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Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan
Surabaya, 60286 Indonesia, +6231-5023151/5023252
Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id
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Legal Strategy for Exposing Covert Cartel Agreements Through Indirect Evidence and Leniency Programs

Lucianus Budi Kagramanto[1] and Teddy Prima Anggriawan[2]
budi.kagramanto@fh.unair.ac.id
[1 2] Universitas Airlangga, Indonesia

Abstract
Indirect evidence is a form of indirect proof provided to seek material truth in the context of competition law enforcement. The leniency program is part of the final proofing process after law enforcers have utilized both direct and indirect evidence. The efficacy of the leniency program will eliminate cartel behaviors that greatly disrupt consumer welfare. This program is one of the roles of law in Indonesia, which is to maintain and regulate the economic activities among business actors so then these activities are orderly and balanced. The leniency program itself is a new substantive system included in the Draft Bill on the Prohibition of Monopolistic Practices and Unfair Business Competition in the amendment to Law No. 5/1999. The urgency of this amendment is also reflected in the 2025-2029 RPJMN, particularly in strengthening the economic transformation foundation through legal certainty and strengthening business competition, including competition institutions. The goal to be achieved is to eradicate cartel actors who violate the established rules in accordance with existing regulations. The program will have a positive impact on the sustainability and welfare of consumers in Indonesia regarding market production pricing. The research method used is normative legal research with a conceptual approach that is descriptive in nature. This research is highly likely to be implemented in Indonesia; both matters can be carried out by establishing a comprehensive Draft Law (RUU) on the Prohibition of Monopoly Practices and Unfair Business Competition.
Keywords: Cartel; Indirect Evidence; Leniency; Business Competition.

Introduction

A cartel is a form of agreement prohibited under Law Number 5 of 1999, which addresses the Prohibition of Monopolistic Practices and Unfair Business Competition.[1] Cartels reduce competition by limiting the number of competitors,

[1] Siti Aminah, 'Kedudukan Bukti Tidak Langsung (Indirect Evidence) Dalam Penyelesaian Praktik Kartel Di Indonesia' (2023) 2 Dharmasisya Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia <https://scholarhub.ui.ac.id/dharmasisya/vol2/iss3/34/>.[1498].

allowing business actors to seek maximum profit through easier agreements, leading to monopolistic practices and unfair business competition.[2] Cartels generally exhibit specific characteristics: conspiracy among business actors; price fixing; changing the allocation of consumers, production, and regions; information sharing among members and compensation mechanisms between large and small cartel members. These elements create incentives for businesses to join cartels rather than compete.[3]

The existence of businesspeople is actually one of the driving forces behind the country's economy. There is no hesitation in the running of the business where the business actors try to gain the maximum profit by defeating other parties, with one of the ways to do so being through unhealthy business competition.[4] Business competition is always associated with competitive conditions in the economic sector, which is defined as conditions that occur between two or more business actors who are trying to outperform each other in achieving the same goals within a certain business scope.[5] The complexity of business competition has been legally accommodated through law enforcement in Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, which is an economic injustice caused by large business groups during the New Order era.[6]

The existence of this law is considered to be able to create control over the market to create healthy business competition and advance the country's economy. Business competition law classifies the forms of agreement, activities and actions

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[2] Anita Nindriani and Pujiyono, 'Prospek Leniency Program Sebagai Upaya Mengungkap Praktik Kartel Dalam Hukum Persaingan Usaha Di Indonesia' (2020) 8 Jurnal Privat Law <https://doi.org/10.20961/privat.v8i1.40359>.[37].

[3] Rodrigo Londono van Rutten,[*et.,al.*], 'Leniency Policy In Hub And Spoke Cartels' [2024] Research Square <https://researchportal.vub.be/en/publications/leniency-policy-in-hub-and-spoke-cartels>.[3].

[4] Takako Fujiwara-Greve and Yosuke Yasuda, 'Inspecting Cartels Over Time: With And Without Leniency Program' [2023] SSRN Electronic Journal <https://www.jftc.go.jp/cprc/events/cprcseminars/index_files/138th-cprcseminar.pdf>.[18].

[5] Sven Heim,[*et.,al.*] 'The Anticompetitive Effect Of Minority Share Acquisitions: Evidence From The Introduction Of National leniency programs' (2022) 14 American Economic Journal: Microeconomics <https://www.aeaweb.org/articles?id=10.1257/mic.20190117>.[1].

