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Price Fixing Through Association Rules in Indonesia's Peer-to-Peer Lending Sector

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Original Article

Abstract

Collectively established lending-cost ceilings may protect borrowers while constraining independent price setting. This article examines the AFPI Code of Conduct under Article 5 of Indonesia's Law No. 5 of 1999 and the interpretive role of Article 101 of the Treaty on the Functioning of the European Union (TFEU). It employs doctrinal legal research using statutory and conceptual approaches and case-oriented documentary analysis. The study distinguishes the Indonesian Competition Commission's March 2026 decision from its reported annulment by the Commercial Court in October 2026 and the subsequent cassation proceedings. A common ceiling may constitute a pricing agreement even when actual rates differ, but liability depends on establishing an agreement between competitors in the same relevant market, individual participation, and the inapplicability of statutory exceptions. Regulatory compulsion must be distinguished from autonomous private coordination. Article 101 TFEU clarifies association decisions and concerted practices without creating a binding domestic prohibition or exemption. The article develops a three-part framework integrating the pricing parameter and relevant market, attribution of coordination, and regulatory compulsion. This framework distinguishes lawful consumer protection from prohibited horizontal price coordination without prejudging individual liability.

Keywords: *Price Fixing, Industry Associations, Peer-To-Peer Lending, Concerted Practices, Regulatory Compulsion*

Abstrak

Batas biaya pinjaman yang ditetapkan bersama dapat melindungi penerima dana sekaligus membatasi kemandirian penentuan harga. Penelitian ini mengkaji Pedoman Perilaku AFPI berdasarkan Pasal 5 Undang-Undang Nomor 5 Tahun 1999 serta fungsi interpretatif Pasal 101 Treaty on the Functioning of the European Union (TFEU). Penelitian hukum normatif menggunakan pendekatan perundang-undangan, konseptual, dan kajian dokumen perkara. Analisis membedakan putusan KPPU pada Maret 2026 dari pembatalannya oleh Pengadilan Niaga pada Oktober 2026 dan proses kasasi yang kemudian akan berlangsung. Batas atas bersama dapat berkualifikasi sebagai perjanjian harga meskipun tarif aktual berbeda, tetapi pertanggungjawaban bergantung pada pembuktian perjanjian, hubungan persaingan dalam pasar bersangkutan yang sama, keterlibatan individual, dan tidak berlakunya pengecualian. Arahan regulator dibedakan dari koordinasi privat yang otonom. Pasal 101 TFEU memperjelas keputusan asosiasi dan tindakan terkoordinasi tanpa menjadi sumber larangan atau pengecualian yang mengikat di Indonesia. Kontribusi penelitian berupa kerangka pengujian tiga komponen yang memisahkan parameter harga, atribusi koordinasi, dan keterikatan pada regulasi, sehingga membedakan perlindungan konsumen yang sah dari koordinasi harga horizontal yang dilarang.

Kata kunci: *Penetapan Harga, Asosiasi Industry, Pinjaman Daring, Tindakan Terkoordinasi, Keterikatan Regulasi*

1. INTRODUCTION

Indonesia's information technology-based co-funding services (*Layanan Pendanaan Bersama Berbasis Teknologi Informasi*, LPBBTI), also known as peer-to-peer lending (P2P lending) or online lending, connect funding providers and borrowers through electronic systems. Unlike conventional bank lending, in which a bank generally acts as the lender, LPBBTI operators serve as intermediaries in financing transactions. This structure creates legal relationships among three parties with distinct interests. Protecting users and ensuring certainty about operators' rights and obligations are central to the legal design of the industry. From a competition law perspective, it is important to distinguish the price of the operator's services, the return earned by the funding provider, and the total cost borne by the borrower. These amounts need not coincide.[1]

During the early development of the industry, Financial Services Authority Regulation No. 77/POJK.01/2016 governed lending services but did not specify maximum lending costs in the manner of subsequent regulations. According to a publication issued by the Indonesian Competition Commission on May 6, 2025, the Code of Conduct of the Indonesian Fintech Lending Association (*Asosiasi Fintech Pendanaan Bersama Indonesia*, AFPI) established a daily cost ceiling initially set at 0.8% and later reduced to 0.4%. These percentages concern the historical dispute rather than current permissible rates. Tjandra examines the regulatory gap in interest-rate determination as a matter of legal protection for the parties to lending transactions, whereas Annas and Anshori situate interest-rate determination within the broader challenges of regulation and competition. Both studies demonstrate the importance of identifying the legal authority under which economic-benefit standards are established.[2]

Article 108 of Financial Services Authority Regulation No. 10/POJK.05/2022 required operators to join a designated association and comply with its code of conduct. In 2023, the Financial Services Authority (*Otoritas Jasa Keuangan*, OJK) issued Circular Letter No. 19/SEOJK.06/2023, which prescribed more specific limits on economic benefits (the regulated components of lending costs). OJK Regulation No. 40 of 2024 repealed Regulation No. 10/2022 while providing transitional continuity for compatible implementing provisions. OJK Circular Letter No. 19/SEOJK.06/2025 subsequently replaced the 2023 circular. These developments occurred within the framework of Law No. 4 of 2023 on Financial Sector Development and Strengthening, as amended by Law No. 4 of 2026. Subsequent instruments illuminate the evolution of sectoral

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1 S. Laela, "Perlindungan Hukum bagi Pelaku Usaha Penyelenggara Fintech Peer to Peer Lending," *IBLAM Law Review* 2, no. 2 (2022): 220–236, https://doi.org/10.52249/ilr.v2i2.255; Otoritas Jasa Keuangan, Peraturan Otoritas Jasa Keuangan Nomor 40 Tahun 2024 tentang Layanan Pendanaan Bersama Berbasis Teknologi Informasi, https://ojk.go.id/id/regulasi/Pages/POJK-40-Tahun-2024-Layanan-Pendanaan-Bersama-Berbasis-Teknologi-Informasi.aspx.

