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# Jurnal Dinamika Hukum

Vol. 24 Issue 1, 2024

E-ISSN 2407-6562 P-ISSN 1410-0797

National Accredited Journal, Decree No. 21/E/KPT/2018

DOI: [10.20884/1.jdh.2024.24.1.4053](https://doi.org/10.20884/1.jdh.2024.24.1.4053)

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## Indirect Evidence in Disclosing Cartel Violations Under Business Competition Law in Indonesia

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Submitted: 17/12/2023

Revised: 17/01/2024; 15/01/2024; 29/1/2024; 15/02/24; 23/02/24 Accepted:  
26/02/2024

### Abstract

Cartels, or secret deals among competitors to set prices, limit production, or divide markets, pose a significant challenge to healthy competition and market integrity around the world, including in Indonesia. This study examines the use of indirect evidence, such as economic data and communication patterns, in uncovering such covert operations under the Indonesian Competition Law (Law No. 5 of 1999), using the normative juridical approach. The study uses statutory analysis to understand the legal framework, case analysis to explore the use of indirect evidence in law enforcement, and conceptual analysis to enhance theoretical understanding. This study analyzes the decisions of the KPPU and District Courts, KPPU regulations, and relevant legal frameworks to understand the applicability and challenges of using circumstantial evidence in legal proceedings. The results of the study make it clear that, despite its important role, the study identifies legal uncertainty and the need for corroborating evidence as the main obstacles to the effectiveness of indirect evidence. It reveals a significant gap in the acceptance and interpretation of indirect evidence between the KPPU and the judiciary, highlighting the need for clarity and consistency in the law. This review recommends the revision of Law No. 5 of 1999 and related procedural laws to include provisions for the acceptance and utilization of circumstantial evidence, improving the adjudication process of both the KPPU and the courts. This research contributes to Indonesia's understanding of competition law enforcement and promoting fair business practices.

Keywords : Business Competition; Cartel; Disparity; Indirect Evidence.

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### Introduction

Business actors can carry out business activities because there is a demand to fulfill the needs of consumers (Mackaay, 2021). Business competition arises between multiple business actors to sell goods or services to consumers. Judge Frank Easter Brook emphasized that successful competitive practices have victims, with more casualties and deeper injuries due to new manufacturing and distribution methods (Bork & Gregory Sidak, 2012). Business competition is a natural aspect of

competition in Indonesia, where individuals, legal entities, and non-legal entities conduct activities to meet life needs and dominate the market, requiring regulation for fair competition (Jawani, 2022).

All business actors definitely want to make big profits by carrying out strategies that are believed to increase revenue. However, it is often found that business actors carry out trade monopoly practices. Competition can bring both positive and negative impacts, promoting efficiency and social welfare through varied product selection, market prices, and high quality (Ayu Rizkia & Rahmawati, 2021). Competition can be harmful if negative behavior or anti-competitive actions by market actors harm consumers. Business competition law is essential for modern economic systems to prevent such negative behavior (Kamal, 2010).

In connection with the explanation above, Indonesia has also experienced quite diverse trends in the business competition index in recent years. During 2020-2022, the Indonesian Business Competition Supervisory Commission (KPPU) revealed that The Business Competition Index (IPU) exceeded its strategic plan. The index score reached 4.65 (2020), 4.81 (2021), and 4.87 (2022), while the plan was 4.5 (2020) and 4.7 (2021, 2022) (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2023). The IPU shows an upward trend from 2019 to 2022, indicating improved market competition. An increased IPU aligns with competition law principles, reducing monopolistic practices and increasing efficiency. However, deviations from the actual IPU in 2021 may indicate that competition has not met expectations due to unpredictable market behavior or regulatory inadequacies. Regulatory bodies like KPPU must ensure fair competition and prevent harmful practices such as trade monopolies or cartels. Competition law prevents negative behavior and ensures that the benefits of competition are not outweighed by anticompetitive practices. To address this challenge, over the past five years, KPPU has issued 23 KPPU Regulations and six KPPU Chairman Regulations. The regulations issued regulate a number of matters ranging from case handling (Komisi Pengawas Persaingan Usaha Republik Indonesia, 2023).

