LAW ENFORCEMENT OF CARTEL CASES IN INDONESIAN BUSINESS COMPETITION LAW THROUGH PER SE ILLEGAL APPROACH

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ABSTRACT

The purpose of this study is to know and analyze law enforcement against cartel practices in Indonesian business competition law, to know and to analyze and find law enforcement against cartel practices in Indonesian business competition law through a per se illegal approach. The research method uses a constructivism paradigm, a method approach used is sociological juridical, the specification of this research is descriptive analysis in nature, the approach method in this study uses three approaches, namely the statutory approach, the comparative approach and the case approach, the type of data consists from primary and secondary data, the method of collection by observation, interviews and library data, data analysis techniques using descriptive qualitative techniques. The results of this study: Cartel arrangements in Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition is regulated in the provisions of different and separate articles and with different methods of legal approach, namely the per se illegal approach and the rule of reason. Law enforcement against cartel cases in Indonesian business competition law has not been fair, currently there are many cartel allegations or reports reported by the public to KPPU, however, only a few existing cartel practices have been successfully uncovered and prosecuted by KPPU as the business competition supervisory authority in Indonesia. Law enforcement against cartel cases in Indonesia's business competition law is based on the value of justice: Use of the legal approach method per se Illegal in enforcing cartel case law (reconstruction of Article 7, Article 9, Article 11, Article 12, Article 22 of Law No. 5 of 1999), Adoption of leniency program in Indonesian business competition law, Adoption of indirect evidence in Indonesian business competition law (reconstruction of Article 42 of Law No. 5 of 1999), Strengthening of KPPU as a state institution (reconstruction of Article 36 of Law No. 5 of 1999) , Authority to search and confiscate by KPPU (reconstruction of Article Law No. 5 of 1999), Weighting of fines for administrative sanctions (reconstruction of Article 47 of Law No. 5 of 1999).

Keywords: *Law; Enforcement;Cartel; Cases; Business; Competition*

INTRODUCTION

Proof of a cartel is often hampered because the business competition authority has difficulty proving the existence of a cartel, namely finding evidence of an agreement in which business actors mutually agree to conduct a cartel. Business actors often make cartel agreements unwritten so that there is no physical or direct evidence. The difficulty for the competition authorities to unravel the links between business actors in cartel syndicates has forced investigators to look for alternative evidence that at least states that there is an agreement between the actors involved. The method of proving indirect evidence is used as proof of conditions that can be used as an allegation of the implementation of an oral agreement.[1]

The use of circumstantial evidence is actually not uncommon in developed countries that are serious about eradicating cartel practices. Given the difficulty of obtaining direct evidence of agreement, many countries, such as the United States, Japan, and others, introduce indirect evidence, which includes economic evidence and communication evidence. However, in the Indonesian context, the use of these economic indications is often referred to as circumstantial evidence.[2]

The United States is one that applies indirect evidence. In practice, indirect evidence is obtained based on the results of an analysis of data processing which reflects supernormal profits that occur not due to increased efficiency and productivity of business actors. So it does not require the existence of a formal written or express agreement. However, circumstantial evidence can also be obtained from suspicious offers, travel records and expenses, telephone records, and diaries.[3]

Normatively Law no. 5 of 1999 does not recognize indirect evidence. In some cases their existence is acknowledged by the courts but in other cases they are not recognized by the courts because they are not recognized in the Indonesian legal system. The difference in court attitudes causes uncertainty in enforcing cartel law. A concrete example is the KPPU's decision No. 24/KPPU-I/2009, dated May 4 2010, which was later canceled by the Central Jakarta Court based on the decision of the Central Jakarta District Court (PN) No.03/KPPU.JKT.PST.58.[4]

[1]Nanda Narendra Putra, Struggling to Find the Legitimacy of Indirect Evidence, accessed on 7 September 2022.
[2]The OECD in its report Policy Roundtables: Prosecuting Cartels without Direct Evidence, uses the term circumstantial evidence as a substitute for indirect evidence. These two terms are sometimes used together, "Indirect (circumstantial) evidence is used in most jurisdictions including those with the longest and most successful records of cartel prosecutions...". The report explains that the evidence used to prove cartel agreements consists of types, namely direct evidence and circumstantial evidence.
[3] Ibid.
[4] The case began with allegations that 18 cooking oil companies had entered into a cartel agreement. The alleged cartel is related to the decline in the price of crude palm oil which was not followed by a decline in the price of cooking oil at the domestic consumer level. In connection with this, the KPPU sentenced the 18 companies, based on KPPU Decision No. 24/KPPU-I/2009, to pay a fine of Rp. 299 billion. The evidence used by the KPPU was indirect evidence, which was later canceled by the Central Jakarta District Court, in connection with the appeal made by the reported party. The reason for the annulment of the KPPU's decision by the District Court was because indirect evidence could not be used as evidence58, even though in the case of cross-share ownership by Temasek Holdings Pte Ltd in Telkomsel and Indosat, indirect evidence was used.58 "Business

Such a situation is certainly problematic, because the Indonesian legal system itself does not recognize the term indirect evidence as valid evidence. Moreover, the evidence in Law no. 5 of 1999 refers to the provisions of Article 184 paragraph (1) of the Criminal Procedure Code which was later adopted in the provisions of Article 42 of Law no. 5 of 1999 which mentions various pieces of evidence used in the examination of business competition cases, namely:[5]

1. Witness testimony;
2. Expert testimony;
3. Letters and/or documents;
4. Instructions;
5. Description of the business actor.

At least the provisions regarding the evidence above have spawned several other polemics. The first is the polemic where in terms of proof, this law actually refers to the provisions contained in the Criminal Procedure Code. Whereas cartel practices are based on agreements or agreements. Then in the provisions of Article 42 of Law no. 5 of 1999 explicitly does not include indirect evidence as stand-alone evidence. As a result, every cartel case where there is circumstantial evidence aimed at solving the problem is rarely considered by judges. However, the use of indirect evidence must still be carried out within the framework of evidence as stipulated in Law no. 5 of 1999. The existing guidelines must be able to accommodate dynamic developments.[6]

The difficulties experienced by KPPU in uncovering the existence of cartels gave rise to a similar understanding in other countries, that special tips are needed to be able to detect and punish cartel perpetrators. One of the efforts to uncover cartel practices is the leniency program.[7] The Leniency Program is a system of amnesty that frees cartel members who complain about cartel practices to the Business Competition Authority, which can be in the form of exemption from part or all of the penalties and/or fines that should be stipulated. This provision is similar to criminal law where the offender admits his guilt and is willing to provide testimony as a witness in return for which he will be given a reduced sentence.[8]

The leniency program itself was initiated by the United States in 1973 and began to have a lot of impact after the revision of the Corporate Leniency program in 1993. At that time, the abuse of private economic power which endangered the interests of consumers began to emerge. This economic strength is obtained through the formation of industrial cartels and the grouping of large businesses under the control of one or more private entrepreneurs (Johny Ibrahim, 2009: 133). The existence of a leniency program allows competition authorities to penetrate the cartel's cloak of secrecy.[9]

Leniency programs have been implemented in business competition law in at least 50 (fifty) jurisdictions around the world including Brazil, Mexico, the Russian Federation and Japan. The leniency program arrangements in these countries are similar and work in parallel with those in the United States and the European Union, the two jurisdictions with the largest acceptance of leniency applications in the world. A survey by the United Nations Conference on Trade and Development (UNCTAD) shows that through the leniency program, at least 100 international cartel practices have been detected, apart from domestic cartels in countries around the world. An effective leniency program will encourage cartel members to provide competition authorities with acknowledgment of their involvement in the cartel even before the start of the investigation phase.[10] The leniency program is an important breakthrough in business competition law, but unfortunately it has not been regulated in competition law in Indonesia.