2 Otoritas Jasa Keuangan, Peraturan Otoritas Jasa Keuangan Nomor 77/POJK.01/2016 tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi, https://ojk.go.id/id/regulasi/otoritas-jasa-keuangan/peraturan-ojk/Pages/POJK-Nomor-77-POJK.01-2016.aspx; Komisi Pengawas Persaingan Usaha, "Pinjol: Menguntungkan atau Merugikan? KPPU Sidangkan Perkara Pengaturan Secara Kolektif Bunga Pinjaman Berbasis Teknologi (Pinjol) Rp 1.650 Trilyun," 6 Mei 2025, https://kppu.go.id/berita/pinjol-menguntungkan-atau-merugikan-kppu-sidangkan-perkara-pengaturan-secara-kolektif-bunga-pinjaman-berbasis-teknologi-pinjol-rp-1650-trilyun; Antoni Tjandra, "Kekosongan Norma Penentuan Bunga Pinjaman Financial Technology Peer to Peer Lending," *Jurnal Hukum Bisnis Bonum Commune* 3, no. 1 (2020): 90–103, https://doi.org/10.30996/jhbbc.v3i1.3077; Muhammad Annas dan Muhammad Anwar Anshori, "Problematics of Determining Interest in Peer-to-peer Lending in Indonesia," *Jurnal Media Hukum* 28, no. 1 (2021): 102–117, https://doi.org/10.18196/jmh.v28i1.10022.

governance but do not retroactively determine the legality of conduct predating their entry into force.[3]

The dispute crystallized in Decision No. 05/KPPU-I/2025, announced on March 26, 2026, by the Indonesian Competition Commission (*Komisi Pengawas Persaingan Usaha*, KPPU). According to the Commission's official publication, it found 97 operators to have infringed Article 5 of Law No. 5 of 1999 and imposed administrative fines totaling approximately IDR 755 billion. KPPU considered the common ceiling capable of facilitating price coordination and ineffective as a protective measure if set substantially above the market equilibrium. It also rejected the exemption argument on the ground that no regulation authorized a group of business actors to determine interest rates. By contrast, on May 20, 2025, OJK stated that the maximum lending-cost limits incorporated into the code before the 2023 circular reflected its directions to protect the public. These contrasting institutional positions raise a question of legal attribution: who substantively determined the pricing parameter, and did the operators retain discretion to coordinate independently?[4]

The Commission's decision must be considered in light of subsequent judicial proceedings. On October 22, 2026, the Commercial Court at the Central Jakarta District Court reportedly upheld the objections and annulled the KPPU decision, including in Case No. 26/Pdt.Sus-KPPU/2026/PN Jkt.Pst. Reports quoting a court spokesperson identify issues concerning OJK's directions, the distinction between a ceiling and price fixing, conventional and Sharia-compliant relevant markets, and proof of an agreement. On November 16, 2026, the media reported that KPPU had submitted its cassation memorandum to the Supreme Court. As of the research cutoff of November 19, 2026, neither the full judgment on the objections nor a cassation judgment had been obtained. The Commission's decision is therefore examined as a contested enforcement position rather than a final and binding determination of liability.[5]

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3 Otoritas Jasa Keuangan, Peraturan Otoritas Jasa Keuangan Nomor 10/POJK.05/2022 tentang Layanan Pendanaan Bersama Berbasis Teknologi Informasi, Pasal 108, https://ojk.go.id/id/regulasi/Pages/Layanan-Pendanaan-Bersama-Berbasis-Teknologi-Informasi.aspx; Otoritas Jasa Keuangan, Surat Edaran Otoritas Jasa Keuangan Nomor 19/SEOJK.06/2023 tentang Penyelenggaraan Layanan Pendanaan Bersama Berbasis Teknologi Informasi, https://ojk.go.id/id/regulasi/Pages/Penyelenggaraan-Layanan-Pendanaan-Bersama-Berbasis-Teknologi-Informasi-%28LPBBTI%29.aspx; POJK 40/2024; Otoritas Jasa Keuangan, Surat Edaran Otoritas Jasa Keuangan Nomor 19/SEOJK.06/2025 tentang Penyelenggaraan Layanan Pendanaan Bersama Berbasis Teknologi Informasi, https://ojk.go.id/id/regulasi/Pages/SEOJK-19-SEOJK06-2025-Penyelenggaraan-LPBBTI.aspx; Indonesia, Undang-Undang Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan, https://peraturan.bpk.go.id/Details/240203/uu-no-4-tahun-2023; Indonesia, Undang-Undang Nomor 4 Tahun 2026 tentang Perubahan atas Undang-Undang Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan, https://peraturan.bpk.go.id/Details/350166/uu-no-4-tahun-2026.