One of the most important regulations for supervised business competition is Law No. 5 of 1999 in Indonesia, which aims to regulate business competition and prevent monopolistic practices. However, it does not prohibit a monopoly position if it is obtained through high business ability, innovation, or intelligence. Antitrust and unfair competition laws recognize the benefits of innovation and efficiency for economic development but restrict their use to prevent harmful practices (Herlina, 2018). The detection and prevention of cartels are two of the main objectives of competition authorities around the world, and significant resources are devoted to them to develop various tools to detect, investigate, and prosecute cartels. However,

despite the strengthening of competition laws, cartels continue to form (Marvão et al., 2022).

One form of unhealthy competition is a cartel, which is often called a collusive oligopoly (Fellman & Shanahan, 2020). A cartel is a building of similar companies that openly agree to regulate their activities in the market. In other words, a cartel is an organization of producers of goods and services intended to dictate the market. If all companies in one industry agree to coordinate their activities, the market will be in the form of a perfect monopoly (Suhasil & Makarao, 2010). Cartels form monopoly power by managing supply through production quotas, allowing them to set prices and enjoy profits above perfectly competitive markets. However, their ability to maintain power can be reduced due to incentives for deviation. The success of a cartel depends on its members' consistency in adherence to agreements (Suhasil & Makarao, 2010).

Despite the extensive theoretical and empirical literature on cartels and collusion, there has been limited research on the impact of structural industry characteristics on the magnitude of welfare losses resulting from collusive pricing. This fact is surprising, as there are clear policy implications for identifying the types of industries in which collusion is expected to have the most detrimental impact on welfare (Symeonidis, 2018).

To prove a violation of the provisions in Law Number 5 of 1999, the Business Competition Supervisory Commission must analyze and prove that the elements of each article have been fulfilled. In the case of an alleged violation of Law Number 5 of 1999, both Article 5, Article 9, as well as Article 11 require the fulfillment of the elements of the agreement to prove that there has been a violation of the provisions of these articles. However, because cartels are usually formed and carried out in secret, proving the existence of cartel agreements creates problems (Silalahi, 2017). The Commission for the Supervision of Business Competition struggles to find explicit agreements on prices, marketing, and production, necessitating indirect evidence to establish a cartel (Thomson Reuters, 2024).

In contrast to Indonesia, countries such as the United States and the European Union have recognized and implemented the use of indirect evidence in antitrust and competition law enforcement practices. In the United States, indirect evidence may include patterns of market behavior, economic analysis indicating possible collusion, and evidence of behavior such as uniform pricing without any other logical explanation. In cases of competition in the European Union, evidence such as communication between competitors, market structure, and coordinated price behavior can indicate antitrust agreements or unfair competition practices. Both jurisdictions have developed legal frameworks that allow courts to draw conclusions based on the entirety of the evidence presented, including circumstantial evidence, in determining a violation of competition law (Silalahi, 2017). Indonesia's Law on Monopolistic Practices and Unfair Business Competition prohibits using indirect evidence to establish cartels. Instead, the Commission relies on witness testimony,

expert testimony, and other information. Detecting cartels is challenging due to collusion and secretive activities (Munadiya, 2011a).

Indirect evidence, such as the case of the Indonesian cooking oil cartel, has been used in some cases. Soaring palm oil prices in March 2008 were attributed to the high cost of oil processing inputs, which increased by 80%. However, the decline in palm oil prices does not necessarily lead to a proportional increase in domestic cooking oil prices. Indonesian 20 cooking oil business actors violated Law No. 5 of 1999, leading to significant losses for the community of Rp. 1,270,000,000,000.00 for branded packaged products and Rp. 374,300,000,000.00 for bulk products. Business Competition Supervisory Commission's decision stated that the 20 (twenty) private companies in bulk oil market activities have carried out a cartel, which is included in the elements of monopolistic practices and or unfair business competition (Winata & Tan, 2022). The Business Competition Supervisory Commission's decision has been annulled by District Court Decision Number 03/KPPU-I/2010/PN.JKT (Wintansari, 2020).