UU no. 5 of 1999 has regulated several types of sanctions that can be imposed on perpetrators of business competition law violations, including cartel violations in it, namely in the form of administrative sanctions and criminal sanctions. KPPU is given the authority to impose administrative sanctions as a legal measure to prevent and restore the lost welfare of some consumers and business actors. In addition, it is also to provide legal certainty to the business world and increase the rationality of business actors not to engage in monopolistic practices and or unfair business competition.[11]

The Commission has the authority to impose sanctions in the form of administrative measures against business actors who violate the provisions of Law no. 5 of 1999. Based on the provisions of Article 47, administrative fines are one of the actions that can be imposed by the KPPU on business actors who commit cartel violations. Namely in the form of imposition of a minimum fine of Rp. 1000,000,000.- (one billion rupiah) and a maximum of Rp. 25,000,000, - (twenty-five billion rupiah). In view of these provisions, the maximum fine is only Rp. 25,000,000, - (twenty-five billion rupiah). The provision for the value of these fines is considered no longer relevant because the value is considered very small for business actors, moreover most business actors are corporations whose asset values are up to trillions of rupiah, so that a small fine is very ineffective in providing a deterrent effect for business actors, especially the cartel actors. This will cause cartel practices to continue to thrive in Indonesia.

Based on the provisions of Article 47 paragraph (2) letter g, the imposition of an administrative fine that can be imposed by the KPPU is a minimum of IDR 1 billion and a maximum of IDR 25 billion. Meanwhile, the imposition of criminal fines by the Court related to violations of the cartel division of areas, boycotts, is the lowest is 25 billion and the highest is Rp. 100 billion. Pricing cartel violations and setting prices below the market, the lowest is IDR 5 billion and the highest is IDR 25 billion.

Although in Law no. 5 of 1999 there is a possibility that the court can impose a larger criminal sanction, in practice it has never been carried out until it reaches IDR 100 billion. In cartel cases decided by KPPU, the administrative fine that can be imposed by KPPU is a maximum of Rp. 25 billion considering that the maximum limit allowed by law is that figure. For cartel

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Actors Accuse KPPU of Entrapment", accessed from http ://www. Hukumonline.com/berita/baca/lt4ceba3ce64e9e/angkatan-kasasi-ma-kppu-carrefourKPPULeave a Comment », on August 4 2011, on August 4 2010

[5] See Article 42 of Law Number 5 of 1999 concerning Prohibition of Monopoly Practices and Unfair Business Competition.

[6] Devi Meyliana, Business Competition Law: Study of the Concept of Proof of Price Determination Agreements in Business Competition, Setara Press, Malang, 2013, p. 47.

[7] Johny Ibrahim, 2006, Theory and Methodology of Normative Legal Research, Bayu Publishing, Malang p.133.

[8] Miftahur Rachman, Jurnal Business Law Review, *Vol. 3, h.9*

[9] Johny Ibrahim, *Op.Cit.*, p. 133

[10] Anita Nindriani, Leinency Program as an Effort to Expose Cartels in Indonesian Business Competition Law, Private Law Journal Vol. VIII No. January 1-June 2020

[11] KPPU Regulation no. 4 of 2009, Chapter 1 Background, Concerning Guidelines for Administrative Actions in Accordance with the Provisions of Article 47 of Law no. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

cases that are categorized as extraordinary crimes where the impact on social welfare is very real, the maximum limit of IDR 25 billion is no longer relevant at this time. Provisions for the amount of fines in 1999, when Law no. 5 of 1999 was enacted, the maximum limit of Rp. 25 billion was still considered reasonable considering the situation at that time, in a state of crisis, so that the provision of large fines to business actors had a negative impact on the Indonesian economy which was just trying to revive after the crisis. However, after nearly 20 years of Law no. 5 of 1999, of course the maximum limit of Rp. 25 billion is no longer appropriate and Indonesia's economic conditions are no longer in a position to recover from the crisis.

The motives of business actors to take cartel actions include, among other things, to get maximum profit, without ruling out the possibility of turning off entrances (new players) by creating barriers to entry. The resulting consequence is the creation of monopolistic practices by cartel actors so that from a macroeconomic perspective it results in inefficiency in the allocation of resources which is reflected by the emergence of deadweight loss.[12] Therefore, cartels are categorized as serious violations (hard core) of business competition law because their impact on reducing social welfare is considered very real considering the large losses suffered by society. Cartels are also considered an extraordinary economic crime (extraordinary crime),[13] so that in several countries such as the United States, cartels are a crime. In fact, by business competition law enforcers, cartels are considered equivalent to corruption or other major crimes. Cartel practices are no less dangerous when compared to corruption crimes, if corruption is the state's money being harmed while the cartel is draining people's money through the prices paid being more expensive than it should be.[14]

Based on the descriptions above, the author is interested in conducting more in-depth research as a dissertation entitled, Reconstruction of Law Enforcement Against Cartel Cases in Indonesian Business Competition Law Based on the Value of Justice. The provisions of Indonesian business competition law that the author refers to in this dissertation are based on Law no. 5 of 1999 and its implementing regulations. The cartel referred to in this dissertation is a cartel that is horizontal in nature and does not include tender conspiracy as stipulated in Article 22[15] of Law no. 5 of 1999.

RESEARCH METHODS

This type of research is qualitative research[16]. This research uses a social legal research approach. [17] The type of data used is primary and secondary data. Data analysis was done through descriptive analysis.[18]

DISCUSSION

Law Enforcement Against Cartel Cases in Indonesian Business Competition Law

Business competition law is a legal instrument that determines how competition must be conducted. Although it specifically emphasizes the aspect of "competition", competition law is also closely related to eradicating monopoly, because what is concerned with competition law is regulating competition in such a way that it does not become a means to obtain monopoly.[19] Indonesian Competition Law Provisions are regulated in Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition which was promulgated in the State Gazette of the Republic of Indonesia of 1999 No. 33 on March 5, 1999 and is effective 1 (one) year after its promulgation.

Cartel terminology in Law no. 5 of 1999 is only placed in Article 11 of Law Number 5 of 1999 which reads: "Business actors are prohibited from making agreements, with rival business actors, who intend to influence prices by regulating the production and or marketing of goods and or services, which can result in monopolistic practices and or unfair business competition."