4 Komisi Pengawas Persaingan Usaha, Putusan Nomor 05/KPPU-I/2025, 26 Maret 2026, https://putusan.kppu.go.id/view_putusan_kppu/; Komisi Pengawas Persaingan Usaha, "Putusan KPPU: 97 Pelaku Usaha Terbukti Melakukan Kesepakatan Penetapan Suku Bunga Pinjaman Daring," 26 Maret 2026, https://kppu.go.id/berita/putusan-kppu-97-pelaku-usaha-terbukti-melakukan-kesepakatan-penetapan-suku-bunga-pinjaman-daring; Otoritas Jasa Keuangan, "OJK: Pengaturan Bunga Pinjaman Daring untuk Lindungi Konsumen," 20 Mei 2025, https://ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/OJK-Pengaturan-Bunga-Pinjaman-Daring-untuk-Lindungi-Konsumen.aspx.

5 Anandy Satrio, "PN Jakarta Pusat Batalkan Putusan KPPU, Sengketa Batas Atas Bunga Pinjol Jadi Sorotan," *Dandapala*, 23 Oktober 2026, https://www.dandapala.com/article/detail/pn-jakarta-pusat-batalkan-putusan-kppu-sengketa-batas-atas-bunga-pinjol-jadi-sorotan; Tim Dandapala, "PN Jakpus Batalkan Putusan KPPU Soal Bunga Pinjol, Ini Alasannya!," *Dandapala*, 23 Oktober 2026, https://dandapala.com/article/detail/pn-jakpus-batalkan-putusan-kppu-soal-bunga-pinjol-ini-alasannya; Ferry Saputra, "Pengadilan Niaga Batalkan Putusan KPPU Soal Suku Bunga Pinjol, Begini Respons OJK," *Kontan*, 16 November 2026, https://keuangan.kontan.co.id/news/pengadilan-niaga-batalkan-putusan-kppu-soal-suku-bunga-pinjol-begini-respons-ojk; Indonesia, Peraturan Mahkamah Agung Nomor 3 Tahun 2021 tentang Tata Cara Pengajuan dan

Scholarship on price-fixing agreements in P2P lending has expanded. In a doctrinal study of the same proceedings, it is concluded that the common ceiling qualifies as a horizontal agreement and identify overlapping aspects of OJK's and KPPU's authority. These studies help map the applicable legal framework. However, classifying a collective policy does not, by itself, establish each operator's participation, particularly where association membership is mandatory and the Commission's decision has been challenged.[6]

In examine indirect evidence in competition proceedings, while Mahayunan, Tundang, and Tan address its importance in cartel enforcement. Fitriansyah, Windari, and Hadi analyze *concerted action* in an airline-pricing case. Aryadiputra, Pribadi, and Subroto examine the distinction between *per se illegal* and the *rule of reason*. Mappuji and Wardana analyze competition compliance programs in fintech. This literature supports the assessment of coordination, but its focus differs from the attribution of liability to individual association members when common pricing standards are defended as the implementation of regulatory directions.[7]

The research gap lies in the absence of an integrated analysis, within the literature examined. Hence, this study addresses two questions. First, under what conditions can the AFPI Code of Conduct qualify as a price-fixing agreement under Article 5 of Law No. 5 of 1999, particularly with respect to pricing parameters, unwritten agreements, relevant markets, and member participation? And second, how can Article 101 TFEU inform the interpretation of association-based coordination and regulatory involvement without displacing domestic legal authority?

2. RESEARCH METHODOLOGY

This study employs doctrinal legal research with a descriptive-analytical orientation and a prescriptive component limited to the construction of legal norms. The statutory approach examines Law No. 5 of 1999 and relevant amendments, OJK instruments in their respective periods of application, and Article 101 TFEU. The conceptual approach addresses pricing agreements, concerted conduct, relevant markets, business actors' liability, and regulatory compulsion. The case-oriented

Pemeriksaan Keberatan terhadap Putusan Komisi Pengawas Persaingan Usaha di Pengadilan Niaga, https://peraturan.bpk.go.id/Download/203798/PERMA_03_2021.pdf.

6 Samuel Apollos Pratomo, Kevin Suryajaya, dan Johan Kurniawan, "Kepastian Hukum atas Penerapan Pasal 5 dan Pasal 11 Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat terhadap Penetapan Bunga Layanan Fintech Peer-to-Peer Lending," *Action Research Literate* 8, no. 5 (2024), https://doi.org/10.46799/arl.v8i5.360; Azizah Arfah et al., "Analisis Yuridis Dugaan Kartel Bunga Pinjaman Daring serta Implikasinya terhadap Perlindungan Konsumen," *Legtimacy: Journal of Law and Islamic Law* 1, no. 2 (2025): 83–99, https://doi.org/10.59066/jolil.v1i2.1933; Nadia Putri Irawan dan Hudi Yusuf, "Analisis Hukum Persaingan Usaha terhadap Dugaan Kartel Suku Bunga Fintech P2P Lending di Indonesia (Studi Kasus KPPU dan 97 Perusahaan Fintech)," *Jurnal Intelek dan Cendikiawan Nusantara* 3, no. 3 (2026), https://garuda.kemdiktisaintek.go.id/documents/detail/6434270.

