

“Optimal deterrence: Exploring business cartels in Indonesia and their impact on the economy”

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OPTIMAL DETERRENCE: EXPLORING BUSINESS CARTELS IN INDONESIA AND THEIR IMPACT ON THE ECONOMY

Abstract

A business cartel is a business that is carried out by business actors to obtain market power by regulating the market by fixing prices, for example, by limiting the availability of commodities on the market. This paper examines in detail business cartel practices in Indonesia, explores their impact on the economy, and analyzes KPPU as an unfair business eradication body. In so doing, this paper analyzes eight business cases in Indonesia to describe and evaluate the practices of economic cartels in the industry. Those cases were randomly chosen for different periods and different industrial sectors. Using a qualitative analysis method, it is found that business cartels, unfortunately, are still rather common practice in Indonesia. It is also found that business cartels harm economic development, citizens and customers, since they tend to be monopolistic practices so that the customers will have to pay high prices for limited commodities. In addition, KPPU needs to be reformed, and the amendment of current antitrust law also needs to be executed. Consequently, judges and lawmakers should understand the balance of business interest and public interest at the same time.

Keywords

cartel business, business collusion, antitrust policy, unfair business, policy making

JEL Classification

K21, K23

INTRODUCTION

Trade competition is ubiquitous. The existence of business competition can form a perfect market and change market structures (Symeonidis, 2000). In addition to competitive prices, the range of products offered to the market is also more varied. That is, consumers have more choices of products and prices according to their needs and purchasing power. Unfortunately, the intense competition in business led to the idea of cooperation to 'outsmart' the competition itself (Usman, 2004, 2013).

Competition, that is, healthy business competition, contributes to a good and healthy economic development and society as a whole for various reasons. One of the reasons is being able to push down the price of commodities to boost up the product quality. Healthy business competition particularly benefits costumers in general. On the other hand, healthy competition can also boost the production efficiency, and encourage business actors to innovate more regarding their products so that it will not be eliminated from market (KPPU, 2010).

On the other hand, unhealthy business practices, such as monopoly, will affect quality and prices of commodities. Business actors will no longer have to innovate their products and services because there are

no more competitors. These practices are killing the economic development sector, and this will harm customers and market as a whole. Meanwhile, the same tactics are used by cartels, including supply reduction, price-fixing, collusive bidding, and market carving. It is considered illegal because it promotes anti-competitive practices. Thus, its actions can hurt customers through increased prices of commodities and lack of transparency (Qaqaya, 2008).

Furthermore, cartels are an independent producer group whose aim is to set prices, limit supply and competition (Tampubolon et al., 2019). Under antitrust laws, cartels are prohibited in almost all countries. Nevertheless, cartels still exist both nationally and internationally, formally and informally. A single business entity that holds a monopoly cannot be considered a cartel, although it can be considered guilty if it misuses its monopoly. Cartels usually arise under oligopoly conditions, where there are a small number of sellers with similar types of products.

Particularly in Indonesia, the large potential market is strongly influencing and indirectly leading to cartel practice, which, unfortunately, are becoming rampant. Many cartel cases in Indonesia end up in court, but the fine, that is the money penalty inflicted upon those actors, cannot be classified as an equitable penalty (Nurfaik, 2019). Furthermore, the problem can be elaborated more, because this fine is the maximum fine that can be imposed on a cartel actor as regulated in Law Number 5 Year 1999 about Prohibition of Monopolistic Practices and Unfair Business Competition (Nurfaik, 2019).

While the practices of such cartels are common, especially in developing countries, it is essential to analyze further its dynamics and idiosyncrasies (Iman, 2014).

1. LITERATURE REVIEW

Business competition is a form of freedom of expression that every individual has to trade or carry out transactions in the market. Business competition is a mechanism to achieve social welfare, that will benefit the people as customers with a high quality product and variety of product choice (Nurhayati, 2011). It can be said that healthy business competition is a catalyst to developing better industries and better economic conditions (Qindy, 2018).

