit scrutiny and accountability, whereas insufficient protection could deter businesses from fully participating in the process or sharing sensitive evidence.

Appeals and objection mechanisms serve as additional procedural safeguards to ensure fairness. While Regulation No. 2 of 2023 allows parties to contest decisions or procedural errors, the critical question is whether these mechanisms are accessible, timely, and effective in practice. Ineffective appeal procedures could undermine confidence in the fairness of the entire system, particularly if procedural violations occur during investigations or hearings.

A comparative perspective further highlights the significance of these reforms. Prior to Regulation No. 2 of 2023, procedural inconsistencies often led to delays, arbitrary dismissals, and perceptions of unfair treatment. By formalizing notification, evidence submission, hearing procedures, and appeal mechanisms, the regulation addresses many of these shortcomings. Nevertheless, the practical implementation of these procedural safeguards remains a challenge, as their effectiveness depends on the Commission's capacity to enforce rules consistently, monitor compliance, and manage the tension between efficiency and procedural justice.

In addition, the regulation's success in upholding due process has broader legal implications. Failure to respect procedural rights could result in legal challenges, annulment of decisions, or reduced credibility of the Commission. Therefore,

beyond formal compliance, the actual practice of ensuring due process is crucial to maintain legal certainty, legitimacy, and public trust in competition law enforcement.

Overall, while Regulation No. 2 of 2023 demonstrates a strong commitment to embedding due process principles into administrative adjudication, critical analysis underscores that its effectiveness relies not only on the written rules but also on rigorous implementation, oversight, and continuous evaluation. Only through consistent and fair application can the regulation achieve its intended goal of balancing procedural efficiency with the protection of fundamental rights in competition cases..

3. Legal Certainty and Implementation Challenges

Another crucial dimension of Regulation No. 2 of 2023 is its impact on legal certainty and the practical challenges of implementation. Legal certainty refers to the predictability, consistency, and clarity of the law, which allows business actors to understand their rights and obligations and ensures that enforcement authorities apply rules fairly and consistently. By clearly defining procedural stages from case initiation to the execution of administrative decisions, Regulation No. 2 of 2023 seeks to strengthen legal certainty in the adjudication of monopoly and unfair business competition cases.

A critical analysis of legal certainty should first examine the clarity and precision of procedural provisions. While the regulation establishes detailed steps for investigation, examination, and adjudication, questions remain regarding potential ambiguities in certain procedural requirements, such as timelines for evidence submission or the scope of investigatory

powers. Analysts must consider whether such ambiguities could lead to inconsistent application of rules, which may undermine confidence in the Commission's decisions and weaken the regulation's normative value.

The regulation also aims to enhance accountability and transparency, which are essential components of legal certainty. By standardizing decision-making procedures, hearings, and reporting mechanisms, Regulation No. 2 of 2023 reduces discretionary variability and promotes consistency. However, implementation challenges may arise due to variations in the Commission's administrative capacity, the availability of trained personnel, and institutional practices that may differ across cases. A critical perspective should evaluate whether procedural guidelines are sufficiently detailed and adaptable to prevent inconsistent interpretations or practices that could compromise fairness.

Enforceability of administrative decisions represents another analytical focus. Although the regulation provides clear mechanisms for implementing sanctions, analysts should assess whether these mechanisms are practical, timely, and free from legal loopholes that could hinder compliance. For example, delays in the execution of sanctions or disputes over procedural correctness could diminish the regulation's effectiveness and erode public trust in competition law enforcement.

A comparative perspective can further illuminate both strengths and challenges. Compared to previous procedural frameworks, Regulation No. 2 of 2023 provides a more formalized and transparent approach, yet its success depends on rigorous implementation and oversight. Analysts must consider

the interaction between legal certainty, due process, and administrative efficiency, as gaps between written rules and actual practice could create systemic weaknesses.

Finally, the regulation's implementation carries broader implications for stakeholders. For the Business Competition Supervisory Commission, effective enforcement requires institutional capacity, personnel training, and monitoring systems to ensure procedural compliance. For business actors, clear and predictable procedures enhance the ability to anticipate obligations, protect rights, and engage constructively in dispute resolution. Therefore, critical examination should not only evaluate the textual provisions but also the practical realities of enforcement and the potential need for continuous procedural refinement.

In conclusion, Regulation No. 2 of 2023 advances legal certainty in competition law adjudication through clearly defined procedures and standardized practices. Nevertheless, its effectiveness ultimately depends on careful implementation, monitoring, and the Commission's ability to maintain consistency, fairness, and accountability in practice. Addressing these implementation challenges is essential to ensure that legal certainty is not merely theoretical but realized in the daily administration of competition cases.

Conclusion

Regulation No. 2 of 2023 issued by the Business Competition Supervisory Commission represents a significant reform in the procedural handling of monopoly practices and unfair business competition cases. The regulation strengthens legal certainty,

transparency, and accountability by clearly defining procedural stages, including case initiation, investigation, examination, adjudication, and execution of administrative decisions. Compared to previous frameworks, it formalizes mechanisms for notification, evidence submission, hearings, defense, confidentiality, and appeals, thereby providing a more structured and predictable legal process.

Critical analysis highlights that while the regulation provides a strong framework for due process, its effectiveness depends on practical implementation. Ensuring that parties' rights are protected requires consistent enforcement, adequate institutional capacity, trained personnel, and monitoring systems to prevent procedural errors, delays, or discretionary inconsistencies. Challenges remain in balancing administrative efficiency with procedural fairness, particularly in managing evidence collection, protecting confidential information, and executing sanctions in a timely and effective manner.

Overall, Regulation No. 2 of 2023 constitutes a deliberate effort to improve the quality of competition law enforcement in Indonesia. Its success relies not only on the clarity of its written provisions but also on the Commission's ability to operationalize these procedures in practice, ensuring that due process, legal certainty, and accountability are realized for all stakeholders. Continuous evaluation, oversight, and refinement of procedural practices are therefore essential to achieving the regulation's intended objectives and strengthening public trust in the administration of competition law.

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