7 Fajar Bima Alfian dan Rilda Murniati, "Implementasi Bukti Tidak Langsung dalam Penyelesaian Perkara Hukum Persaingan Usaha," *Jurnal Persaingan Usaha* 3, no. 2 (2023): 106–119, https://doi.org/10.55869/kppu.v3i2.94; Girli Ron Mahayunan, Ronald Eberhard Tundang, dan Joanna Christie Tan, "Urgensi Pemberlakuan Indirect Evidence pada Penanganan Perkara Kartel di Indonesia," *Jurnal Persaingan Usaha* 3, no. 2 (2023): 142–151, https://doi.org/10.55869/kppu.v3i2.130; Rezha Fitriansyah, Ratna Artha Windari, dan I Gusti Ayu Apsari Hadi, "Concerted Action dalam Menilai Praktik Penetapan Harga (Studi Putusan KPPU Nomor 15/KPPU-I/2019)," *Kertha Patrika* 47, no. 2 (2025): 196–216, https://doi.org/10.24843/KP.2025.v47.i02.p05; D. Aryadiputra, D. S. Pribadi, dan A. Subroto, "Perbedaan Penerapan Pendekaran Per Se Illegal dan Rule of Reason dalam Putusan KPPU tentang Kartel Penetapan Harga," *Risalah Hukum* 18, no. 1 (2022): 1–19, https://doi.org/10.30872/risalah.v18i1.753; M. Raihan Mappuji dan Lingga Wisnu Wardana, "Fintech Competition Compliance: Analisis Pelaku Usaha Fintech dalam Menjalankan Program Kepatuhan Persaingan Usaha KPPU," *Jurnal Studia Legalia* 4, no. 1 (2023): 43–59, https://doi.org/10.61084/jsl.v4i01.64.

component examines available documentary materials rather than reconstructing the individual circumstances of every respondent. This design reflects the doctrinal method of using legal materials to develop arguments and reach legal conclusions.[8]

Primary legal materials comprise legislation, treaties, and European Union judgments accessible through EUR-Lex. The identity of KPPU Decision No. 05/KPPU-I/2025 was established through the decision registry and official publications. The full text of the Commission's decision, the judgment on the objections, and historical versions of the AFPI Code of Conduct were not obtained directly during the research. Official summaries and news reports are accordingly treated as documentary materials, not substitutes for authentic legal texts. Secondary materials include books and journal articles identified through DOIs, publisher websites, library catalogs, and GARUDA, Indonesia's academic publication index. The study does not rely on original interviews, observations, or individual transaction data.

The analysis identifies applicable provisions and distinguishes their periods of operation. It uses grammatical interpretation to examine the elements of agreement and price; systematic interpretation to consider Article 1, points 7 and 10, together with Articles 5, 11, and 50 of Law No. 5 of 1999; and teleological interpretation to assess the objectives of fair competition and consumer protection. European Union law is used for a limited conceptual comparison, not on the assumption that the two legal systems are equivalent. Deductive reasoning distinguishes documented circumstances, statements by the parties or institutions, and the study's own normative conclusions. The research cutoff was November 19, 2026.

3. RESULTS AND DISCUSSION

3.1. Classification of the AFPI Code of Conduct as a Price-Fixing Agreement

Article 1, point 7, of Law No. 5 of 1999 defines an agreement broadly to encompass conduct through which business actors bind themselves to one another, regardless of its designation or whether it is written or unwritten. Article 5(1) prohibits agreements between competing business actors to determine the price of goods or services payable by consumers or customers in the same relevant market.[9] The substance of the agreement thus takes precedence over documentary formalities. Establishing the existence of an association rule is insufficient on its own: the existence of an agreement and the connection between that agreement and the business actor under examination remain distinct matters of proof. Corporate law and internal organizational arrangements cannot substitute for the specific statutory elements of competition law.[10]

The first issue concerns the pricing parameter. In LPBBTI, the borrower's cost may include several components, such as the funding provider's return, administrative

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[8] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), https://eprints.unram.ac.id/20305/.

[9] Juan Matheus and Ariawan Gunadi, "Pembentukan Lembaga Pengawas Perlindungan Data Pribadi Di Era Ekonomi Digital: Kajian Perbandingan Dengan KPPU," *JUSTISI* 10, no. 1 (2024): 20–35, https://doi.org/https://doi.org/10.33506/jurnaljustisi.v10i1.2757.