[6] Tiara Rizky Aprillia, Teddy Prima Anggriawan and Aldira Mara Ditta Caesar Purwanto'Persaingan Usaha Jasa Transportasi Online Ditinjau Dari Undang-Undang Nomor 5 Tahun 1999' (2023) 1 Deposisi: Jurnal Publikasi Ilmu Hukum <http://dx.doi.org/10.59581/deposisi.v1i2.558>.[97].

that can be considered to cause unfair business competition. There are several forms of prohibited agreements or activities, one of which is cartels. The existence of a cartel is based on the consideration that the increasing number of competitors will result in the possibility of acquiring fewer consumers and result in limited profits.[7]

In the world of cartels, there is a program concerning indirect evidence, which refers to the nature of indirect proof provided to seek material truth in the enforcement of competition law. In Indonesia, this program has often been used by the KPPU (Indonesian Competition Commission) in processing cartel practices within the country. However, in practice, the KPPU often uses indirect evidence in the analysis of the processed data, which is viewed through profit outcomes not driven by efficiency improvements or the company's products.

The Leniency Programme refers to the final stage of the proof process after law enforcement has used direct or indirect evidence. The effectiveness of this program lies in eliminating cartel behavior, which significantly disrupts consumer welfare. The program is a legal mechanism in Indonesia designed to safeguard and regulate economic activities among businesses, ensuring that such activities are conducted in an orderly and balanced manner. In this case, businesses act as direct participants in the program established by the government. The program also seeks to realize the national goals outlined in the fourth paragraph of the Preamble to the 1945 Constitution, where economic development is aimed at advancing the welfare of the people. This program facilitates companies or individuals involved in a cartel to report cartel activities and cooperate with competition authorities to avoid penalties.

This regulation was created as a governmental response to cartel issues, which often violate established regulations in Indonesia. This is demonstrated through legislation that serves as a supervisor for business actors and provides legal certainty for every individual involved in economic activities in Indonesia. This is intended to help realize the ideals of the nation and to foster economic democracy

[7] J Sevilla and Hasanah, G. N., 'Strategi Percepatan Pemberantasan Praktik Kartel Di Indonesia Melalui Reformulasi Kebijakan Leniency Program' (2023) Jurnal Studia Legalia.[27].

that guarantees justice for all business actors. Thus, all business actors can actively participate in the production and marketing of goods and/or services in a healthy, efficient, and effective manner. Therefore, this program, in addition to providing supervision, also fosters economic growth. Consequently, this research was conducted to assess the development of regulations established by the government in addressing cartel issues in Indonesia.

The research method employed in this study is a normative legal research method, which examines issues related to competition law and monopoly from a normative legal perspective in a descriptive manner. The descriptive method used in this research aims to describe and explore strategies for addressing the various issues related to cartels, as well as to analyze the role of the government in dealing with the widespread cartel problems in Indonesia. The author analyzed the data using a conceptual approach, comparative law, and a statute approach as well.

In the statutory approach, primary legal sources that have official authority in existing legislation are also referenced. Additionally, secondary legal sources, which include data from legal publications, are gathered from official documents and these legal publications discuss issues related to cartel problems. In the legal analysis used in this study, deductive reasoning is applied to analyze several pieces of legal literature, which are then drawn into conclusions to illustrate the objectives of the research being analyzed.

The Role of Indirect Evidence in Proving Hidden Cartel Agreements

In general, a cartel is an agreement between business competitors at the level of competition for goods and services that horizontally sets prices and sales conditions, limits output, allocates customers, and divides market management. Violations in cartels are also often referred to as hard core, where the goal of the cartel is to gain profits based on an agreement agreed made by the business actor concerned.[8] For a long time, cartels have done this openly because of the lack of

[8] Peter T Dijkstra and Jacob Seifert , 'Cartel Leniency And Settlements: A Joint Perspective' [2023] Review Of Industrial Organization <https://doi.org/10.21203/rs.3.rs-2155039/v1>.[243].

access to business management protection. Cartels are no longer considered legal because market performance is disrupted, resulting in losses and imbalances in the people's economy.[9]

Obstacles in business activities will disrupt the balance in the community's economy where supply and demand activities are not in accordance with market ideals.[10] There are two disadvantages to this cartel practice, including:

1. Monopoly practices occur where the actions of cartel actors result in a reduction in the allocation of resources which results in a loss of weight in market competitiveness. This is generally caused by policies limiting production which are carried out by monopoly companies to keep market prices high.
2. From a consumer perspective, the choices are related to price, competitive quality and good after-sales service.[11]

Given the above conditions, it is necessary to supervise cartel management efforts in business activities in Indonesia. This is so then the business sector can grow and develop the economy in a healthy manner, ensuring that there is no concentration of economic power in certain groups. This action is also based on international agreements governing international trade as outlined in the agreements of the World Trade Organization (WTO), which have been ratified into the Indonesian legal framework through Law No. 7 of 1994 on the Ratification of the Agreement Establishing the World Trade Organization.[12]

In this context, indirect evidence plays an important role. Indirect evidence can take the form of economic evidence such as similar pricing patterns, stable profit margins without any efficiency reasons, or unusual declines in production. Communication evidence such as meeting notes, emails, or informal conversations

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[9] James R Seaward,[*et.,al.*] 'Rating The Rater: A Technique For Minimizing Leniency Bias In Residency Applications' [2023] Plastic and Reconstructive Surgery - Global Open.[3].

[10] Jeroen Hinloopen,[*et.,al.*] 'Corporate leniency programs For Antitrust: Past, Present, And Future' [2023] Review Of Industrial Organization.[113].

[11] M Faqih Surbakti, 'Potensi Penggunaan Leniency Program Dalam Perkara Kartel Indonesia' (2023) 5 Studi Perbandingan Leniency Jepang. Reformasi Hukum Trisakti.[214].

[12] 'Undang-Undang Nomor 7 Tahun 1994 Tentang Ratifikasi Perjanjian Pendirian Organisasi Perdagangan Dunia'.

can also be used as indications of a hidden agreement. This type of evidence is often the only way to detect cartel practices. The use of indirect evidence has a legal basis in Indonesia's competition law system. For example, Article 57 of Commission Regulation No. 1 of 2019 recognizes the use of economic and communication evidence as guidelines for proof.[13] The principle of *unus testis nullus testis* still applies, meaning that one piece of evidence is not sufficient and must be supplemented with other supporting evidence.

Indirect evidence is an agreement between business actors, consisting of either economic evidence or evidence of communication or meetings. When utilizing indirect evidence, it is important to remember that *"Indirect evidence can be difficult to interpret. Economic evidence in particular can be ambiguous, consistent with concerted or independent action. Better practice is to consider indirect evidence in a business 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"*.[14]

However, the use of indirect evidence faces a number of challenges. Economic evidence is often ambiguous because parallel behavior by business actors may arise naturally due to market conditions, rather than as a result of cartel agreements. For example, simultaneous price increases may be caused by rising raw material costs, rather than secret agreements. Therefore, indirect evidence must be interpreted with caution.

To overcome these challenges, in-depth economic analysis is essential. Competition authorities must use a cumulative approach, in which economic evidence, communications, and patterns of behavior are analyzed as a whole. In this way, authorities can distinguish between independent and collusive actions. This cumulative approach has also been used by various international jurisdictions such as the European Union and the United States.

[13] Pasal 57 Ayat 1 Peraturan Komisi Pengawasan Persaingan Usaha Nomor 1 Tahun 2019 tentang Tata Cara Penanganan Praktek Monopoli dan Persaingan Usaha Tidak Sehat.

[14] T Nyreröd, [*et.,al.*], 'Money Laundering And Sanctions Enforcement: Large Rewards, Leniency And Witness Protection For Whistleblowers' [2023] Journal Of Money Laundering Control <https://www.emerald.com/insight/content/doi/10.1108/jmlc-05-2022-0068/full/html>.[3].

The use of indirect evidence is carried out by countries that apply business competition law in handling the resolution of cartel cases, where they use indirect evidence as examples of agreements. In Indonesia itself, the reason for the use of indirect evidence by the KPPU is because cartel proof is difficult to establish in relation to civil procedural law in Indonesia, which places greater emphasis on the use of direct evidence.[15] In principle, direct evidence is very difficult to find in the examination of suspected cartel cases, so cartel proof mostly uses indirect evidence because cartel practices are violations that are difficult to prove. Cartel cases are rarely based on written agreements, presenting the difficulty of using circumstantial evidence as the only evidence used by the KPPU.