The definition of a cartel in Article 11 of Law Number 5 of 1999 is actually only related to the prohibition of a cartel which emphasizes agreements to regulate the production and or marketing of goods or services intended to influence prices. Meanwhile, if we look at the definition of cartel according to experts, the definition of cartel in Law Number 5 of 1999 is too narrow.

Richard A. Posner explains in his book entitled "Economic Analysis of Law" that a cartel is, "A contract among competing sellers to fix the price of the product they sell (or, what is the same thing, to limit their out put) is like any other contract in the sense that the parties would not sign it unless they expected it to make them all better.[20] (A cartel is a contract that occurs between competing sellers to be able to set a price for the product they want to sell).

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[12] Ayudha D. Prayoga, "Cartels are Built for Maximum Profit", in Competition, Edition 39, 2013, Business Competition Supervisory Commission, Jakarta, p. 15 A deadweight loss is defined as, "a cost to society created by market inefficiency. Mainly used in economics, deadweight loss can be applied to any deficiency caused by an inefficient allocation of resources. Price ceilings, such as price controls and rent controls; price floors, such as minimum wage and living wage laws; and taxation can all potentially create deadweight losses". Information downloaded from "What is Deadweight Loss?", at https://www.investopedia.com/terms/d/deadweightloss.asp, dated 9 August 202

[13] Sukarmi, Competition Law Enforcement Must Continue, in Competition, Edition 39, 2013, Business Competition Supervisory Commission, Jakarta, p. 10.

[14] M. Nurfaik, *Sulit Berantas Kartel*, Jurnal Recht Viding Online, 6 November 2015

[15] M. Nurfaik, It's Difficult to Eradicate Cartels, Online Recht Viding Journal, 6 November 2015
Article 22 Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, states that, "Business actors are prohibited from conspiring with other parties to organize and/or determine tender winners so that it can result in unfair business competition."

[16] Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, Jurnal Akta. Volume 9 No. 3, September 2022.

[17] *Loc.cit*

[18] Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, JPH: Jurnal Pembaharuan Hukum, Volume 8, Number 3, December 2021.

[19] Arie Siswanto, 2002, Business Competition Law,, Ghalia Indonesia, Jakarta, p. 25.

[20] Richard A. Posner, 1992, Economic Analysis of Law: 4th Edition, Little, Brown and Company, Boston Toronto London, p. 285

In more detail, Arthur Sullivan stated that, "A cartel is a formal (explicit) agreement among competing firms. It is a formal organization of producers and manufacturers that agree to fix prices, marketing, and production"[21] (A cartel is a form of formal/explicit agreement between competing business actors. A cartel is a formal organization consisting of producers or manufacturing agree to fix prices, marketing, and production).

Meanwhile, according to Rachmadi Usman, a cartel is a form of monopoly, in which several business actors (producers) unite to control production, determine prices and/or marketing areas for goods and/or services, so that between them (business actors) there is no creation or more competition.[22] Meanwhile, according to A.M. Tri Anggraini cartel is sometimes interpreted narrowly, but on the other hand it is also interpreted broadly. In a narrow sense, a cartel is a group of companies that should compete with each other, but instead they agree with each other to "fix prices" in order to gain monopolistic profits. Meanwhile, in a broad sense, cartel includes agreements between competitors to divide the market, allocate customers, and set prices.[23]

If we look at the definition of a cartel according to the experts as mentioned above and then link it with the provisions in Law Number 5 of 1999, then the provisions governing cartel practices in Law Number 5 of 1999 will be found in several provisions of other articles separately. As found in Article 5 and Article 7 (Pricing and Pricing Below Market Price), Article 9 (Division of Territory), Article 10 (Boycott and Article 22 and Article 24 (Tender Conspiracy).[24] Following the author describes cartel arrangements in business competition law Indonesia is governed by several different articles and different legal approaches.

In the development of these two decades, the existence of Law no. 5 of 1999 has provided many benefits. There are many habits that show that the behavior of the business world has changed quite a lot because it is aware that there are laws and regulations and KPPU (Business Competition Supervisory Commission) that oversees the business world. However, apart from the KPPU's positive achievements, it must also be acknowledged that for certain cases, it has not run optimally. One of them is cartel-related cases, especially cartels other than tender conspiracy.[25]

Until now, there have been many cartel[26] allegations or reports that have surfaced or been reported by the public to KPPU, but very few have been proven by KPPU, let alone confirmed by the courts (District Court and Supreme Court). As of December 2015, there were recorded a number of cartel cases outside of bid rigging as many as 25 cases or 9% of the total 272 cases decided by KPPU. Seeing the number of non-conspiracy cartel cases that have been decided by the KPPU, the number of cases handled by the KPPU is 25 and it can be said that it was insignificant during a span of 15 years. This is because the reports of alleged cartel behavior that have entered KPPU have reached hundreds of reports. As a comparison, for example, the European Commission, from 2011 to February 2015 (for four years), has succeeded in deciding 24 cartel cases, including the TV and computer monitor tubes case in 2012, with a fine of up to Rp. 21.3 trillion. Furthermore, the 25 cases that have been decided by KPPU are explained in the following table:

Table 10 KPPU's Decision Regarding the Type of Violation (Period 2000 – 31 Dec 2018)

No	Type of Violation	Number of Decisions	%
1	Tender Cases Article 22	235	7
2	Cartel Cases Outside Tenders Article 22	**28**	**9**
3	Other Matters	45	15
	Total	308	100

Source: Processed by the author from www.kppu.go.id

Table 11 KPPU's Decisions in Legal Action in District Courts and Supreme Court (Period 2000 – 31 Dec 2017)

No	INFORMATION	NUMBER OF DECISIONS	PERCENTAGE
1	Decision with Permanent Legal Force (Inkracht) at KPPU	308	-
2	THE VERDICT WAS AFFIRMED by the District Court	84	
3	VERDICT CANCELED District Court	60	
4	VERDICT AFFIRMED by the Supreme Court	92	
5	VERDICT CANCELED Supreme Court	35	

Source: Processed by the author from www.kppu.go.id

Table 12 KPPU's Decision on Cartel Violations Outside of Tender Conspiracy in Legal Action at the District Court and the Supreme Court (Period 2000 – 31 Dec 2018)

No	Information	Amount	Total	Persentase
1	Not Proven in KPPU	7	7	25
2	Decision with Permanent Legal Force (BHT) Inkracht at KPPU		21	75

[21] Arthur Sullivan dan Steven M. Sheffrin, Economics: Principles in action, (New Jersey: Pearson Prentice Hall), p. 171
[22] Ibid.
[23] A.M. Tri Anggraini, 2011, Detecting and Revealing Cartels in Business Competition Law, Business Law Journal Vol 30.
[24] Interview with Dr. Veri Antoni, S.H., M.Hum, Lecturer in Business Competition Law, Faculty of Law UGM
[25] Ibid
[26] So far, the KPPU has received hundreds of reports of alleged bid rigging, withholding supplies and cartels in several commodities with patterns that are similar to each other. See Muhammad Syarkawi Rauf, 2013, "Cartels and Failed States", Bisnis Indonesia, 12 September 2013.