[10] Indonesia, Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat, Pasal 1 angka 7 dan Pasal 5, https://peraturan.bpk.go.id/Details/45280/uu-no-5-tahun-1999; Andi Fahmi Lubis et al., *Hukum Persaingan Usaha: Buku Teks*, 2nd ed (Jakarta: KPPU, 2017), https://elibrary.kppu.go.id/index.php?id=3201&keywords=&p=show_detail.

charges, and platform fees. OJK Circular Letter No. 19/2025 illustrates that the term "economic benefit" covers more than interest alone. Although the subsequent definition has no retroactive application, it underscores the importance of identifying the cost components governed by the historical association rule. An agreement concerning only a ceiling on a particular charge does not mean that all cost components have been fixed uniformly. Conversely, an agreement on a formula or maximum limit can restrict one dimension of price competition even while final rates vary. OECD literature on cartels illustrates how coordination may concern pricing parameters rather than identical nominal transaction prices.[11]

Consider a hypothetical daily ceiling of 0.4%: operator A charges 0.2%, B charges 0.3%, and C charges 0.4%. Each retains discretion to price below the ceiling. Such variation establishes neither that the ceiling was determined independently nor that an agreement existed. If competitors adopted the ceiling as a common benchmark, the coordination concerns the maximum pricing parameter, not an obligation to charge identical amounts. If, by contrast, all operators comply with a ceiling imposed through binding regulation, their uniform compliance reflects a vertical legal requirement. The form of a ceiling alone therefore cannot determine its legality.

The second issue is whether the operators compete in the same relevant market. Article 1, point 10, of Law No. 5 of 1999 relates the relevant market to the geographic scope of marketing and goods or services that are identical, similar, or substitutable. LPBBTI services vary in character, including productive and consumer financing and conventional and Sharia-compliant products. Differences in contractual structures do not necessarily establish separate markets, but they cannot be disregarded. Assessing substitutability by reference to users' needs, product functions, eligibility requirements, costs, and geographic reach provides a basis for determining whether operators compete with one another. Common association membership does not establish a single relevant market.[12]

The third issue concerns evidence of a horizontal agreement and its attribution to individual business actors. The concept of *concerted action* helps explain coordination that is not embodied in a formal contract. Under Indonesian law, it is not an independent category of infringement outside the statutory language; rather, it can inform proof of an unwritten agreement. Fitriansyah and colleagues and Buana and Dewi examine airline-pricing proceedings from the perspectives of coordination and enforcement. These studies illustrate the relevance of communications and patterns of conduct, but they do not establish the facts of P2P lending. As Alfian and Murniati and Mahayunan and colleagues discuss, indirect evidence must be evaluated through reasoning that connects it to the elements of the alleged agreement.[13]

Relevant documentary evidence may include circulated drafts of the code, communications between association officers and members, meeting minutes, internal

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[11] SEOJK 19/2025; Organisation for Economic Co-operation and Development, *Fighting Hard-Core Cartels: Harm, Effective Sanctions and Leniency Programmes* (Paris: OECD Publishing, 2002), https://doi.org/10.1787/9789264174993-en.

[12] UU 5/1999, Pasal 1 angka 10 dan Pasal 5; Laela, "Perlindungan Hukum bagi Pelaku Usaha Penyelenggara Fintech Peer to Peer".

[13] Fitriansyah et al., "Concerted Action dalam Menilai Praktik Penetapan Harga (Studi Putusan KPPU"; S. E. W. Buana dan R. Dewi, "Analisis Yuridis Putusan KPPU No. 15/KPPU-I/2019 terhadap Pengenaan Sanksi Pelaporan Tertulis Jasa Angkutan Udara," *Ahmad Dahlan Legal Perspective* 2, no. 1 (2022): 1–19, https://doi.org/10.12928/adlp.v2i1.5233; Alfian dan Murniati, "Implementasi Bukti Tidak Langsung dalam Penyelesaian Perkara Hukum Persaingan Usaha"; Mahayunan et al., "Urgensi Pemberlakuan Indirect Evidence pada Penanganan Perkara Kartel di Indonesia".

instructions, and records of implementation. Nevertheless, transmission of information differs from receipt, knowledge differs from assent, and compliance with a binding requirement differs from acceptance of a privately determined pricing policy. Attribution requires evidence linked to the specific actor, period, and conduct in question. For operators that joined the association after the rule was established, the date of membership, acceptance of the rule, and discretion available at the time differ from the circumstances of founding members. Association membership alone therefore cannot justify identical findings of liability across all members.

Economic evidence can strengthen or weaken an inference of coordination. Examples include price changes following common communications or the clustering of rates at a ceiling. Similar patterns, however, may arise from credit risk, funding costs, regulatory policies, platform requirements, or shared changes in demand. Without adequate data and consideration of alternative explanations, comparable cost levels do not independently establish an agreement. Pricing policies that predate association communications may likewise challenge an inference of assent. These examples identify analytical indicators; they do not presume that particular communications or economic evidence existed for every respondent.

Article 5 is generally characterized as a *per se illegal*. Unlike Article 11, which links cartel conduct to potential monopolistic practices or unfair competition, Article 5 focuses on price-fixing agreements between competitors. KPPU Regulation No. 4 of 2011 provides specific guidelines on Article 5. The absence of a separate requirement to demonstrate market harm does not dispense with proof of the subject matter of the agreement, the relevant market, or individual participation. Economic analysis remains pertinent to establishing competitive relationships, evaluating coordination, and assessing alternative explanations. The classification of an agreement must also be distinguished from the imposition of administrative sanctions, which is governed by Article 47 under the applicable amended legal framework.[14]