Limited access to data is also an obstacle. The reported parties often do not have adequate opportunity to test or conduct counter-analysis of the indirect evidence presented. This raises issues in the application of the principles of justice and transparency. It is important for the Indonesian legal system to strengthen the evidence testing mechanism so then indirect evidence can be more valid. Thus, indirect evidence is an important instrument in proving hidden cartels. Despite its weaknesses, this evidence can provide a strong initial indication of cartel behavior. The use of indirect evidence must be supported by careful analysis, transparent testing mechanisms, and clear standards of proof in order to provide legal certainty.

The Implementation of Leniency Programs as a Legal Strategy to Uncover Cartels

In addition to the use of indirect evidence, another important strategy in uncovering hidden cartels is the implementation of leniency programs. These programs offer reduced penalties or immunity to businesses that report and cooperate with competition authorities to expose cartels. This concept stems from

[15] Peter Rønø Thingholm, 'Provider Spill-Overs In Opioid Prescription Leniency And Patient Labor Market Outcomes' (*Department Of Economics And Business Economics Aarhus University*, 2023).[11].

the realization that cartel participants themselves are the most knowledgeable source of information about the details of such practices. The Leniency Program involved in disclosing cartel cases is a way of looking for clues. Instructions in the cases at the KPPU can be interpreted as actions, events or circumstances which, due to their adjustments, either with each other or with reports of alleged violations of the Business Competition Law, indicate that there has been a violation of the Business Competition Law and an indication of the culprit.[16] With the Leniency Program, we can find clues about suspected cartels that are otherwise difficult to reveal and avoid obstacles to the investigation.

In cases related to cartels, such as the example of the shortage of cooking oil or similar issues, it has been found that cartel-related problems indicate violations of antitrust laws. In this regard, if Indonesia implements a Leniency Program, cartel issues would be more easily uncovered by granting immunity to individual cartel participants or companies. This advantage would impact competition law enforcement, confirming that the suspected cartel aligns with predictions.

The enforcement of unfair business competition in cartels is carried out through comprehensive disclosures in order to be able to reach good business actors who are domiciled within and outside Indonesian law, which will have an impact on the economic market in Indonesia. Cartel actors are also classified based on actions, which include, among other things:

1) The Cost Price Cartel is a cartel that creates rules among its members to take into account the calculation of the cost price and the amount of profit.
2) Price Cartel is a price that sets the minimum price for the sale of goods they produce in trade.
3) Cartel Conditions or Conditions is a determination of sales conditions that work out the quality standards of goods to be produced or sold and determines their

[16] RB Setianingrum and Hawin, M., 'The Urgency Of Leniency Program Against Cartels In Indonesia: Lesson Learned From Singapore Competition Law' (2021) 28 Jurnal Media Hukum. [198].

delivery conditions, and whether they are determined in competition.[17]

The benefits of this program include allowing cartel participants to receive immunity or a reduction in fines for violations. Additionally, the implementation of the Leniency Program provides positive impacts, such as facilitating the proof of cartels through cooperation with certain parties, reducing the efforts (both resources and time) needed to prove the existence of cartels, decreasing the likelihood of business actors engaging in cartels, and lowering the potential for fines imposed by the Competition Authorities. This advantage will have an impact on the business competition law enforcement.[18]

Article 11 of Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices explains*: "Business actors are prohibited from entering into agreements with their business competitors to influence prices by regulating the production and or marketing of goods and or services, which may result in monopolistic practices and or unfair business competition".*[19] This means that in the case in question, the Rule of Reason approach is used by the Competition Authority to evaluate the consequences of certain business activity agreements to determine whether the agreement is an obstacle or support for all matters relating to cartel issues. In examining and proving a violation of the provision, the reasons of the business actors must first be examined, which can be proven to have occurred due to monopolistic practices or unfair business competition.

The implementation that regulates law enforcement regarding cartel behavior in Indonesia is still based on Law Number 5 of 1999 regarding the enforcement of cartel behavior using direct or indirect evidence. This does not mean that Indonesia does not regulate the Leniency Program. The Leniency Program itself has been

[17] Nadjiba Badi Boukemidja and Ouiza Chahed, 'The Effectiveness Of A Leniency Program In Algerian And Comparative Competition Law' (2019) 8 New Guidelines. European Journal Of Economics And Business Studies <https://doi.org/10.26417/ejes.v5i3.p25-34>.[131]

[18] Erika Canossini, 'Justifying Leniency At A Time Of Punitiveness: Federal Clemency Narratives In The United States' (2023) 25 Punishment & Society <https://journals.sagepub.com/doi/pdf/10.1177/14624745231168780>.[1343].