	a. Accepted by Entrepreneurs	9[27]		43
	b. Against Entrepreneurs	12		57
	Total	28		
3	Legal effort		12	
	At the District Court level			
	a. The decision was upheld by PN	4		33
	b. The decision was canceled by PN	8		73
	At the Supreme Court level			
	a. The decision was strengthened by the Supreme Court	3		25
	b. The Supreme Court's decision was annulled	6		50
	c. There is no Supreme Court decision yet	3		25

Source: Processed by the author from www.kppu.go.id

Referring to the table, of the 25 alleged cases that have been decided by the KPPU, seven cases have been decided by the KPPU that there was no cartel violation. Thus, 18 cases decided by KPPU proved legally and convincingly that cartel violations occurred. Furthermore, of the 18 cases decided by the KPPU it was proven legally and convincingly that there were cartel violations in which as many as eight cases were not submitted to objections by business actors (accepting the verdict). It is quite interesting that the business actor accepted the KPPU's decision and did not submit an objection to the District Court because the KPPU's decision did not impose sanctions on the business actor, even though the business actor was found guilty. As for the remaining 10 cases, there are objection legal efforts by business actors and cassation efforts at the Supreme Court. Of the 10 cases that were legally and convincingly decided by the KPPU, three cases were upheld by the District Court's decision, while the remaining seven cases were canceled by the District Court. Meanwhile, at the cassation level at the Supreme Court of the Republic of Indonesia, of the 10 cases, as many as three cases were upheld by the Supreme Court, five cases were canceled by the Supreme Court, and two cases are still in the process of cassation.

Thus, when compared to other business competition violations, law enforcement on cartel cases other than collusion has not run optimally. Viewed from the quantitative aspect, the alleged cartel violations that have been tried by KPPU, namely as many as 25 cases, are small cases considering the large number, even hundreds of reports7 of alleged cartel cases to KPPU. Furthermore, out of the 25 cases, only 11 cases or no more than half of the cases could be proven by the KPPU to have cartel agreements, where most of what was proven were cases that did not attract the attention of the public at large (read: minor cases). Meanwhile, for alleged cartel cases that cause huge losses to consumers, such as cartels in the consumer goods sector (cooking oil cartel), in the transportation sector (allegedly fuel surcharge cartel), in the production sector (allegedly cement cartel), in the health sector (medicine cartel), not proven at the level of the Supreme Court of the Republic of Indonesia.

The ineffectiveness of law enforcement related to cartel practices is something that is not encouraging, considering that cartels are a very important and phenomenal issue in the application of business competition law in many countries. Cartel is considered as one of the oldest forms of limiting business competition as well as collusive actions by entrepreneurs which are considered the most dangerous in the business world. Cartels are categorized as serious violations of business competition law because their impact on decreasing social welfare is considered very real, considering the large losses suffered by society.

Based on the descriptions as mentioned above, cartel practices can cause harm to a country's economy. Such as causing allocation inefficiencies, production inefficiencies, hindering innovation and the discovery of new technologies, hindering the entry of new investors, and causing the country's economic conditions to be not conducive and less competitive. Cartels also harm the community, as consumers, the public must pay prices for goods and or services that are higher than market prices, limited goods and or services produced, both in terms of quantity and quality, and limited choices of business actors. Until now, there have been many cartel allegations or reports reported by the public to KPPU, however, only a few cartel practices have been successfully uncovered and prosecuted by KPPU as the business competition supervisory authority in Indonesia, this is due to weak law enforcement against cartel cases in Indonesia.[28]

Therefore, according to the author, law enforcement against cartel cases in Indonesian business competition law is not based on the value of justice when analyzed using the Pancasila theory of justice. Whereas the view of justice in the national laws of the Indonesian nation is focused on the basis of the state, namely Pancasila, of which the fifth precept reads: "Social justice for all Indonesian people", the issue now is whether what is called fair according to the conception of national law which originates from Pancasila.

Law enforcement against cartel cases in Indonesia's fair business competition law is actually intended to bring social justice to all Indonesian people as mandated by Pancasila. Namely by avoiding the Indonesian nation's economic situation which is free fighting liberalism in the jungle economy where the national economy is controlled by only a handful of people. But on the

[27] A total of eight KPPU decisions regarding cartels were accepted by the business actors because these decisions did not impose fines on business actors who committed violations. These matters are:
1. Case Number: 02/KPPU-I/2003 Concerning Jakarta Cargo Tariffs
2. Case Number: 03/KPPU-I/2003 Concerning Surabya – Makassar Cargo Tariffs
3. Case Number: 05/KPPU-I/2003 Concerning Patas AC Bus Fares in Jakarta
4. Case Number: 32/KPPU-I/2008 Concerning EMKL Tariffs at Sorong Port
5. Case Number 53/KPPU-L/2008 concerning the Division of AKLI Work Areas
6. Case Number: 10/KPPU-L/2009 Concerning Ticket Fees by ASATIN in Mataram
7. Case Number: 14/KPPU-L/2009 concerning CTKI Health Examination Services to the Central Team
8. Case Number 11/KPPU-L/2013 concerning Electrical Installation Services in Nunukan. Farid Nasution, 2017, "Case Study of Cartel Cases", Business Competition Procedural Law Workshop, 26 - 27 September 2017, Indonesia Competition Lawyer Association, Jakarta.

[28] Interview with Prof. Dr. Paripurna, S.H., M.Hum., LL.M and Dr. Veri Antoni, S.H., M.Hum, Lecturer in Business Competition Law, Faculty of Law UGM

other hand it does not kill or hinder the growth of business actors. KPPU must then stand on two different interests, the interests of business actors and the interests of society as consumers.

The fifth precept in Pancasila can be called the Indonesian doctrine of economic democracy. Namely, the necessity to realize social justice for all Indonesian people. This economic doctrine becomes the basis of politics and law in caring for social life. There is something specific in this doctrine, namely social justice in the economic field which is poor in value must be arranged with the politics of social justice values.[29] Economic democracy is an elaboration of. Article 33 of the 1945 Constitution and the scope of the former definition of economic democracy can be found in the elucidation of Article 33 of the 1945 Constitution. Economic democracy can basically be understood from its economic system as mandated in the Constitution.[30] In the Minutes of the BPUPKI Meeting on May 31, 1945 at the Pejambon Building, Jakarta, it can be seen that Supomo as chairman of the Drafting Committee for the Constitution rejected the notion of individualism and used the family spirit found in Indonesian rural communities.