A consumer-protection objective neither confers automatic immunity nor can it be excluded from the normative context. The relationship between small-business protection and consumer protection under competition law. Their analysis underscores the need for coherence between legal regimes rather than providing a general justification for price coordination. Article 5(2) exempts agreements made within a joint venture and agreements based on applicable statutes. Article 50(a) exempts acts or agreements intended to implement applicable legislation and regulations. KPPU Regulation No. 5 of 2009 provides guidelines for the latter exception. The assessment of exceptions therefore starts from concrete domestic legal provisions rather than a business actor's own assessment of the benefits of its policy.[15]

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[14] UU 5/1999, Pasal 5, 11, dan 47; Indonesia, Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Perppu Nomor 2 Tahun 2022 tentang Cipta Kerja Menjadi Undang-Undang, https://peraturan.bpk.go.id/Details/246523/uu-no-6-tahun-2023; Komisi Pengawas Persaingan Usaha, Peraturan Komisi Pengawas Persaingan Usaha Nomor 4 Tahun 2011 tentang Pedoman Pasal 5 (Penetapan Harga), https://kppu.go.id/media-publikasi/regulasi/pedoman?page=2; C. Adeffian dan R. Apriani, "Metode Pendekatan Per Se Illegal and Rule of Reason Terkait Penegakan Hukum Alternatif Persaingan Usaha Tidak Sehat," *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* 9, no. 2 (2023): 97–103, https://doi.org/10.37567/shar-e.v9i2.2227; Aryadiputra et al., "Perbedaan Penerapan Pendekaran Per Se Illegal dan Rule of Reason"; L. Jawani, "Prinsip Rule of Reason terhadap Praktik Dugaan Kartel di Indonesia," *Lex Renaissance* 7, no. 1 (2022): 31–40, https://doi.org/10.20885/jlr.vol7.iss1.art3.

[15] D. Apriani dan Syafrinaldi, "Konflik Norma antara Perlindungan Usaha Kecil Menurut Hukum Persaingan Usaha Indonesia dengan Perlindungan Konsumen," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 14–33, https://doi.org/10.14710/jphi.v4i1.14-33; UU 5/1999, Pasal 5 ayat (2) dan Pasal 50 huruf a; Komisi Pengawas Persaingan

The contested enforcement positions in the AFPI proceedings illustrate the importance of these elements. In its March 2026 publication, KPPU considered the ceiling a mechanism facilitating coordination and rejected the claimed exception. Reports of the annulment indicate that the Commercial Court assessed OJK's directions, rate variation, relevant markets, and the absence of proof of an agreement differently. Merely reiterating either institution's conclusions cannot resolve these competing positions. Because the full decisions were unavailable, this study does not identify any particular document as the decisive basis of the judgment or determine the liability of the 97 respondents. Its normative finding is narrower: a collective ceiling may fall within Article 5 only after the elements concerning price, competitors, agreement, and attribution, as well as the applicable exceptions, have been assessed.[16]

3.2. The Interpretive Role of Article 101 TFEU and the Limits of Regulatory Compulsion

Article 101(1) TFEU expressly covers agreements between undertakings, decisions by associations of undertakings, and concerted practices that may affect trade between Member States and have as their object or effect the restriction of competition. It also encompasses direct and indirect price fixing. Indonesia's Law No. 5 of 1999 recognizes written and unwritten agreements, but Article 5 does not enumerate association decisions as a distinct prohibited category. This difference in statutory formulation explains why an association decision in Indonesia must be connected to the elements of an agreement between business actors rather than being treated as an infringement in itself. Article 101 is pertinent for conceptual clarification, not for the direct application of EU law in Indonesia.[17]

The use of foreign legal materials as interpretive aids requires an explanation of their relevance and the limits of the analogy. The legitimacy of foreign-law references in constitutional adjudication and act as a typology of the Indonesian Constitutional Court's use of international law. Although these studies address matters other than competition law, their distinction between persuasive and binding legal authority helps prevent the substitution of foreign rules for domestic enforcement provisions. The place of Article 101 in the parties' submissions and the Commission Panel's reasoning is distinct from the question of its legal applicability. Without the full decision, the exact function of each reference cannot be established through textual analysis. This article accordingly relies on a direct comparison of legal provisions rather than claiming that KPPU adopted the entire EU framework.[18]

In *Eturas*, Case C-74/14, the Court of Justice of the European Union addressed a message sent by the administrator of a booking system to travel agencies concerning a

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Usaha, Peraturan Komisi Pengawas Persaingan Usaha Nomor 5 Tahun 2009 tentang Pedoman Pelaksanaan Ketentuan Pasal 50 Huruf a Undang-Undang Nomor 5 Tahun 1999, https://kppu.go.id/media-publikasi/regulasi/pedoman?page=3.

16 Komisi Pengawas Persaingan Usaha, "Putusan KPPU"; Tim Dandapala, "PN Jakpus Batalkan Putusan KPPU Soal Bunga Pinjol, Ini Alasannya!".

17 European Union, Consolidated Version of the Treaty on the Functioning of the European Union, Article 101, https://eur-lex.europa.eu/eli/treaty/tfeu_2016/art_101/oj/eng; UU 5/1999, Pasal 1 angka 7 dan Pasal 5.