[19] Pasal 11 *Undang-Undang Nomor 5 Tahun 1999* tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat.

designed to provide relief for cartel perpetrators who want to help eradicate cartels. The meaning of the Leniency Program itself is as a form of protection related to cartel behavior, which often violates business competition law. One way to control cartels in Indonesia is to improve consumer welfare. The use of domestic products reduces the high cost and expands business opportunities.

It is also related to the changes to the Law through Baleg which can be carried out in an open cumulative manner based on the Constitutional Court Decision if Law Number 5 of 1999 is subject to a judicial review. Taking into account that the law has undergone 3 (three) judicial reviews on various articles in 2016, 2020 and 2022, it is possible that the bill could be revised at any time through an open cumulative mechanism with the approval of the factions in the DPR. The KPPU hopes that, through meetings with Baleg, the amendment process for Law Number 5 of 1999 can become an initiative of the DPR. In Law Number 5 of 1999, which was originally born from the DPR's initiative to realize democracy in Indonesia, the old Law should have been perfected as an initiative driven by the people's representatives.

The weakness of the rule of reason approach in disclosing cartels is that it does not have a deterrent effect on the business actors who carry out cartel activities because they are considered to provide a reason for their policy, which appears to not carry out these activities. However strategising to destroy the cartel chain can be done according to the Business Competition Authority's efforts to provide guidelines for the Leniency Program, which can run effectively. These strategies can include:

1) *Immunity*

The immunity policy provides immunity to parties who are a *whistleblower* who have applied for immunity. Program *leniency,* which regulates this immunity, requires the right to immunity if the business competition institution is not aware of the existence of a cartel or knows of the existence of a cartel but there is not sufficient enough evidence. Therefore, the company or party that first makes a complaint about the cartel will gain a large profit.

2) *Predictability*

A possible reduction in the sanctions that can be obtained can be anticipated, which means that reporting companies or individuals can estimate the level of reduction in sanctions and the benefits they can gain by reporting the cartel activity. Estimates of reducing sanctions are not only based on written law but also on the existence of jurisprudence or legal principles that have been implemented previously, as well as other sanctions that may be imposed on cartel violators. If perpetrators can estimate the benefits they will obtain, they will tend to be more motivated to report cartel activities.

3) *Corporate Leniency and Leniency for Individuals*

Waiver programs in jurisdictions that impose sanctions on individuals usually grant them immunity when collaborating with legal entity authorities, and often immunity is also granted to the companies involved. Immunity for individuals is important because these individuals are considered to be able to influence company decisions related to their personal interests. Some leniency programs also allow individuals to report violations separately from the company they work for, allowing them to obtain leniency separately.

4) *Protection From Private Damage Action*

Protection from private civil lawsuits allows law enforcement to reduce the requirements that could harm parties reporting cartel practices, whether companies or individuals, related to the information they submit so then law enforcement can follow up on the report. This reduction is carried out by paying attention to security and maintaining the confidentiality of the reporter's identity. Several business competition monitoring agencies in several countries also choose to keep the identities of companies that receive leniency confidential. Reports are accepted orally to maintain the confidentiality.

5) *Risk Related to Corruption*

In some cases, high-class businesspeople try to give bribes so then the Leniency Program does not continue. Before adopting a Leniency Program, a country must ensure that the disclosure of cartel practices will not be related to criminal acts of corruption.[20]

The implementation of this regulation also faces several challenges often encountered by the reported parties, such as limited access to data or to the case files needed for the testing or counter-analysis of indirect evidence. The Commission Panel has the authority to determine the validity of the evidence presented. There is no comprehensive re-examination of KPPU decisions and evidence in court (court examinations are limited to a maximum of 30 working days based on KPPU cases), and procedural law reduces the reported parties' right to present new evidence when challenging the application of indirect evidence in the KPPU's decisions (Regulation of the Supreme Court Number 3 of 2019).[21]

In implementing the program, the relevant mechanisms must be regulated through technical regulations. The commitment to cooperate during investigations and recognize business actors who participate in business competition violations being among them.[22] Submissions are made as collateral, where if business actors provide incorrect information that results in losses for other business actors, then they will be subject to criminal prosecution and administrative sanctions.