As we know, economics actually talks about the struggle for limited resources. In this case humans will prioritize their individual ego. Because limited resources also provide very limited opportunities. Even though everyone does not have the same ability to seize that limited opportunity. If every individual is allowed to be free without limits then those limited sources of life will only be enjoyed by strong people. In today's modern world, limited resources are marked by the fact that those who live in abundance and those who live in poverty.[31]

Law enforcement against cartels in Indonesia's fair business competition law is expected to foster a conducive business climate through creating fair competition, ensuring equal business opportunities for everyone, preventing monopolistic practices and or unfair business competition, creating a fair business climate. efficient and effective so that in the end consumers or the public will benefit from the economy, so that people's welfare as aspired by the welfare state can be achieved.

C.1. Law Enforcement Against Cartel Cases in Indonesian Business Competition Law Through an Illegal Per Se Approach

Both the per se illegal and rule of reason approaches have long been applied to assess whether a particular action by a business actor violates competition law. The rule of reason approach is an approach used by the business competition authority to evaluate the consequences of certain agreements or business activities, in order to determine whether an agreement or activity is detrimental or supports competition. On the other hand, the per se illegal approach is to declare any particular agreement or business activity as illegal, without further proving the impact arising from the agreement or business activity. Activities considered per se illegal usually include collusive price fixing of certain products, as well as fixing resale prices.

One of the weaknesses in law enforcement against cartel players in Indonesia is due to the approach in dealing with cartels used in the provisions of Law Number 5 of 1999, some of which still use the rule of reason approach, making cartel practices in Indonesia difficult to prove.[32] Law enforcement for cartel cases using the per se illegal approach normally has problems because it deviates from the practice of many countries, in practice there are also many potential problems because law enforcement for cartel cases in Indonesia has not been maximized. In developed countries, cartels are only considered illegal per se, even in some countries, cartels have led to criminal acts.[33] This has implications for the handling of cartels in Indonesia.

Cartel arrangements in Law no. 5 of 1999 is regulated in the provisions of different articles and different legal approaches. Such as article 5 (Pricing) and article (Pricing Below Market Price), article 9 (Division of Territories), article 10 (Boycott), and article 11 (Cartel). Price-fixing cartels and boycotts are formulated per see illegally[34] while regional division cartels and cartels are formulated according to the rule of reason.

Although there are those who argue that law enforcement on all cartel cases using a per se illegal approach is considered to be excessive and repressive and has the potential to disrupt a conducive business climate and hinder the investment climate and historically the monopolistic situation in Indonesia was caused by corrupt government policies (government sanctioned monopolies).) especially giving special treatment to certain business actors in the form of laws and regulations, in contrast to developed countries such as America, Japan and Australia where monopolistic situations occur due to industrial monopolization by private companies. So that business competition law in Indonesia should focus on overcoming the problem of government sanctioned monopolies, not only through law enforcement by the KPPU.[35]

Their argument is also added that the existence of cartels is not always negative and does not always conflict with the public interest, cartels sometimes have a positive impact.[36] Defensive cartels, namely cartels formed to avoid competition that has led to unhealthy competition, to this defensive cartel the government must provide legal force. Not all cartel practices have a negative impact, cartels sometimes have a positive impact on the public interest.[37] Defensive cartel or public cartel is a cartel that

[29] Bernard L. Tanya, Theodorus Yosep Parera dan Samuel F. Lena, Pancasila is the Framework for Indonesian Law,Genta Publishing, Yogyakarta, 2015, p. 111.

[31] Bernard L. Tanya, Theodorus Yosep Parera dan Samuel F. Lena, *ibid.*

[32] Interview with Prof. Dr. Paripurna, S.H., M.Hum., LL.M and Dr. Veri Antoni, S.H., M.Hum, Lecturer in Business Competition Law, Faculty of Law UGM

[33] Ibid.

[34] Per se illegal is an approach that is an sich and focuses more on the behavior of business actors without taking into account broader economic and social interests. Lawrence Anthony Sullivan, 1992, "Antitrust", St. Paul Minnesota, p. 167- 171, as quoted in A.M Tri Aggraini, 2003, Prohibition of Monopoly Practices and Unfair Competition: Perse Illegal and Rule of Reasom, Faculty of Law, University of Indonesia, Jakarta, p. 7.

[35]Interview with Benny Sutrisno, Head of APINDO Trade and Ramdlon Naning, S.H., M.S, M.M Lawyer/Advocate from Ramdlon Naning & Associates Law Firm

[36] Interview with Benny Sutrisno, Head of APINDO Trade

[37] Suharsil and Mohamad Taufik Makaro, 2010, Law Prohibiting Monopoly Practices and Unfair Business Competition in Indonesia, Ghalia Indonesia, Bogor.p. 59.

arises because of a policy or regulation that arises by the government related to pricing, production and others to protect certain business sectors, or price certainty that benefits consumers, here the cartel becomes part of the government's economic policy[38].

The formation of cartels in some cases can bring benefits, and can provide protection or protection against an industry from the threat of deadly competition, namely by maintaining production capacity, especially in industries that require large investments. Besides that, the cartel system can also prevent the influence of competition from forcing companies to carry out innovations that are not so urgent, thereby avoiding unnecessary expenditure or research and development.[39]

Kheamani R. S and D. M Shapiro stated that in discussing cartels, they are categorized into two, namely private cartels and public cartels[40]. A private cartel is a general agreement made between business actors in the same market without the knowledge of other parties outside of the cartel agreement. This private cartel is generally categorized as an act of violation of business competition law[41]. While a public cartel is a cartel that arises because of a policy or regulation that arises by the government related to pricing, production and others to protect certain business sectors, or price certainty that benefits consumers, here the cartel becomes part of the government's economic policy.[42]

Lee McGowan defines a public cartel, namely a cartel that is initiated and organized by the Government with the aim of serving the public interest, not for commercial interests. One type of public cartel is a crisis cartel organized by the Government for various industries or products and is mostly carried out in various countries to improve production and distribution prices in periods where there is an excess or shortage of supply justified if the goal is for the good of the people (public interest).[43]

In fact, the parties agree that law enforcement in cartel cases using the rule of reason is heavily influenced by arguments that tolerate the cartel so that several cartel-related articles are formulated using the rule of reason approach. However, it should be noted that these arguments have several weaknesses, namely: First, the stability and certainty of the market created by the cartel is all because it is not in accordance with the forces of supply and demand that affect price movements, besides there is no certainty or guarantee that participants the cartel will use its monopoly profits in the interests of consumers. Second, it is recognized that many cartels did not last long, but many did last for a long time. Cartels that occur over a long period of time are detrimental to competition and consumers.[44]

In addition, to positive cartel practices, Indonesia's business competition law has provided exceptions to agreements and actions that are exempt from business competition law. As is usually a rule of law, in addition to generally accepted provisions, there are exceptions. Law No. 5 of 1999 In sufficient detail, it has regulated exceptions to prohibited agreements or actions. This means that even though it seems that there are actions or agreements that are anti-competitive in nature or can result in monopolistic practices and/or unfair business competition, however, with various considerations, the law provides exceptions. Article 50 of the Business Competition Law regulates provisions on exempt agreements and actions.[45]