Put it simply, a business cartel can be understood as a form of cooperation between independent producers to dispel competition and dominate the market (Osborne, 1976). The purpose of the cartel is to determine prices, limit product supply and competition. The cartel arises from the oligopoly condition, in which there are many producers in the market with similar types of products (Usman, 2004, 2013). Such practices can then easily be found not only in business and trade, but also in political power and association, especially in developing countries (Slater, 2004).

As long as there has been an interest in relationship in marketing, there has been the recognition

of a potentially 'dark side' to their development and existence (Tadajewski, 2010). Much of the initial research on the dark side of business relationships focused on negative relationship constructs such as opportunism and conflict. Opportunism is a central problem in cartel relationships as their illicit nature prohibits the use of legally binding contracts (Pressey, 2015).

The reason for the collaboration in the form of a cartel is that producers as business actors can gain market power (Setyanegara, 2013; Wicaksana, 2018). Market forces allow producers to regulate prices by making agreements limiting product availability in the market, limiting production, and dividing sales territories. Limited product availability can cause scarcity, so producers can raise prices to produce higher levels of profit. This kind of practice is obviously contradictory to the idea of a welfare state (Sukmana, 2016).

As a conspiracy, cartels have various types (Chen & Harrington, 2007). This type of cartel places more emphasis on the scope or scope of cooperation rather than the others, which is the main point of agreement among the producers involved

in the cartel. The various types of cartels can be described below (KPPU, 2015, 2016).

First, *Price cartel*. As the name implies, this type of cartel aims to regulate the price of products produced by producers who are members of a cartel. In this type of a cartel, the minimum selling price of the product is determined. Each cartel member producer is prohibited from selling their products at prices lower than the minimum price determined and agreed upon. However, cartel members are not prohibited from selling their products at a higher price, provided that any risk of loss, if not sold in the market, is their own responsibility.

Second, *Cost of goods cartel*. What is the difference between the price cartel? The price cartel determines the minimum selling price, while the sales price cartel determines the basic price and uniform profit rate among cartel members. A different level of profit is thought to cause competition. Therefore, in order for competition to be avoided, the producers agreed to uniform the old level to be taken.

Third, is *Rayon cartel*. Rayon means a division of territory. Rayon cartel is a type of cooperation to determine the marketing area, followed by the pricing for each region (Cerretano, 2012). With the agreement on the division of territory, cartel members are prohibited from selling their products to other regions.

Fourth, *Contig entering cartel*. This type of cartel determines the volume of production. Producers whose production volume is lower or less than the specified quota will be given a prize premium. Conversely, if the production volume exceeds the agreed quota, a penalty will be imposed. This type of cartel aims to master product availability on the market.

Cartel terms. The type of cartel requirements stipulates specific requirements, for example, in terms of sales, quality standards of goods and shipping, and packaging. The aim is to create uniformity of products and their attributes, so that competition does not occur between producers.

Fifth, *Sales cartel*. The point of cooperation in the type of sales cartel is the establishment of a cen-

tral sales cartel. That is, goods produced by cartel member producers are sold through a single sales office, so there is no competition.

And the last, *Profit cartel*. In this cartel, an agreement is made on the acquisition and distribution of profits. The mechanism for gross profit earned by cartel members is centralized in the cartel's general cash, while the net profit obtained is divided among all cartel members with specific proportions in accordance with mutually agreed terms (Osborne, 1976).

In forming a cartel, there is generally a consensus among firms that prices should be raised. Though there may be some disagreement as to extent of the price increases (with higher cost firms preferring higher increases), the far more prevalent source of disagreement lies in market allocation: How is demand to be distributed among the firms participating the cartel? Though initially able to raise price without having settled upon a market allocation, the arrangement soon unraveled with a series of price cuts as firms reduced prices to either claim more market share or in response to a reduction in its marketshare. Only after coming back to the bargaining table and settling on an allocation did successful collusion ensue (Harrington, 2015).

As a kind of business conspiracy, a cartel can have both positive and negative impacts (see Table 1).

Because of many negative impacts and a danger to the cartel in trading, cartels are not permitted. Such practices are considered and declared illegal (Weruin, 2017). The prohibition on the existence of this cartel is stipulated in Law Number 5/1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, which in Article 11 states, "marketing of goods and/or services, which may result in monopolistic practices and or unfair business competition."