Criminal charges will be given if there is no good faith due to the business actor's non-operation in providing correct information. Therefore, leniency programs must be regulated strongly so then their implementation does not deviate or interfere with business actors accused of carrying out cartel actions.[23]

By imposing severe criminal sanctions on business actors in the world of business competition, it has little impact on unfair business competition, in this case, where the business actors have no fear or there is no deterrent effect in response to administrative sanctions in the form of fines rather than criminal penalties. Criminal law is an ultimatum step towards law enforcement over a long period of time.

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[20] J Buretta, *The Cartels and Leniency Review* (8th edn, 2021).[389].

[21] 'Peraturan Mahkamah Agung Nomor 3 Tahun 2019 Tentang Tata Cara Pengajuan Keberatan Terhadap Putusan Komisi Pengawasan Persaingan Usaha'.

[22] ibid.[37].

[23] S Mardatilla, 'Tinjauan Yuridis Pengaturan Cartel Leniency And Whistleblowing Program Sebagai Reformasi Pengungkapan Perjanjian Kartel (Studi Komparasi Hukum Persaingan Usaha Indonesia Dan Belanda)' [2023] Jurnal Studia Legalia.[108].

The characteristics of implementing the program involve increasing the criminal sanctions for business actors who are not cooperative with providing incentives, as well as providing immunity to whistleblowers or reported parties who participate in cartel disclosure through a Leniency Agreement with guarantees that they will not provide false information and harm other business actors.[24]

These issues highlight the need for implementing indirect evidence and a Leniency Program to address the unfair competition problems caused by cartel activities. The KPPU has the power to investigate, enforce the law, and handle legal proceedings through litigation. In addition to overseeing unfair business competition, the duties of this institution are outlined in regulatory guidelines, specifically KPPU Regulation No. 1 of 2022 on business competition compliance programs.[25] By definition, the program involves a series of activities to achieve its goals.

Another external supporting factor, besides the legal framework, is the establishment of the Business Competition Supervisory Commission (KPPU) by the government. The KPPU is a government institution that has a complex task based on Presidential Decree No. 75/1999, in that it aims to maintain a conducive business environment and fair competition so then both large and small business actors have the same opportunity to gain profits.[26] This also encourages the KPPU to improve efficiency and effectiveness in implementing business competition compliance programs within the company. Additionally, the KPPU's role in consumer welfare goes beyond legal actions seeking damages from cartel activities; it also involves making recommendations or suggestions to the government in forming policies related to the economy.

The duties and authority of the KPPU are very important, although many of the duties and authorities have not yet been implemented optimally. In analyzing consumer welfare, this has been carried out by the government through the KPPU, which strengthens the KPPU to prevent or overcome cartel actions that harm

[24] Thingholm (n 18).[21].
[25] *Peraturan KPPU Nomor 1 Tahun 2022 tentang Program Kepatuhan Persaingan Usaha*.
[26] *Keputusan Presiden Nomor 75 Tahun 1999 tentang Komisi Pengawas Persaingan Usaha*.

consumers. One of the roles is to strengthen the existence of forms of business competition law enforcement and community participation in uncovering cases of suspected cartels which, of course, threatens the lives of those who report them. Therefore, cartel actions can be overcome by this program to minimize the losses experienced by consumers. From this policy, which is related to the economic interests of society, competitive business competition will be created both in terms of price efficiency and quality in terms of consumer economic standards.

A Leniency Program is one of the cartel-proofing procedures that has been implemented in many countries, including the United Kingdom, South Korea, Singapore, and Australia. leniency programs are considered to be an effective way to uncover and enforce competition law. However, Indonesia has yet to implement one.[27]

The Regulation of the Business Competition Supervisory Commission (KPPU) Number 1 of 2022 on Competition Compliance Program is a legal instrument designed to encourage business actors to proactively comply with the principles of fair business competition as stipulated in Law Number 5 of 1999. This regulation emphasizes the importance of compliance as an integral commitment in corporate management, involving all elements within the company. Through the establishment of a Compliance Program, which includes a code of ethics, compliance guidelines, as well as outreach, counseling, and training activities, companies are expected to create effective internal mechanisms to prevent violations of competition law. This approach aims to build a culture of compliance that can enhance market integrity and stakeholder trust.