The legal reason is that business actors who carry out the same or comparable activities will receive equal treatment according to applicable business competition law principles and standards, such as providing guarantees for fairness, equality and equal treatment or non-discrimination. An approach based on legal reasons is expected to ensure consistency in the interpretation and application of law, as well as increase transparency, accountability and trust in law enforcement institutions that are responsible for implementing business competition law.[46]

Article 50 letter a Law no. 5 of 1999 regulates agreements and actions that are exempt from the Business Competition Law, namely actions and/agreements that aim to implement the applicable laws and regulations. This exception provision is intended to avoid the occurrence of conflicts of various policies in order to fulfill the basic rights of citizens by the state which is arranged in a national economic system.[47]

More than that, Law no. 5 of 1999 has given authority to KPPU not only in enforcing business competition law. KPPU as the supervisory authority for business competition in Indonesia has the authority to provide suggestions and considerations to the government that affect business competition in the form of reviewing the process of forming regulations, evaluating policies, or recommending implementation of policies.[48]

Within the scope of the rule of reason doctrine, if an activity that is prohibited is carried out by a business actor, it will be seen how far the negative effect is. If it is significantly proven that there are elements that impede competition, then legal action will be taken.[49] The rule of reason standard applied in Law Number 5 of 1999 includes two elements, namely the element of monopolistic practices and the element of unfair business competition. Both of these elements contain aspects of the impact of an agreement or business activity, the second is the aspect of how these activities are carried out. In terms of impact, competition and harm to the public interest. To determine an agreement or activity that is prohibited can be determined after inhibition of competition occurs. In the method aspect, an agreement or activity can be considered anti-competitive and prohibited if the agreement or activity is carried out dishonestly and against the law.[50]

Compared to other types of violations commonly found in Law no. 5 of 1999 such as tying agreements, predatory pricing, price discrimination, abuse of dominant position, and so on, cartel violations always occupy a 'special' position so that they require

[38] Suharsil dan Taufik Makaro, *ibid*., p. 58.
[39] L Budi Kagramanto, 2015, Get to know Business Competition Law, Laros, Sidoarjo. p.. 168.
[40] Kheamani R. S and D. M Shapiro, 1993, Glossary of Industrial Organisation Economics and Competition Law, OECD.
[41] Ibid.
[42] Suharsil dan Taufik Makaro, Op. Cit., p. 58.
[43] Ibid., p. 39.
[44] Mustafa Kamal Rokan, 2010, Business Competition Law (Theory and Practice in Indonesia) , Rajawali Pers, Jakarta, p.288
[45] Interview with Prof. Dr. Paripurna, S.H., M.Hum., LL.M and Dr. Veri Antoni, S.H., M.Hum, Lecturer in Business Competition Law, Faculty of Law UGM
[46] Mustafa Kamal Rokan, 2009, Business Competition Law, PT. Raja Grafindo Persada, Jakarta,p. 241.
[47] Ibid., p. 243.
[48] Interview with Deswin Nur SE., M.E. Head of Public Relations and Cooperation Bureau of KPPU
[49] Ibid.
[50] Supianto, "Per Se Illegal Approach and Rule of Reason in Business Competition Law in Indonesia", RECHTENS JOURNAL, Vol. 2, no. 1, June 2013, p. 54-55.

a special approach. Among these 'specialties' is related to the dangers of the impact of the cartel itself. The OECD (Organization for Economic Co-operation and Development) stated that, "hard core cartels are the most egregious violations of competition law".[51]

Facing a cartel, the debate should be more on proving who violated it, while in other cases of violations it is more focused on measuring the impact on competitors or on competition, whether it has closed competitors' access or has reduced competition substantially.[52] The motives of business actors to take cartel actions include, among other things, to get maximum profit (maximum profit),[53] without ruling out the possibility of turning off entrances (new players) by creating barriers to entry.[54] The resulting consequence is the creation of monopolistic practices by cartel actors so that from a macroeconomic perspective it results in inefficiency in the allocation of resources which is reflected by the emergence of deadweight loss.[55] Therefore, cartels are categorized as serious violations (hard core) of business competition law because their impact on reducing social welfare[56] is considered very real considering the large losses suffered by society. [57]Cartels are also considered an extraordinary economic crime (extraordinary crime),[58] so that in several countries such as the United States, cartels are a crime. In fact, by business competition law enforcers, cartels are considered equivalent to corruption or other major crimes.

Law enforcement against cartels is not easy, it is even considered difficult. The practice and who was involved in the cartel were strictly confidential, while other violations were more open in nature so that it was easier to find out who was responsible for the violations committed.[59] Proof of a cartel is often hampered because the business competition authority has difficulty proving the existence of a cartel, namely finding evidence of an agreement in which business actors mutually agree to conduct a cartel.

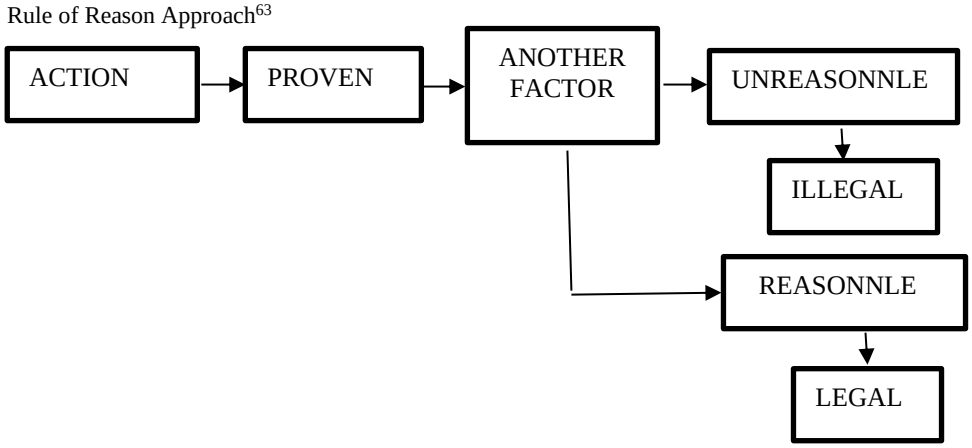
The application of the rule of reason approach in enforcing cartel case law in business competition law has various weaknesses. The rule of reason requires law enforcers to master knowledge of economic theory and a number of complex economic data. They may not necessarily have enough ability to understand it, to make rational decisions. The lack of ability to understand data and economic theory resulted in a series of inaccurate and inconsistent decisions. For example, in a verification process, sometimes the data obtained from calculating market share is not always accurate.[60]

In applying the rule of reason, a fact seeker must have a comprehensive knowledge of law and economics. Bearing in mind that fact seekers must focus on seeing the consequences that arise from an act committed, where they do not necessarily have sufficient ability to understand it to make the right decision. Limited ability and experience of law enforcers to deal with complex litigation processes.