The question then is, How can we fight business cartels? The ineffectiveness of law enforcement related to cartel practices is something that is not encouraging, particularly in Indonesia (Tampubolon et al., 2019), considering that cartels are a very important and phenomenal issue in the application of business competition law in many countries (Antoni, 2019). The cartel remains the oldest form

Table 1. Business cartel impact

Positive impact	Negative impact
The cartel allows the employment relationship between company management and workers to be more conducive because all demands that are a source of conflict, such as rising wages and workers' welfare, can be more easily granted	Lack of innovation development because the profits earned by companies tend to be stable and precise
The risk of termination of employment can be minimized or even avoided because companies incorporated in a cartel tend to have a more stable position in free competition	The company does not have the freedom to develop innovation and business expansion because of the agreed regulations in the cartel and the sanctions
The risk of loss due to low levels of sales can be minimized because either production or sales are regulated and guaranteed in amount	Harming the consumer community, because the cartel's market power results in unstable prices, and the cartel has the power to raise the price of the product as he wishes
–	The business climate is less conducive than before due to the absence of fair competition among producers
–	It affects people's purchasing power because product prices are vulnerable and unstable
–	The benefits obtained and enjoyed by cartel member producers are likely to be too substantial and long-term
–	The price of a product controlled by a cartel can trigger inflation, which will harm the public at a macro level

of business competition, as well as a collusive act by entrepreneurs who are considered the most dangerous in the business world. Levenstein and Suslow state that cartels are illegal agreements in which firms collude with competitors to increase profits by softening competition. They distort market outcomes and cause significant dead weight losses (Levenstein & Suslow, 2006).

Cartels are generally regarded as the most socially harmful anticompetitive practice. Furthermore, Morgan states that cartels are typically illegal and operate in secret. Recent high profile cartel cases, internationally, have demonstrated in landscape and areas as diverse as drugs, rubber, fine art, industrial threads (Morgan, 2009). Energy markets are no exception; an increased number of unlawful cartels have been detected in both Europe and the US in recent years (Lunde, 2019). Cartels are more common than is widely known. Publicly traded U.S. firms convicted of cartel activity between 1990 and 2010 accounted for more than one fifth of the total U.S. market capitalization (Ferrés et al., 2020). Katsoulacos et al. (2015) state that cartels are still very active throughout the world and pervasive in a wide variety of markets, despite increased enforcement in the form of much higher fines and other sanctions and the implementation of leniency policies.

For comparison, in the European Union (EU), the principle body in charge of investigating cartels, is the European Commission. The investigation starts as follows: (a) a complaint, (b) the opening

of a own-initiative investigation, or, (c) a leniency application from one of the participant of a cartel. After the investigation, the Commission decides whether to conduct an in-depth investigation. This is the first point at which the factor of the investigation is publically announced (Mariuzzo, 2020). Furthermore, in Indonesia, this principle body is carried out by Business Competition Supervisory Commission or KPPU. KPPU's authorities are resolving cases, including monopolistic practices and unfair business competition (Simbolon, 2012).

In Indonesia, the business competition issue is regulated by Law No. 5 of 1999. This regulation is based on the Indonesian Constitution, the 1945 Constitution, especially referring to Article 33 stating that every citizen has equal opportunities to open and conduct business. This article also requires that every business competition must be a healthy competition (Pratama, 2018). In general, Law No. 5 of 1999 contains six parts of the regulation consisting of prohibited agreements, prohibited activities, dominant position, KPPU (Business Competition Supervisory Commission), law enforcement, etc. Cartel is one of the agreements prohibited under this law (Silalahi and Edgina, 2017).

Furthermore, in the beginning of bill making, Law No. 5 of 1999 used the term based on Pancasila (The Five Principles of Indonesia), and considers the economic democracy system used as the embodiment of the Indonesian economic system. The basic element of economic democracy can be

explained as follows: First, the national economy structured as a joint effort based on the kinship principle. Second, – society welfare takes precedence, rules out the individual welfare. Third, resources are used for the greatest people's welfare (Suhara, 2009). But on the contrary, in fact, in Indonesia, cartel practices are still tolerable and still allowed to be carried out as long as the cartel does not cause monopolistic practices or unfair business competition; this is based from The Law No 5. of 1999, Article 11 (Qindy, 2018).