The lack of regulation in Law No. 5 of 1999 for indirect evidence creates legal uncertainty and disparity in its application. This outcome is due to the need to explore roles not contained in official documents, which is a weakness of the rule of reason approach. This disparity affects the decisions of the Commission for the Supervision of Business Competition, making their decisions weaker. Although indirect evidence has been regulated in a limited manner in Perkom 1/2019, it cannot be used as a legal reference basis. The Council For Economic Defense (CADE) used indirect evidence in the Brazilian cartel case to prove the existence of a cartel.

As done by Ulya, who identified the obstacles faced by the KPPU and recommended a more explicit setting in Law No. 5 of 1999, this study brings novelty by exploring the effectiveness of the use of indirect evidence in uncovering cartel cases in Indonesia. The study examines the use of indirect evidence by KPPU in law enforcement, highlighting its challenges and limitations. It compares Indonesian practice with international countries, suggesting the potential for a more effective legal framework to accommodate indirect evidence (Ulya, 2020). In contrast to Akhyat, which assessed the effectiveness of indirect evidence in cartel cases in Indonesia through a case study of Supreme Court Decision No. 131 K / Pid.Sus/2013 emphasizes the importance of explicitly regulating the use of indirect evidence in Law No. 5 of 1999. The study combines a critical analysis of the current legal framework with the evaluation of KPPU law enforcement practices, focusing on circumstantial evidence application and existing loopholes. It proposes an updated legal framework to enhance business competition governance in Indonesia (Akhyat, 2019).

The Indonesian government should consider amending the law to include provisions on indirect evidence. The author's research focuses on economic and communication evidence supported by structural and behavioral approaches. The

difference and novelty of this study is that it provides a comprehensive analysis of the legal framework in Indonesia and examines the acceptability and interpretation of indirect evidence. It identifies gaps between the KPPU and the judiciary, suggesting areas for improvement. The review recommended the revision of Law No. 5 of 1999 to include provisions on the acceptance and utilization of circumstantial evidence, improve court proceedings, and strengthen enforcement of competition laws.

## Research Problems

1. How effective is the use of indirect evidence in uncovering cartel violations in Indonesia in the context of the Business Competition Law (Law No. 5 of 1999)?
2. What are the challenges and limitations faced in collecting indirect evidence, and how does it affect law enforcement by KPPU?

## Research Methods

The purpose of this study is to conduct a more specific analysis of the concept of indirect evidence and its application patterns in the difference in decisions between the KPPU and the District Court. This study employs a normative juridical approach to analyze documents such as KPPU decisions, District Court decisions, KPPU technical regulations, and related academic studies. The data used in this study include decision documents from the KPPU and the District Court relevant to the cartel case, as well as rules and regulations relating to monopolistic practices and unfair business competition in Indonesia. Approaches include statutory analysis to understand the applicable legal framework, case analysis to explore the application of indirect evidence in law enforcement practice, and conceptual analysis to deepen the theoretical understanding of indirect evidence. Data was obtained from a variety of sources, including official documents, archives of legal decisions, and academic literature relevant to the research topic.

## Discussion

### 1. The effectiveness of the use of indirect evidence in uncovering cartel violations

Article 42 of Law Number 5 of 1999 provides evidence in business competition procedural law, including witness statements, expert statements, letters, documents, indications, and business actors' statements. Commission Regulation No. 1 of 2010 explains these pieces of evidence (Rodger, 2015). Business Competition Supervisory Commission Regulation No. 2 of 2023 concerning procedures for the investigation and prosecution of violations of Law No. 5 of 1999, which provides for the collection, assessment, and application of indirect evidence in the investigation and prosecution process and the Supreme Court Decision No. 01 K/KPPU/2011