In addition, the rule of reason approach tends to take a long time for the process of examining business competition cases. In enforcing the law on cartel cases using the rule of reason approach, after obtaining sufficient evidence that business actors have entered into agreements or cartel activities, the next step in the context of proving whether a prohibited cartel has occurred needs to be carried out a thorough examination. in depth whether the impact on cartel practices resulted in monopolistic practices or not.[61] Competition law enforcers must examine whether the reasons for business actors to engage in this cartel are reasonable (reasonable restraints).[62] The following is an illustration based on the Rule of Reason approach:

[51] Organisation for Economic Co-operation and Development, 2003, Hard Core Cartels Recent Progress and Challenges Ahead, p. 7.
[52] Ine Minara S. Ruky, "Economic Evidence in Proving Cartels", Business Competition Procedural Law Workshop, 26 – 27 September 2017, Indonesia Competition Lawyer Association, Jakarta, p. 1
[53] In economics, profit maximization is defined as, "the short run or long run process by which a firm may determine the price, input, and output levels that lead to the greatest profit. Neoclassical economics, currently the mainstream approach to microeconomics, usually models the firm as maximizing profit". Downloaded from https://en.wikipedia.org/wiki/Profit maximization, on March 9 2019.
[54] In The Law Dictionary the barrier to entry is explained as follows, "issues that new firms encounter that prevent or restrict them from entering a market. These issues can be related to the economy, a flooded market, high investment needs, brand competition, and pricing just to name a few. An exit barrier can make it hard." Information downloaded from, "What is a barrier to entry?", downloaded at https://thelawdictionary.org/barriers-to-entry/, on March 9 2019
[55] Ayudha D. Prayoga, "Cartels are Built for Maximum Profit", in Competition, Edition 39, 2013, Business Competition Supervisory Commission, Jakarta, p. 15
[56] Social welfare, which is part of the concept of welfare states, is a theory which emphasizes that a state whose government guarantees the welfare of the people. To be able to realize the welfare of its people, it must be based on five pillars of statehood, namely: Democracy, Rule of Law, Human Rights Protection, Social Justice and Anti-Discrimination.). Information accessed from, Bathara Kresno, "Concept of "Welfare State Theory" Maximizes the Role of Government", downloaded from ttps://kumparan.com/bathara-kresno/konsep-welfare-state-theory-maksimimal-peran-anggaran, on the 9th March 2019.
[57] In the cartel practice of determining SMS service rates, which took place in the period April 2004 - April 2007, the calculation of consumer losses by the KPPU was IDR 2.827 trillion. Price cartel for packaged and bulk cooking oil, during April-December 2008, total consumer losses were IDR 1.27 trillion for branded packaged cooking oil products and IDR 374.3 billion for bulk cooking oil products. The avtur price agreement cartel during the 2006-2009 period caused losses to consumers of up to IDR 13.8 trillion. See SMS Cartel Losses Consumers IDR 2.82 Trillion, Here Are the Details", Friday, 04 March 2016, accessed from www.tempo.co.id, on 17 May 2015" and." Five Powerful Cartels in Indonesia" accessed from http://www.apakabardunia.com/2012/09/5-kartel-berkuasa-di-indonesia.html, on 17 May 2015.
[58] Sukarmi, "Competition Law Enforcement Must Continue", in Competition, Edition 39, 2013, Business Competition Supervisory Commission, Jakarta, P. 10.
[59] Ine Minara S. Ruky, lot.cit
[60] Fitrah Akbar Setiawan, Business Competition Law Application of the Rule of Reason in Handling Cartel Cases, Suluh Media, Yogyakarta, 2017, P.38
[61] Interview with Prof. Dr. Paripurna, S.H., M.Hum., LL.M and Dr. Veri Antoni, S.H., M.Hum, Lecturer in Business Competition Law, Faculty of Law UGM.
[62] Supianto, "Per Se Illegal Approach and Rule of Reason in Business Competition Law in Indonesia", JURNAL RECHTENS, Vol. 2, No. 1, Juni 2013, P 54-55.

Rule of Reason Approach[63]



To see whether the actions taken by business actors constitute cartel practices or not, evidence must first be carried out. Based on the provisions of Article 42 of Law no. 5 of 1999, evidence in assessing whether or not a cartel violation occurred consists of:

1. Witness testimony
2. Expert testimony
3. Letters and or documents
4. Hint
5. Description of business actors

The next step in the context of proving whether a cartel has occurred using the rule of reason approach requires an in-depth examination of whether the impact on cartel practices has resulted in monopolistic practices or not. Monopolistic practice is the concentration of economic power by one or more business actors which results in the control of the production and or marketing and or certain services, thereby creating unfair business competition and causing harm to the public interest.[64] Based on this description, the elements of monopolistic practices are:

1. There is a concentration of economic power in one or more business actors;
2. There is control over production or certain goods or services;
3. Unfair business competition occurs as well

4. The action is detrimental to the public interest.

In the event that law enforcement in cartel cases uses the rule of reason to prove whether the cartel practice is proven and unreasonable restraint from elements resulting in monopolistic practices and or unfair business competition, it is necessary to prove the following matters:[65]

1. Business actors own and misuse market share (market power).
   Cartel practices grow and develop in markets with an oligopoly structure, where it is easier to unite and control a large part of the market share[66]. There are only a few sellers in the iligopoly market, this shows that the market share of each company is quite significant.[67] Companies that have a significant market share will more easily abuse market share (market power), with a significant market share will be able to increase prices easily and impose monopoly profits at higher costs borne by consumers. If a business actor has a high market share and if this power is used to set a higher price, it will be easy for the business actor to achieve this. If a business actor only has a small market share, he will relatively not have the ability to engage in cartel practices.[68]
2. There are high barriers to entry.
   Barriers to market entry are several factors in the market that make the cost of conducting similar business activities for new entrants higher than the costs charged to companies that have existed before. These barriers to entry include capital costs that must be paid by new businesses that are higher than existing companies. Barriers to market entry (barrier to entry) are conditions that encourage cartel practices.[69]
   When cartel actors earn high profits, this will be an attraction for new business actors to enter the same market. If in a cartel market there are many new business actors who enter the same market, the cartel cannot operate properly and in the end it will result in the end of the cartel, the cartel will be easy to form and run effectively if there are high barriers to entry.[70]
3. The actions of business actors create inefficiencies
   Cartel practices occur in imperfect markets, namely in the oligopoly market structure. Imperfect market structure will result in economic inefficiency. The occurrence of economic inefficiency is known as market failure. In proving whether the actions of business actors created inefficiencies or not, an analysis of the influence of industrial concentration on technical efficiency can be used. Analysis of the relationship between technical efficiency and high concentration encourages efficiency or inefficiency.