Nevertheless, a business cartel is categorized as a serious violation of business competition law because its impact on the decline in social welfare is considered very real, given the large amount of losses suffered by the community (Antoni, 2019). The following section will discuss the aim of this paper and the research methodology to help in describing and analyzing the case of business cartels in Indonesia.

2. AIM

The purpose of this paper is to offer recommendations for reforming the KPPU as an state body and reinforcing its authorities regarding eradication or elimination of unfair business trade, in particular, cartel practices. To that end, this paper provides a broader picture of cartel practices by analyzing eight cases from different areas of industries ranging from daily needs, communication, airlines ticketing, to automotive commodities.

3. RESEARCH METHODOLOGY

This study is conducted using juridical normative, document analysis. Research positions law as a building system norm (Nazir, 2009). The system norm referred to here is the verdict of an institution, in this case, the KPPU's verdict and efforts mind to review. An approach used in this study is the statute approach to research various rules of law generally accepted (*in abstracto*) and the form case approach to explore reasons a judge in the case makes the ultimate judgments (*in concreto*). The statutory approach is used to analyze formulation problems to prove that cartel business is done by an association of Indonesian subsidiaries if the

case is reviewed by the business competition supervisory commission.

The case approaches are used to analyze the formulation of the second problem (Hajar, 2017). To analyze the case handling, the practices of a cartel of the children of a case study of verdicts number 167/PK/PDT.SUS-KPPU/2017 in 2018 is used at the level of the case review. An effort at this level is not arranged in order by the business competition law. The research method is a normative law analysis that used secondary data (primary law material, secondary law material, and other raw material) and supporting data (the results of the interviews) with the speakers of the business law professor's opinion (Diantha, 2017).

The research analysis material used in this study is a qualitative study, and analysis is done in naturalistic one, consisting of words not processed into figures (Nazir, 2009). The analysis methodology is based on the nature of this experiment, which is described as dealing with the condition of the law to try to answer the existing problems. From the results, a conclusion is then drawn, where a conclusion taken was carried out based on a procedure of reasoning called deduction, namely ways of thinking that is fundamental to general things and then a conclusion is drawn specifically called a syllogism. This is in order to know what was found both from the literature and legislation (*das sollen*) with practices (*das sein*) is that the consideration of the law by the judge becomes (Hajar, 2017).

In particular, the following rules and regulations are analyzed: Law Number 5 of 1999 about Prohibition of Monopolistic Practices and Unfair Business Competition, Supreme Court's Regulation Number 3 of 2005 about Procedures for Submitting Objection Laws against KPPU Verdicts, Business Competition Supervisory Commission's Regulation Number 1 of 2010 about Procedures for Handling Cases, Business Competition Supervisory Commission's Regulation Number 4 of 2010 about Cartel, Supreme Court's Verdict Number 167/PK/PDT.SUS-KPPU/2017 in 2018, Supreme Court's Verdict Number 221/K/PDT.SUS-KPPU/2016 in 2016, District Court's Verdict Number 70/PDT.G/KPPU/2015/PN.JKT.PST in 2015, as well as Business Competition Supervisory Commission's Verdict Number 08/KPPU-I /2014 in 2015.

4. RESULT AND DISCUSSION

4.1. The Indonesian business cartel cases

Whether recognized or not, cartel practices still exist today in Indonesia, as if it is a necessary practice (Iman, 2014). Cartel cases that have occurred in Indonesia include the automotive industry, telecommunications related to the determination of telephone and SMS service tariffs involving several cellular operators, the pharmaceutical industry, bulk cooking oil and packaging, and even salt (see Tampubolon et al., 2019). An example of cartel practices in Indonesia can be seen in Table 2.

The Business Competition Supervisory Commission (KPPU), as an independent institution, was formed to oversee the implementation of Law no. 5 of 1999. KPPU has the authority to examine business actors suspected of carrying out cartel practices (KPPU, 2015, 2016). If it turns out that the results of the examination and investigation are based on available evidence stating that business actors carry out cartel practices, KPPU will have to force its authority to impose administrative sanctions on business actors who violate the law.