concerning the garlic cartel case, which justifies indirect evidence as valid evidence in handling cartel cases, and becomes the legal basis for the permissibility of indirect evidence as the basis for handling cartel cases and other business competition cases (Supriatna et al., 2022). Indirect evidence, such as market data, economic analysis, correspondence, and testimony, can indicate alleged business competition violations but must be supported by other evidence (Rahmah, 2018). The regulation allows KPPU to use circumstantial evidence in investigations, contrasting with guidance evidence, which is the knowledge of the Commission Council. Indirect evidence, on the other hand, cannot clearly explain the agreement between business actors and is classified as evidence of presumption made by judges. It is often used as communication and economic evidence and can also be used as proof of conditions or circumstances that can be used as allegations of oral agreement implementation.

In the Organization for Economic Co-operation and Development indirect evidence is stated as follows: *“Circumstantial evidence (indirect evidence) can be difficult to interpret, however. Economic evidence can be especially ambiguous and consistent with either concerted or independent action. The better practice is to consider circumstantial evidence in a case as a whole, giving it a cumulative effect, rather than on an item-by-item basis, and to subject economic evidence to careful economic analysis”* (Organisation for Economic Co-Operation and Development, 2009). Indirect evidence, including communication and economic evidence, can be used to prove a cartel. Economic analysis helps determine motives and predict behavior impact. It can be divided into intensive analysis and capability analysis. The Plus Factor, including price fixing rationalization, market structure, performance data, and collusion facilities, is also important (Katsoulacos et al., 2016). The Commission may decide that certain analytical tools are sufficient to prove violations of competition law.

Business Competition Supervisory Commission faces challenges in proving cases, both direct and indirect, as well as tender and non-tender cases. The commission's regulations require at least two pieces of evidence for case filing, which can hinder investigation processes. Direct evidence, tangible or intangible, shows violations of business competition elements. Direct evidence in the practice of price fixing (price cartel) that there is a conspiracy between business actors can be proven :

- a. By the following factors:
  - 1) Price lists issued by professional associations are a source of data for compiling self-estimated prices (HPS) in the procurement of goods/services. These lists, after deducting rebates or discounts, are legally based on LKPP 12 of 2021 and follow Perlem No. 9 of 2018. The process involves steps for preparing and functioning HPS in procurement (Almarosy, 2018).

- 2) Price change notifications are official letters from sellers to customers indicating price changes in products, goods, or services. They aim to maintain transparency, avoid conflicts, and establish communication. Notifications typically include the effective date, amount, reason, additional benefits, and acknowledgements (Richardson, 1967).
- 3) Meetings or telephone conversations between competitors can be used to discuss product pricing, market distribution, marketing strategies, and standards. These conversations can either improve efficiency, innovation, or quality of products or services, or reduce competition, cause monopolistic practices, or harm consumers. The impact of these conversations can be positive or negative (Lee et al., 2021);
- 4) Meetings or telephone conversations between competitors can be used to discuss price, quantity, quality, market division, marketing strategies, and standards. These conversations can either improve efficiency, innovation, or product quality, reduce competition, cause monopolistic practices, or harm consumers. The impact of these conversations can be positive or negative (Frignani & Rossi, 2003).
- 5) Competitor analysis is a company's process of understanding its business, identifying competitors, and predicting their moves using methods like SWOT and Porter's. It also involves a business competition compliance program designed to prevent violations, increase awareness, and enforce laws involving policies, training, supervision, auditing, sanctions, and performance improvement (Osipovič et al., 2016).
- 6) Confessions from conspiring parties can be used as evidence to prove business competition violations, particularly in tenders. These confessions, either written or oral, justify an agreement, coordination, or manipulation to determine the winning bidder. They have perfect strength of proof but must be unequivocally, honestly, and in accordance with facts. Judges can reject false confessions (Khandelwal, 2021).
- 7) Documents, emails, and faxes facilitate the electronic exchange of business data between competitors, improving efficiency and cooperation. However, they can also lead to violations of competition, such as price collusion or market sharing (Munadiya, 2011b).