One of the factors that has prevented Indonesia from implementing a Leniency Program is the potential mismatch between the leniency concept from other countries and Indonesia's context. For example, in the United States, cartel practices are considered to be a serious crime that can jeopardize the interests of the state, so the perpetrators can be sentenced to imprisonment for up to 10 years.

[27] Haifa Arief Lubis, 'Perbandingan Leniency Program Sebagai Pembuktian Kartel Di Berbagai Negara Dan Penerapannya Menurut Hukum Persaingan Usaha Indonesia' (Universitas Indonesia 2014) <https://lib.ui.ac.id/detail?id=20365096&lokasi=lokal>.[115].

In Indonesia, the Business Competition Supervisory Commission KPPU) tends to impose administrative sanctions such as fines on cartel participants.

However, although the Compliance Program offers a comprehensive preventive mechanism, there are limitations in addressing serious violations such as cartel practices. Cartels, which are the most harmful form of competition law violations, are often conducted covertly and are difficult to uncover. The Compliance Program may not be sufficiently effective at dealing with violations involving complex conspiracies such as cartels. In this context, while the Compliance Program may help prevent general violations, stricter and more effective law enforcement is needed to complement this preventive approach.

To address serious violations such as cartels, the Business Competition Supervisory Commission (KPPU) needs to strengthen its law enforcement efforts by imposing stricter sanctions. Criminal penalties can provide a stronger deterrent effect compared to administrative sanctions like fines. The implementation of criminal penalties against cartel practices also reinforces the Business Competition Supervisory Commission's (KPPUs) credibility as an institution serious about enforcing competition law. A regulatory approach based on compliance needs to be balanced with stronger law enforcement to ensure that violators are punished fairly and proportionally.

Ultimately, the effectiveness of competition law enforcement in Indonesia heavily depends on the balance between preventive and repressive approaches. The compliance program regulated under the Business Competition Supervisory Commission (KPPU) Regulation Number 1 of 2022 is an important first in encouraging businesses to comply with the law. However, to ensure that serious violations such as cartels can be uncovered and effectively addressed, the Business Competition Supervisory Commission (KPPU) must be prepared to adopt stricter enforcement measures, including the imposition of severe criminal penalties. The integration of preventive effort through compliance and repressive efforts through law enforcement will create a fairer and more sustainable business environment, supporting healthy economic growth in Indonesia.

Thus, the Leniency Program has the potential to be an effective legal strategy in uncovering cartels in Indonesia. The urgency of implementing this program cannot be ignored. The implementation of the Leniency Program, if carefully designed and accompanied by adequate legal protection, will be an important complement to the use of indirect evidence, so then the enforcement of business competition law becomes stronger and more efficient.

Conclusion

Countering cartel practices in Indonesia focuses on the use of circumstantial evidence and leniency programs in accordance with the applicable legal framework. This approach aims not only to impose legal sanctions on cartelists but also to strengthen consumer protection and regulatory effectiveness. The government, through the establishment of KPPU based on Presidential Decree Number 75 Year 1999, plays a strategic role in competition supervision.

Proving hidden cartel practices is a major challenge in the enforcement of competition law in Indonesia. Two important strategies that can be used are the application of indirect evidence and leniency programs. First, indirect evidence plays a crucial role because cartel practices are rarely accompanied by direct evidence in the form of written agreements. Economic evidence, pricing patterns, communication records, and market behavior can be indications of collusion. However, this evidence is ambiguous and must be analyzed carefully using a cumulative approach and in-depth economic testing in order to distinguish independent actions from collusion.

Second, leniency programs are strategic legal instruments for dismantling cartels, providing immunity or reduced penalties for perpetrators who report and cooperate with competition authorities. These programs can accelerate disclosure, reduce the cost of proof, and prevent new cartels from forming. To be effective, leniency programs must be clearly regulated, provide legal certainty and protection for whistleblowers, and be balanced with strict sanctions, including criminal penalties, for non-cooperative cartel participants.

The two complement each other: indirect evidence serves as an initial tool for detecting cartel practices, while leniency programs provide incentives for perpetrators to disclose internal information that is difficult to access. With adequate regulatory support, strengthening the role of the KPPU, and balancing preventive (compliance programs) and repressive (strict sanctions) approaches, competition law enforcement in Indonesia can become more effective at protecting consumers, creating a healthy business climate, and maintaining equitable economic growth.

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