As a supervisor, the KPPU is tasked with monitoring trade activities ranging from rational product pricing, distribution, and supply of goods from business actors. In essence, KPPU has a role in maintaining price stability, a balance between supply and demand, so that the community's economy develops as it should or in accordance with market conditions. Below are several business cartel cases in Indonesia that have occurred in less than ten years.

4.2. Motorcycle cartel

In 2017, the Business Competition Supervisory Commission (KPPU) stated that Yamaha Indonesia Motor Manufacturing (YIMM) and Astra Honda Motor (AHM) were proven to have price-fixing. The two companies were decided to be proven to have carried out cartel practices in accordance with the case 04/KPPU-I/2016 regarding the alleged cartel on February 22, 2017. YIMM and AHM were proven legally and convincingly in violation of Article 5 of Law No. 5 of 1999 con-

cerning Monopolistic and Competition Practices Unhealthy Business (Law No. 5/1999). KPPU also sentenced YIMM with a fine of Rp. 25 billion and AHM to Rp. 22.5 billion. The fine received by YIMM is more severe than expected because the KPPU considers YIMM to have manipulated data at the trial. Therefore, the penalty for YIMM is included, plus 50 percent of the amount of the proportion of the fine, while the fines imposed on AHM have been deducted by 10 percent because they are considered cooperative by the KPPU.

4.3. Salt cartel

In 2005 the KPPU revealed the practice of the salt cartel. This case is related to the "game" of salt raw materials supplied in North Sumatra. At that time, the KPPU ordered PT Garam, PT Budiono, and PT Garindo to provide the same provisions and opportunities to business actors other than PT Graha Reksa, PT Sumatera Palm, UD Jangkar Waja, UD Sumber Samudera to market raw salt in North Sumatra. In addition, the KPPU also prohibited PT Graha Reksa, PT Sumatera Palm, UD Jangkar Waja, UD Sumber Samudera from taking actions that could prevent other business actors from obtaining raw salt supplies from PT Garam, PT Budiono, and PT Garindo. KPPU also imposed sanctions on PT Garam, PT Budiono, PT Garindo, PT Graha Reksa, PT Sumatera Palm, UD Jangkar Waja, UD Sumber Samudera each to pay a fine of Rp 2,000,000,000.00 (two billion rupiahs)

4.4. Cartel establishment of Short Message Service (SMS) tariff services

The KPPU revealed the cartel practices carried out by six cellular companies during 2004–2008, which set a conspiracy in the price of an SMS tariff of Rp 350/SMS. Consumer losses are estimated at Rp2,827 trillion. The six cellular operator companies include PT Excelcomindo Pratama Tbk (XL), PT Telkomsel, PT Telkom, PT Bakrie Telecom Tbk, PT Mobile-8 Telecom Tbk and PT Smart Telecom who have been fined by KPPU.

4.5. Bulk cooking oil cartel

In May 2010, the KPPU decided the price parallelism of packaged and bulk cooking oil prices, in

which 20 cooking oil producers that had been reported during the middle of April-December 2008 had conducted a price cartel. As a result of this action, the KPPU considered that at least it had cost the community Rp 1.27 trillion for branded packaged cooking oil products and Rp 374.3 billion for bulk products. However, the KPPU decision was canceled by the Supreme Court (MA) after being filed an objection by 20 cooking oil producers who were reported in KPPU.

4.6. Ticket pricing cartel in fuel surcharge

KPPU convicted nine airlines, namely PT Sriwijaya, PT Metro Batavia (Batavia Air), PT Lion Mentari Airlines (Lion Air), PT Wings Abadi Airlines (Wings Air), PT Merpati Nusantara Airlines, PT Travel Express Aviation Service, and PT Mandala Airlines has conducted a cartel by entering into an aviation turbine fuel (ATF), or avtur, benchmark price during 2006–2009. The practice caused consumers to lose up to Rp 13.8 trillion. KPPU also sentenced nine airlines with total damages of Rp. 586 billion. However, the airline that was charged with filing an objection to the court and managed to reap maximum results. At that time, the court considered many factors that determined the price of fuel surcharge, namely international prices and the rupiah exchange rate, but they bought it from one producer, Pertamina. So it cannot be ascertained as an agreement that meets the elements of monopoly as stipulated in Article 5 of Law No. 5/1999.