18 Achmad Zuhdi dan Ari Ade Kamula, "Legitimasi Hukum Asing sebagai Pertimbangan Putusan oleh Mahkamah Konstitusi: Perbandingan antara Indonesia dan Afrika Selatan," *Yurispruden* 7, no. 2 (2024): 272–296, https://doi.org/10.33474/yur.v7i2.21634; Simon Butt, Bisariyadi, dan Fritz Siregar, "International Law in the Indonesian Constitutional Court: A Typology of Use," *Asian Journal of International Law* 16, no. 1 (2026): 105–126, https://doi.org/10.1017/S204425132510074X.

discount ceiling. The judgment distinguished knowledge of the message from participation in a concerted practice and recognized the possibility of rebuttal through other evidence. The case provides a limited analogy for digital communications within an association: receipt of information does not automatically establish that every recipient agreed to coordinate. Evidence that a firm rejected a policy or pursued an independent strategy may be relevant. Applicable evidentiary standards and procedures remain matters of Indonesian law; *Eturas* does not establish a rule shifting the burden of proof to every AFPI member.[19]

EU law also distinguishes restrictions of competition *by object* from restrictions *by effect*. Ibáñez Colomo examines the role of context and legal reasoning in identifying restrictions by object. That category is not directly equivalent to the Indonesian characterization of Article 5 as a *per se illegal*. Economic context helps explain the nature of the agreement and the relationship between the parties; it does not replace the domestic statutory elements. This distinction matters because a maximum price may reflect a protective standard imposed by a public authority or a decision by competitors that limits pricing independence.[20]

Article 101(3) TFEU provides for an exemption subject to four cumulative conditions: a contribution to improved production or distribution or to technical or economic progress; a fair share of the resulting benefits for consumers; restrictions indispensable to achieving those benefits; and no elimination of competition in respect of a substantial part of the products concerned. Funta and Schultz examine the interpretation of this provision; Groza and Perrin address the boundaries of cooperation in innovation networks, while Pitsos explores the relationship between horizontal agreements and sustainability objectives. These studies illustrate why the objectives and restrictive features of cooperation warrant structured legal analysis. However, Article 101(3) cannot itself exempt conduct from Article 5 in Indonesia. In the AFPI context, questions about benefits, necessity, and alternative policies serve an analytical function; the legal basis for an exception remains Article 5(2) and Article 50 of Law No. 5 of 1999.[21]

OJK's involvement raises a distinct question about the source of the obligation. Regulations Nos. 77/2016 and 10/2022 provide the historical context for association governance, whereas Regulation No. 40/2024 and Circular Letter No. 19/2025 reflect a strengthening of direct regulatory oversight. An obligation to comply with an association code is not equivalent to unrestricted delegated authority to set prices. Conversely, the absence of a numerical ceiling in earlier regulations does not automatically establish that the association acted without regulatory directions. OJK's 2025 official statement that the historical ceiling reflected its directions is relevant to

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[19] Court of Justice of the European Union, Eturas UAB and Others v Lietuvos Respublikos konkurencijos taryba, Case C-74/14, Judgment of 21 January 2016, paras. 39–49, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0074.

[20] Pablo Ibáñez Colomo, "Restrictions by Object under Article 101(1) TFEU: From Dark Art to Administrable Framework," *Yearbook of European Law* 43 (2024): 224–260, https://doi.org/10.1093/yel/yeae010; TFEU.

[21] Rastislav Funta dan Andreas Schultz, "The Interpretation of Article 101 (3) of the TFEU by the European Commission," *Prawo i Więź*, no. 4 (47) (2024): 651–670, https://doi.org/10.36128/PRIW.VI47.808; T. Groza dan E. Perrin, "Neither Mergers nor Cartels: Innovation Networks and Competition Law," *Journal of Competition Law & Economics* 20, no. 3 (2024): 206–227, https://doi.org/10.1093/joclec/nhae008; Nikolaos Pitsos, "Competition Law and Sustainability in Horizontal Agreements: Complex Boundaries," *Journal of Antitrust Enforcement* (2026), https://doi.org/10.1093/jaenfo/jnaf031; TFEU, Pasal 101 ayat (3).

legal attribution, but it does not replace examination of the underlying instrument, date, content, legal effect, statutory authority, and discretion remaining with members. Standards adopted after 2023 do not retrospectively validate or establish an infringement in an earlier period.[22]

The development of transaction-data reporting under OJK Regulation No. 8 of 2026 also clarifies the data-management functions of operators and associations. Reporting obligations and authority to administer information systems are distinct from authority to determine prices collectively. The distinction is relevant when assessing the association's discretion during the period in which each instrument applied.[23]

As a comparative reference, *CIF*, Case C-198/01, distinguishes restrictions attributable to state legislation from autonomous conduct that undertakings could still pursue within that legal framework. The analogy helps differentiate three situations. First, a valid regulation prescribes a specific ceiling and leaves no discretion concerning that limit. Second, a regulatory direction establishes a general objective but leaves the amount or means of implementation to the association. Third, a private decision exceeds the scope of the direction, for example by aligning actual rates or exchanging pricing information beyond what is necessary to implement the requirement. The first situation may implicate a domestic exception; the second requires examination of the discretion retained; and the third remains subject to assessment as autonomous conduct. This framework is an interpretation of domestic law informed by comparison, not a transplantation of a foreign *state action* doctrine.[24]

Scholarship on private regulation likewise shows that association governance can establish beneficial standards while potentially restricting competition. Lindholm examines private governance in sports, and the OECD competition assessment toolkit identifies risks associated with self-regulation. The analogy across sectors is limited to institutional functions. In fintech, the compliance programs examined by Mappuji and Wardana and Silalahi are pertinent to documenting decisions, assessing risks, and allocating responsibilities. A compliance program does not itself establish the legality of an agreement, but it may generate evidence about the source of a mandate, the discretion retained, and individual conduct.[25]

The synthesis of the two research questions yields the analytical framework summarized below. Its three components are sequential but interrelated because evidence of regulatory discretion may influence both the assessment of an agreement and the attribution of liability.