- b. Another mechanism often used by business actors in cartels is facilitation between actors in the form of:
- 1) Software aids in allocating markets and consumers, increasing marketing efficiency by collecting, processing, and analyzing demographic, psychographic, behavioral, and preferences data. It helps companies identify potential, profitable, and loyal market segments and measure their size and growth (Frels et al., 2003).
  - 2) The periodic exchange of price information can lead to competition violations like price collusion, market sharing, or discrimination, requiring careful and ethical handling to avoid price wars, increase profits, or form cartels (Brock & Kleidon, 1992).
  - 3) Seminars for related employees are often misused by parties to enforce compliance with rules, despite violating rules, and implementation is massively carried out (Ireland & Auken, 1987).
  - 4) Steering committees and joint audit systems are common among secessionist companies, while new companies lacking market mastery are left behind due to inadequate facilities and modes of operation (Pandit, 2023).
  - 5) Companies face punishment for non-cooperation, and Kong Kalingkong parties provide laws tailored to market impact, granting large-scale companies more facilities and limiting access to smaller ones (Pandit, 2023).

Competition law enforcement often seeks indirect evidence in cartel cases, which can be difficult to obtain. Indirect evidence can facilitate the existence of an agreement or the exchange of information. The Business Competition Supervisory Commission 's decision No. 24/KPPU-I/2009 suggests that the agreement was not written. The Commission Council uses two types of economic evidence to prove mastery of production or marketing: structure and price parallelism. The market structure for bulk cooking oil is highly concentrated, with large companies controlling market share and determining price levels. Price parallelism is evident in the bulk and packaged cooking oil market, with a probability value greater than 5% (Komisi Pengawas Persaingan Usaha, 2021). The Commission Assembly identified the bulk and packaged cooking oil market as an oligopoly controlled by a few key business actors. Bulk cooking oil is controlled by Wilmar Group, Musim Mas Group, PT Smart, Tbk, and PT Berlian Eka Sakti Tangguh.

The Commission Council assessed the oligopoly in the Indonesian cooking oil market, identifying two types: narrow and broad. A narrow oligopoly involves a small number of business actors controlling over 75% of the market, while a broad oligopoly can involve multiple actors. This figure may result in monopolistic



practices or unfair business competition. Packaged and bulk fried foods have entered into an indirect agreement to control and maintain market dominance. This practice resulted in coordination in dealing with the decline in CPO prices, leading to a total consumer loss of approximately Rp. 1,270,263,632,175.00 for packaged cooking oil and Rp. 374,298,034,526.00 for bulk cooking oil (Lubis & Sirait, 2009).

The Commission Assembly ruled that the cooking oil market is an increasingly concentrated oligopoly, with business actors engaging in price parallelism and facilitating practices through price signaling. Communication and coordination, supported by economic evidence, can be classified as agreements between business actors. In addition to Article 4 and Article 5 UUNo. 5/1999, there is also a violation of Article 11 of Law no. 5/1999, the elements of which are (Syahrin, 2018):

- a. Businessmen, Rogue entrepreneur is a term used to refer to entrepreneurs who commit violations or abuse of laws, ethics, or social norms in carrying out their business. Rogue entrepreneurs usually aim to obtain greater profits, avoid obligations, or exploit others;
- b. Agreements with competitors. An agreement with a competitor is a form of cooperation between two or more companies competing in the same market. This agreement may be a price agreement, market share, production restriction, or bidding arrangement<sup>1</sup>. This agreement aims to reduce competition, increase profits, or face threats from other parties. However, agreements with competitors can also have negative impacts on companies, consumers, and the economy in general. Some of the negative impacts that may occur are antitrust law violations. Agreements with competitors can be considered monopolistic, cartel, or unfair competition practices that violate antitrust laws. Antitrust law;
- c. Which intends to influence prices by regulating the production and or marketing of goods and or services;
- d. Elements that may result in monopolistic practices and/or unfair business competition.