4.7. Cartel hypertension drug type of amlodipine besylate

The KPPU stated that the Pfizer business group was found guilty of conducting cartels by punishing each member of the Pfizer business group that was reported to have paid a fine of Rp.25 billion. While Dexa Medica, according to the Commission Council, was found guilty of carrying out a price-fixing cartel and being sentenced to pay a fine of Rp20 billion to the state treasury and ordered the national pharmaceutical company to reduce the price of Tensivask by 60 percent from the pharmacy's net price. Nevertheless, finally, this KPPU decision was canceled by the Supreme Court. The KPPU's decision is deemed insufficient

evidence to declare Pfizer Indonesia and Dexa Medica to conduct cartels. Because there are many other business actors who also produce hypertension drugs, but the KPPU does not mind them.

Besides, the judge also took the decision to accept the objection from Pfizer Indonesia and Dexa Medica based on the information from three experts in the additional examination. The statements of the three expert witnesses are based on their respective fields, namely in the fields of statistics, law, and economics. The three experts said there was no trend in rising prices for hypertension drugs, as alleged by the KPPU. With this decision, Pfizer Indonesia and Dexa Medica are free from a fine of Rp. 25 billion.

4.8. Cartels in tire producers

The case of the position of the cartel tires began with the investigation into alleged violations of Law No. 5 of 1999, which is a business competition initiative owned by the Supervisory Commission of the Republic of Indonesia. Early indicators identified a cartel of a conveyor belt. Indonesia's Tire Producers Association (APBI), at regular intervals, held a meeting to together its members' meeting where there were communication and information exchange with the existence of those defendants who also provided the monthly data reports per categorization of APBI secret and not reported the government.

On Wednesday, January 7, 2015, the KPPU conducted a case examination at the Verdict Reading Session in front of the trial, which was declared open to the public through KPPU's Verdict Number: 08/KPPU-I/2014. The six companies incorporated in APBI were PT Bridgestone Tire Indonesia, PT Sumi Rubber Indonesia, PT Gajah Tunggal Tbk, PT Goodyear Indonesia Tbk, PT Elang Perdana Tire Industry, and PT Karet Rubber Deli. They were proven to be valid and convincingly violating the provisions of Law Number 5/1999 regarding the practices of cartels. Cartel occurs in the automotive industry of four-wheeled tires between the period 2009 to 2012 with passenger car tire products ring 13, 14, 15, and 16. As a result, the six reported business actors were sentenced with a total fine of Rp.150.000.000.000. Especially on how the cartel proves the ban by the six entre-

Table 2. Cartel information in Indonesia

Source: The OECD International Cartel Database (<https://qdd.oecd.org/Home/ApplyFilter>).

Cartel number	Cartel name	Infringement date	Discovery year	First penalty year	Industry code (NAICS 3-digit)	Industry name (NAICS 3-digit) and code (NAICS 2-digit)	Industry name (NAICS 2-digit)	Sanctions (million USD)	Sanction type	Number of cartels	Third party support	Cartel number (Connor)	Reference
956	Tire manufacturing	'01/01/2009 - '01/01/2012	2014	2015	326	Plastics and Rubber Products Manufacturing (32)	Manufacturing	12.1364	Fine	6	TRUE	1127	KPPU – Decision KPPU No. 08/KPPU- I/2014 Jakarta District Court - Case 70/Pdt.Sus-KPPU/2015/PN.Jkt.Pst Supreme Court – Case Number 221 K/pdt.Sus-KPPU/2016 - Case Number 167-PK/Pdt.Sus-KPPU/2017
1031	Automobile and motorcycle imports	'01/01/2014 - '31/12/2016	2016	2017	423	Merchant Wholesalers, Durable Goods (42)	Wholesale Trade	3.61	Fine	4	FALSE	1210	KPPU: Case n. 04/KPPU-I/2016
1088	Beef imports	'01/01/2013 - '31/12/2015	2015	2016	311	Food Manufacturing (31)	Manufacturing	8.12114	Fine	35	TRUE	1271	KPPU: Case n. 10/KPPU-I/2015
1101	Poultry production	'14/09/2015 - '31/12/2015	2016	2016	112	Animal Production and Aquaculture (11)	Agriculture, Forestry, Fishing and Hunting	9.34	Fine	12	FALSE	1287	KPPU: Case n. 02/KPPU-I/2016

Note: All cases have geographical coverage in Asia. All cases have also not been categorized as bid rigging cases.

preneurs who joined in by APBI, in case the management organization is primarily related to any evidence.