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22 POJK 77/2016; POJK 10/2022, Pasal 108; Otoritas Jasa Keuangan, "OJK"; SEOJK 19/2023; POJK 40/2024; SEOJK 19/2025; UU 4/2023; UU 4/2026.

23 Otoritas Jasa Keuangan, Peraturan Otoritas Jasa Keuangan Nomor 8 Tahun 2026 tentang Pelaporan dan Permintaan Data Transaksi Pendanaan oleh Penyelenggara Layanan Pendanaan Bersama Berbasis Teknologi Informasi, https://ojk.go.id/id/regulasi/Pages/POJK-8-Tahun-2026-Pelaporan-dan-Permintaan-Data-Transaksi-Pendanaan-oleh-Penyelenggara-LPBBTI.aspx.

24 Court of Justice of the European Union, Consorzio Industrie Fiammiferi (CIF) v Autorità Garante della Concorrenza e del Mercato, Case C-198/01, Judgment of 9 September 2003, paras. 66 dan 80, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A62001CJ0198; UU 5/1999, Pasal 5 ayat (2) dan Pasal 50 huruf a.

25 J. Lindholm, "Requiring Good Governance from Private Regulators: What About the Rest of Us after ESL and ISU?," *The International Sports Law Journal* 23, no. 4 (2023): 460–466, https://doi.org/10.1007/s40318-024-00259-8; Organisation for Economic Co-operation and Development, *Competition Assessment Toolkit: Guidance*, Vol. 2, Version 4.0 (Paris: OECD Publishing, 2019), https://doi.org/10.1787/b6b938e9-en; Mappuji dan Wardana, "Fintech Competition Compliance"; Nova Angelina Silalahi, "Pembentukan Perangkat Kepatuhan Persaingan Usaha sebagai Strategi untuk Meningkatkan Kepatuhan Persaingan Usaha," *Jurnal Persaingan Usaha* 2, no. 1 (2022): 30–42, https://doi.org/10.55869/kppu.v3i-.50.

Table 1. *Analytical Framework for Association Pricing Policies*

Analytical component	Legal indicators	Analytical consequence
Pricing parameter and market	Cost components; formula or ceiling; competitors; product substitutability.	Determines the scope of Article 5 rather than merely identifying similar rates.
Attribution of coordination	Communications; assent; period; independent conduct; rebuttal evidence.	Distinguishes association decisions from individual participation.
Regulatory compulsion	Valid instrument; statutory authority; timing; discretion; additional conduct.	Distinguishes compliance with regulation from private coordination and tests domestic exceptions.

Source: Authors' analytical construction based on Articles 1, 5, and 50 of Law No. 5 of 1999, with Article 101 TFEU as an interpretive reference.

This framework differs from approaches that equate an association policy with an agreement among all members or treat OJK supervision as sufficient to displace the prohibition. Where regulation mandates a ceiling, the inquiry distinguishes compliance with that maximum from additional coordination below it. Where a member had no knowledge of the rulemaking process, the inquiry extends beyond membership to evidence of attributable participation or acceptance. Where products are not substitutable, a common ceiling does not establish competition in the same market. This distinction between layers of legality is the study's central contribution and does not depend on the final disposition of the AFPI proceedings. Its application to individual actors, however, requires a complete evidentiary and adjudicative record.

4. CONCLUSION

The AFPI Code of Conduct may qualify as a price-fixing agreement under Article 5 of Law No. 5 of 1999 if the maximum constitutes a pricing parameter agreed upon by competitors in the same relevant market and the agreement is attributable to the individual business actors concerned. Differences in actual rates do not exclude coordination, while membership, silence, or compliance alone does not establish agreement. Characterizing Article 5 as a *per se illegal* does not eliminate proof of agreement, competitive relationships, the pricing parameter, or examination of applicable exceptions. The reported annulment of the Commission's decision on objection and the ensuing cassation proceedings prevent the AFPI dispute from being treated as a final judicial determination in this study.

Article 101 TFEU serves as persuasive interpretive authority for understanding association decisions, unwritten coordination, and the scope of autonomous conduct, without creating new prohibitions or exceptions in Indonesian law. The relationship between OJK's directions and the operators' conduct depends on statutory authority, the substance of the instrument applicable at the relevant time, and the discretion retained, assessed under Article 5(2) and Article 50 of Law No. 5 of 1999. The article's contribution is a three-part framework separating the pricing parameter and relevant market, attribution of coordination, and regulatory compulsion. It provides a doctrinal

basis for distinguishing lawful consumer protection from horizontal price restrictions without determining individual liability in the absence of complete case documents.

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