[63] Arie Siswanto, 2002, Business Competition Law, Ghalia Indonesia, Jakarta.p. 103
[64] Rachmadi Usman, 2013, Indonesian Business Competition Procedure Law, Sinar Graphics, Jakarta.P. 293
[65]Interview with Deswin Nur SE., M.E. Head of Public Relations and Cooperation Bureau of KPPU

[66]Andi Fahmi Lubis, 2009, Business Competition Law: Between Text and Context, Business Competition Commission and GTZ, Jakarta.p.41.
[67] Ibid., p 36
[68] Ibid., p. 73
[69] A.M. Tri Anggraini, Detecting and Revealing Cartels in Business Competition Law, Business Law Journal Vol 30, 2011,.p. 11;
[70] Ibid.,

4. There are negative consequences arising from naked cartel practices.
   To prove that there are negative consequences arising from naked cartel practices, a balancing test is used. Balancing test is a test to measure the benefits derived from the actions of cartel business actors compared to the negative consequences. What if the losses obtained are greater than the benefits then the act is not justified.
5. Cartel practices are unreasonable necessity

Unreasonable necessity means that the actions of the cartel business actors do not need to be done with common sense. In other words, in order to obtain pro-competitive profits to be achieved, the cartel's actions do not need to be carried out and there are other ways or alternatives that business actors should think of.

Based on the description above, enforcing the law on cartel cases using the rule of reason method is not easy and takes a long time to prove the impact of a cartel whether it results in monopolistic practices or unfair business competition. For example, it is difficult to prove the market power of cartel actors, considering that the complainant or competition authority must provide expert witnesses in the economic field and extensive documentary evidence from other competitors. So that in most cases the reporting party or business competition authority only has a small possibility to prove it.

Application of the per se illegal approach in cartel cases will bring great benefits to the enforcement of business competition law, because the per se illegal approach is easy and has clarity in the administrative process. Per se illegal which is considered easy, because it allows justice to refuse to carry out detailed investigations that require a lot of time, expensive costs to find facts in the relevant market.[71] The application of an illegal per se approach to cartel cases will guarantee legal certainty for an antitrust law issue that arises, if an agreement or action is almost certain to damage and harm competition, then why bother to prove it, it doesn't take much time, but also expensive cost. In addition, the application of the per se illegal method makes it easier for judges to decide on business competition cases because competition law has a very broad reach which gives freedom for judges to freely interpret whether a person has been declared violating or hindering competition.

Competition law in developed countries views cartels as naked restraints with the sole aim of influencing price and output levels. Therefore the Sherman Act treats cartels as Per Se illegal, as well as Germany, Japan, Australia and Singapore. The reason, according to them, is that the cartel does not produce efficiency at all or the efficiency gained is not worth the negative impact. Because in reality by looking at the evil nature of the agreements that are classified as cartels, the bad impacts caused and the damage to market activities.[72]

CONCLUSION

Law Enforcement Against Cartel Cases in Indonesian Business Competition Law, that cartel arrangements in Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, is regulated in different and separate articles and with different legal approaches. As stipulated in Article 5 (pricing) using the legal approach per se is illegal, Article 7 (pricing below the market price), using the rule of law approach method, Article 9 (division of areas) using the rule of law approach method, Article 10 (boycott) uses the illegal per se legal approach, Article 11 (cartel agreements) uses the rule of law approach, Article 22 (tender conspiracy) uses the rule of response legal approach, and Article 24 (Conspiracy to impede trade) uses the method of legal approach per se is illegal. Cartel practices can be detrimental to a country's economy. Such as causing allocation inefficiencies, production inefficiencies, hindering innovation and the discovery of new technologies, hindering the entry of new investors, and causing the country's economic conditions to be not conducive and less competitive. Cartels also harm the community, as consumers, the public must pay prices for goods and or services that are higher than market prices, limited goods and or services produced, both in terms of quantity and quality, and limited choices of business actors. Until now, there have been many cartel allegations or reports reported by the public to KPPU, however, only a few cartel practices have been successfully uncovered and prosecuted by KPPU as the business competition supervisory authority in Indonesia, this is due to weak law enforcement against cartel cases in Indonesia..Law Enforcement Against Cartel Cases in Indonesian Business Competition Law Based on the Value of Justice. Namely that the use of legal approaches per se is illegal in enforcing cartel law in Indonesian business competition law. The rule of reason legal approach method has several benefits, especially accuracy in analyzing whether the action is detrimental to competition or actually benefits competition, however the weakness of the rule of reason legal approach is the need for accurate economic expertise to determine whether the action is detrimental to competition or profitable, and requires long time. Seeing the evil nature and bad effects of cartels which are very detrimental to the economy of the people and the country, the legal approach to cartel cases in Indonesian business competition law is more appropriate to use illegal per se. So that the provisions of the articles that originally regulated cartel cases using the rule of reason approach method in Law Number 5 of 1999 were changed using an illegal per se approach, namely Article 7 (pricing below market price), Article 9 (zoning division) , Article 11 (Cartel) and Article 22 (Tender conspiracy). Adoption of Leniency Program in Indonesian Business Competition Law. UU no. 5 of 1999 has not regulated provisions related to leniency programs. Therefore, for the sake of effectiveness in enforcing business competition law, especially in cartel cases, it is necessary to adopt or regulate the use of a leniency program in Indonesian business competition law. KPPU can grant pardons and/or reduced sentences for business actors who admit and/or report their actions that are suspected of committing fraudulent practices as stipulated in the provisions of Law No. 5 of 1999 Article 5, Article 7, Article 9, Article 10, Article 11, Article 12, Article , Article 22 and Article 24. Adoption of indirect evidence in Indonesian Business Competition Law. Article 42 Law no. 5 of 1999 states that the evidence for the Commission's examination is in the form of: witness statements, expert statements, letters and/or documents, instructions, statements of business actors. Reconstruction of law enforcement against cartel cases, namely by adding the use of indirect evidence as evidence, namely by making indirect evidence included from the part of guide evidence as referred to in Article 42 letter d. Strengthening KPPU as a State Institution. The position of KPPU as a state institution is for the realization of the implementation, duties and authority of KPPU to oversee the prohibition of monopolistic practices and unfair business competition including in the framework of law enforcement against cartel cases. Reconstruction of Article 30 Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business

[71] Rachmadi Usman, Op.cit.p. 98
[72] Rachmadi Usman, ibid.,p. 56.

Competition by clarifying the KPPU's position as a state institution. Authority of Search and Seizure by KPPU in Usha Indonesia Competition Law. Reconstruction of Indonesian business competition law by adding the KPPU's authority to conduct searches and confiscations to find evidence ti violation of business competition in Article 36 of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Weighting of Fines and Administrative Sanctions. The imposition of fines on cartel perpetrators is a principle form of law enforcement in cartel cases. In order for the deterrent effect to be effective, the imposition must at least be equal to the profits earned by the cartel perpetrators. So that the reconstruction of Indonesian business competition law in Article 47 of Law no. 5 of 1999 namely by increasing the value of administrative fines for perpetrators of business competition law violators a fine of at least IDR 1,000,000,000.00 (one billion rupiah) is a basic fine, and the imposition of administrative actions in the form of fines by the Commission is carried out based on the provisions of a maximum of 50% (fifty percent) of the net profits earned by business actors in the relevant market, during the period when the law was violated; or a maximum of 10% (ten percent) of the total sales in the Relevant Market, during the period when the violation against the Law occurred.

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