Recalling back to the aforementioned cases, one reflection of the Indonesian constitution, especially to achieve one of the goals of the state, namely to promote public welfare, is indeed summarized in Law Number 5/1999 on the Prohibition of Practices Monopoly and Unfair Business Competition as found in Articles two and three (Sukmana, 2016). Indonesian entrepreneurs, in having their business activities based on economic democracy, saw a balance between the interests of entrepreneurs and public interest as an effort to improve people's welfare.

Cartels have high considerable amount of economic destructive power, because, in addition to disincentives for competition, they also take advantage of the consumer's economy. KPPU has made the cartel practice as economic crimes extraordinary and a behavior priority that must be eliminated. One of the KPPU commissioners even calls that cartel's threat is even more dangerous than corruption, because there is a large amount of value is dredged from people, although they are not aware of it.

Some theories argue that cartels have two negative impacts on people's welfare. First, cartels significantly reduce the total welfare generated by the market due to wrong placement of resources due to reduced output and inefficiency of resources to maintain the cartel's existence. Second, the cartel gains monopoly profit (supernormal profit) by diverting consumer surplus to producers. The Ministry of Economic Development of New Zealand in its Regulatory Impact Assessment report on the basis for criminalization of cartels in New Zealand in early 2010 explained that cartels are crimes that cause loss of economic efficiency.

Cartel practices will force consumers to pay more expensive a product, both luxury goods and also their daily needs (Tampubolon et al., 2019). Consumers will have no choice in the market both in terms of price choices, competitive quality of goods and decent after-sales services. Furthermore, consumers are forced to buy a certain product at a monopoly price that is overprice. Meanwhile, consumers who refuse to buy products at monopoly prices will buy

other products that are actually less desirable (less value), which leads to an increase in demand and prices for substitution products with insufficient and has less value. This kind of situation is called dead-weight loss. The cartel practices would cause harm to the economy and healthy business competition because an entrepreneur's cartel members agreed to undertake work resulted in controlling the prices (Setyanegara, 2013). Furthermore, it not only hurts consumers, cartels, but also Economic harm.

Thus, cartels is one form of monopoly and, in general, practice by the trade association with many of the united efforts to control and determining prices, marketing, and/or production. To put an end to cartels and other monopolic practices, KPPU and Law No 5 of 1999 need to be reformed.

As stated above, KPPU is a state auxiliary organ formed by President solely to execute and eradicate monopolic practices and unfair business competition. KPPU is an independent body, it means that KPPU carries out its duties regardless of government influences. In general, state auxiliary organs are state institutions established to assist main state institution (legislative and judicial institutions) duties. KPPU is not a judicial institution, however it has a quasi-judicial authority; KPPU can execute an investigation, initiate a prosecution, make decisions (Simbolon, 2012). In order to do that, KPPU needs at least two evidences of cartel practices, and use the *rule of reason* and *per se illegal* to approach the cases (Wibowo, 2020). In 2020, the institutional status of this body is still unclear; KPPU is still not yet integrated in the national institutional system and national civil service system as a whole, eventhough its operational function funded by state budget (APBN) (Toha, 2019). This ambiguous and unclear status affects how KPPU implements its duties and authorities. Meanwhile, there is other practical problem such as high workload and no clear or definite career path for its employee (Toha, 2019).