In proving the occurrence of cartel behavior in this case, the Business Competition Supervisory Commission uses the element of an agreement between a business actor and his competitor, referring to the meaning of agreement in Article 1 Paragraph 7 of Law Number 5 of 1999. The agreement used in the cooking oil cartel case is an unwritten agreement. Unwritten agreements fall into the category of indirect evidence (Murjiyanto et al., 2023). In this case, the KPPU suspects that there has been collusion secretly carried out by cooking oil business actors to carry out a conspiracy, namely by coordinating not to lower the price of cooking oil when the world CPO price falls. On the contrary, the price still does not decrease. Unwritten agreements or collusion were also carried out secretly by the cooking oil businessmen facilitated by the GIMNI association by holding a meeting on February

9, 2009, to set the price of cooking oil in the market according to what the government expected in the MINYAKITA program regarding the price of simple packaged oil at low prices which is affordable to the community, namely Rp. 8000, -/ltr. The evidence of the meeting on February 9, 2009, should be included in the direct evidence because the minutes of the meeting discussed prices, production capacity, and production cost structure. The minutes of the meeting can be used as evidence that there has been indirect collusion to form a cartel. However, on the contrary, KPPU places it in communication evidence so its position is that of indirect evidence.

Indirect evidence even though it is not mentioned directly as evidence in Article 42 of Law No. 1999, indirect evidence, if linked to one another and accompanied by an economic analysis using a proven method, will form one piece of evidence, namely evidence. In this way, one piece of evidence is fulfilled, namely evidence of indication. This evidence needs to be corroborated by other evidence, for example, expert testimony (Mahayunan et al., 2023). The presentation regarding the legal considerations for the cooking oil cartel case by KPPU above, when viewed from the perspective of justice and legal certainty, it can be concluded that KPPU has acted fairly towards the general public who have been harmed by the price of cooking oil which remains expensive even though world CPO prices have fallen by giving a guilty verdict against the reported party and imposed administrative sanctions that should have been supported by the decisions of the District Court and the Supreme Court because KPPU is more detailed in placing or analyzing cartel cases where proving the articles must use the rule of reason approach, which means that for cartel cases themselves it is difficult to prove with direct evidence/written evidence.

The cooking oil cartel case handled by KPPU shows that the application of indirect evidence in the enforcement of business competition law in Indonesia has a critical role, especially in cases where direct evidence is difficult to obtain. In assessing this case, KPPU has used an indirect evidence-based approach, such as testimony, economic analysis, and meeting documents that do not explicitly state the existence of cartel agreements but overall indicate collusion between business actors. This use of indirect evidence reflects the flexibility in legal interpretation required in the face of increasingly sophisticated and covert cartel tactics (Supriatna et al., 2023). However, this also poses challenges in ensuring fairness and legal certainty, as indirect evidence often requires subjective interpretation and in-depth analysis to prove a causal relationship with unlawful acts (Hantoro, 2022). Business Competition Supervisory Commission's actions in this case can be seen as an attempt to protect the public interest from harmful practices such as price manipulation, which directly impact consumer welfare. The decision to impose sanctions on guilty parties based on indirect evidence underscores KPPU's commitment to effective enforcement of the business competition law despite the challenges of obtaining direct evidence.

## 2. Challenges and limitations in indirect evidence collection

Cartels in most legal systems present an illegal agreement in itself; that is to say, regardless of whether it is effective, does it harm the antidote? The data provided by Allen and Overy in their 2017 annual report on global cartel control is a topic of interest. Competition violations are foreseen in the report. Legislation in the field of business competition will become more substantial (Bortenev et al., 2020). In many countries, the Cartel is extremely important and phenomenal in the application of business competition law. Cartel is included as a sign violation in business competition law because it causes social welfare reduction, which is reputedly real enough. Cartel is one of the agreements that mostly happens in monopolization (Antoni, 2014).