But the main problem is, first, the gap between what is expected (*das sollen*) that a cartel of forbidden in competition law business environment is generally practiced by trade associations. However, in flaws (*das sein*), the practices of cartels is still going rampant and where a business actor association such as APBI (Association of Tire Companies in Indonesia) participates in this fraudulent act as well. Second,

there is the gap between regulations (*das sollen*) and the execution from the KPPU in order to review and carry out the cartel cases; an amendment of a reform in its regulation can be classified as an urgent matter (Wicaksana, 2018). Bunch of KPPU conviction nullified by Supreme Court is another potential problem. These problems show that the Law No. 5 of 1999 needs to be revised due to its incompleteness or deficiency in substances. Some studies refer that this deficiency is due to the lack of experts in business competition law at the time this bill was in the making (Toha, 2019). The amendment of Law No. 5 of 1999 can be as follows (but not limited to): (a) formulate and implement *leniency program* to encourage people to report unfair business practices, (b) acknowledge the existence of economic evidences and communication evidences, (c) reorganize KPPU as a body and its authority as a quasi-judicial authority (Wibowo, 2020). Indirect evidence needs to be acknowledged more in the KPPU investigation as well because in the future it would be difficult to convict more cartel practices if KPPU only relies on direct evidences. In handling cartel cases, Law No. 5 of 1999 or the Business Competition Law should adopt leniency program policies, that is already proven to be effective in some countries such as the USA and Japan. To do so, the legislative body must first ratify the Anti Monopoly Commissions. Furthermore, for cartel related regulations, changes are needed in some of the provisions in the business competition law such as increasing the amount of penalty fine (Pujiyono, 2019)

To sum up, this study suggests that KPPU should regularly disseminate information to all stakeholders, especially the community, by embracing academics and even business actors to raise awareness about the harm of cartels. KPPU must take a quick act to the complaints and reports of alleged violations of business competition. In addition, Indonesia's Ministry of Industry plays a lawful role in constantly monitoring the course of the industry, especially those sold in general and on a large scale, so that it continues to operate according to the corridor of the business competition law.

Furthermore, business actors must pay attention to the provisions of the business competition law in conducting their business practices, not to make price-fixing agreements, marketing and/or production of sales, which may result in monopolistic practices and unfair competition. Business actors must compete healthily in order to not violate the business competition law, in this case, the practice of cartels tends to cause harm to both the state (and as for its economic development) and, especially, consumers.

Finally, harmonization between law enforcement agencies, which consists of the KPPU, District Judges, and Supreme Court Judges; a cross-sector coordination in order to harmonize perceptions, can avoid human conflicts of interest, especially in this case, a conflict between law enforcers themselves as the *raison d'être* of the law.

CONCLUSION

The cartel threat is even more dangerous than corruption, because there is a large amount of value being dredged from people, even though they are not aware of it. Cartel practices in Indonesia are still going rampant. This study shows that cartels have overspread in many industrial fields, from luxury commodities to basic daily needs. These practices need to be stopped or else it will cause more harm to people and economic scene as a whole in this ever-developing country. As data show, motorcycle cartel, salt cartel, SMS's Service cartel, Cooking oil cartel, Airline Ticket Pricing cartel, Drugs cartel, Tire Company cartel cause economic loss for a million and billion rupiahs in short period of time, that is less than five years.

Despite the fact that this practice was condemned by the KPPU and as a result of it a fine should be paid, some of these convictions are nullified by the Supreme Court.

There is a gap between *das sollen* and *das sein* in eradication of unfair business competition in Indonesia. KPPU, a body formed to eradicate unfair business competition, still needs to be reformed due to its ambiguous status in the national state institutional system and a lack of authorities to fully execute all of its duties. KPPU has also yet to effectively consider indirect evidences such as economic and communication evidences in trials and investigations.

Given that problems, this paper suggest the following ideas; First, KPPU reforming is a necessity, it is also necessary to reform KPPU as a national state institution to give certainty to its employees and commissioners. Second, to upgrade the investigation, there is a necessity to acknowledge indirect evidence or circumstantial evidence, such as economical loss evidence and communication evidences, in the KPPU investigation. Third, the legislative body might have to encourage the amendments to Law No.

5 of 1999 and add some substances such as a leniency program and changes in the provisions of business competition law, especially in cartel-related regulations, such as increasing the amount of the penalty fine to trigger deterrent effect.

Last but not least, harmonization between law enforcement agencies consisting of KPPU, District Judges, and Supreme Court Judges can also be seen as a necessity to avoid conflicts of interest.

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