In Indonesia itself, the problem of business competition is that KPPU must find indirect evidence that is still constrained by legal certainty from laws and regulations in Indonesia that place indirect evidence as complementary evidence. It means that there must be other evidence to corroborate the KPPU's decision on whether the District Court and the Supreme Court should accept the guilty party. With regards to the usefulness of laws and regulations on cartels, there is still a lack of evidence because indirect evidence is still complementary evidence. The District Court has received a decision from the Supreme Court (MA), which states that the District Court examines and judges the case. With the issuance of this provision, the Supreme Court granted the application of the Business Competition Supervisory Commission (KPPU) regarding the consolidation (merger) of the cooking oil cartel case. The District Court and the High Court are *judex facti*, which have the authority to review the facts and evidence of a case. Thus, the Constitutional Court's task in reviewing the objection is to examine the KPPU decision by taking into account the facts and the application of the law (Lubis & Sirait, 2009). The position of the district court here resembles that of the high court in handling appeals, which re-examines the case from the beginning regarding the facts, evidence of a case, and the application of the law.

Business Competition Supervisory Commission works to understand and combat cartel practices by analyzing facilitation behavior, which involves exchanging sensitive information between competitors. This effort is very important in proving the case of cartels, as it helps to identify the motivation behind the joint action. The program aims to encourage cartel members to disclose information about cartel practices in exchange for reduced penalties. However, indirect evidence is essential to reduce cartel practices. Understanding facilitation practices is critical to preventing and addressing anti-competitive behavior, understanding market dynamics, and implementing effective policies to encourage healthy competition and protect consumers (Feltovich & Hamaguchi, 2018). In this cooking oil cartel case, the Supreme Court as the *judex juris* only examines the application of the law by KPPU to case No. 24/KPPUI/2009 concerning Cooking Oil Cartel (Mahayunan et al., 2023). The Indonesian Competition Supervisory Commission (KPPU) uses

indirect evidence to prove cartel behavior, particularly in cases without written agreements. This approach is similar to Japan's justice system, where control over cartels is a major focus in competition law.

In Japan, a "link of intent" refers to communication between business actors, facilitating the recognition and prediction of similar actions by other actors. This concept is crucial in determining the existence of cartel agreements (Arai, 2015). This indirect evidence helps identify patterns that indicate coordination, potentially detrimental to market competition. Economic and statistical analysis can also help interpret indirect evidence, revealing anomalies or unusual patterns (Yang et al., 2011).

The determination of the evidence for the meeting on February 9, 2009, should have been included in written evidence or direct evidence because there were minutes of the meeting that discussed prices, production capacity, and production cost structure. The minutes of the meeting can be used as evidence that there has been indirect collusion to form a cartel. However, KPPU places it in communication evidence so its position is indirect evidence. In Indonesian Civil Law, Article 164 of International Civil Procedural Law (HIR) regulates evidence, namely letters, witnesses, presumptions, confessions, and oaths. Hence, indirect evidence still needs to be regulated. However, only as complementary evidence, the Supreme Court, as the *judex juris* decided to reject the KPPU's decision regarding the cooking oil cartel because KPPU was wrong in applying its law.

The KPPU's Decision above experiences disparities, namely based on Decision No. 03/KPPU.JKT.PST/2012, the Decision stipulates that monopolistic practices, oligopolies, cartels, and agreements related to production that KPPU alleges are not proven because KPPU uses indirect evidence that is based on law. There are no regulations regarding circumstantial evidence in Indonesia, so the fine decision by the KPPU was annulled. In their consideration, the panel of judges considered that the KPPU's decision to use indirect evidence alias indirect evidence could not be used in competition law in Indonesia. Business Competition Supervisory Commission's allegation that there has been collusion secretly carried out by cooking oil business actors to carry out a conspiracy, namely by coordinating not to lower cooking oil prices when world CPO prices fell.

An unspoken agreement or collusion, which was also carried out by cooking oil business actors facilitated by the GIMNI association, held a meeting on February 9, 2009, to determine the price of cooking oil in the market according to what the government expected in the MINYAKITA program regarding the price of simple packaged oil at a price which is affordable to the community, namely Rp. 8000, -/ltr. Determining the evidence of the meeting on February 9, 2009, should be included in the direct evidence because there were minutes of the meeting which discussed prices, production capacity, and production cost structure. The minutes of the meeting can be used as evidence that there has been indirect collusion to form a

cartel. But on the contrary KPPU places it in communication evidence so that its position is as indirect evidence. So, based on this matter, the Panel of Judges assessed that based on the testimony of witnesses and experts in the additional examination, it stated that the KPPU was wrong in deciding for the convicted party. In Indonesian Civil Law, Article 164 of International Civil Procedural Law (HIR) regulates evidence, namely letters, witnesses, presumptions, confessions, and oaths. In addition, in proving using facilitating practice, KPPU did not explain in detail the behavior of facilitating practice.

In Article 42 of Law Number 5 of 1999, the KPPU's examination evidence consists of witness statements, expert statements, letters and/or documents, indications, and statements of business actors. In this case, indirect evidence in the form of communication and economic evidence is not regulated in Article 42. In addition, the Elucidation of Law Number 5 of 1999 also does not explain what is meant by evidence of guidance. Despite this, because the evidence used by KPPU is similar to the evidence listed in the Criminal Procedure Code (Nugroho, 2014). The meaning of clue evidence based on Article 188 paragraph (1) of the Criminal Procedure Code is an act, event, or situation which, because of their agreement, both between one and another, as well as with the crime itself, indicates that a crime has occurred and who the perpetrator is. Furthermore, pursuant to Article 188 paragraph (2) of the Criminal Procedure Code, clues can only be obtained from witness statements, letters, and statements from the accused.

The use of indirect evidence itself has disparities even at the court level, namely Decision Number 221 K/PDT.SUS-KPPU/2016 (Bima Alfian & Murniati, 2023), the panel of judges accepted the use of indirect evidence in Decision Number 08/KPPU-I/2014. The consideration of the panel of judges in the decision is that in practice in the business world, agreements regarding price, production, territory (cartel), and other anti-fair competition agreements are often carried out in an opaque manner (tacit) so that in business competition law the evidence is indirect (indirect/circumstantial evidence), is accepted as valid evidence as long as the evidence is sufficient and logical. There is no other stronger evidence that can undermine the indirect evidence (Nugroho, 2014).

Acceptance of indirect evidence in Decision Number 221 K/PDT.SUSKPPU/2016 above can be a legal breakthrough for KPPU, judges at district courts, and other judges at the Supreme Court that indirect evidence can be accepted as evidence in proving cartel cases. The legal considerations above are relevant to current practices. Currently, business actors who enter into agreements regarding prices, production, and/or marketing of goods and/or services do not enter into agreements between these business actors (Agung et al., 2023). Agreements regarding prices, production, and/or marketing of goods and/or services are carried out secretly, so it is difficult for the KPPU to know and prove them.

Therefore, indirect evidence is needed as an early indication of the existence of a cartel.

## Conclusion

The analysis of the cooking oil cartel case by KPPU confirms the effectiveness of indirect evidence in revealing cartel violations in Indonesia, in accordance with the context of Business Competition Law (Law No. 5 of 1999). Indirect evidence plays an important role in competitive law enforcement, especially in situations where direct evidence is difficult to obtain. This helps in identifying complex collusive behavior, which is often done covertly, thus requiring flexible legal interpretation. However, this use of indirect evidence is not without challenges, including difficulties in ensuring justice and legal certainty. This challenge arises from the complexity of interpreting circumstantial evidence and ensuring that the interpretation is widely accepted by various parties, including courts.

Faced with this challenge, KPPU's use of indirect evidence demonstrates a strong commitment to the protection of the public interest, albeit with limitations. Challenges and limitations in collecting indirect evidence affect law enforcement by KPPU, underscoring the need for legal clarity and more diverse evidence collection methods to improve the effectiveness of law enforcement. Therefore, it is recommended to revise Law No. 5 of 1999 to explicitly regulate the use of indirect evidence and provide a clear legal basis for enforcement. These changes can strengthen the legal framework and increase synergy between KPPU and the judiciary, ensuring a more coherent and effective approach to addressing cartel practices and supporting healthy business competition governance in Indonesia.

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