

Leniency Program in Cartel Agreements in Realized Consumer Protection in Indonesia

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Abstrak

Abstract: Leniency Program On Cartel Agreements in Realizing Consumer Welfare in Indonesia" which consists of two problem formulations, namely First, Characteristics of Leniency Programs Against Proving Cartels in the Perspective of Business Competition Law. Second, Urgency of Implementing Leniency Programs Against Case Analysis of Cooking Oil Scarcity in Indonesia. This research is a normative legal research using several approaches, namely the legislative approach, conceptual approach, and case approach. The results of this study answer the problems, namely First Characteristics Leniency Program Regarding the proof of a cartel, a form of pardon is given to the accused who helped uncover a cartel case that is difficult for competition law enforcement to uncover, such as the alleged cartel in the cooking oil shortage that occurred in Indonesia. Then, the application of Leniency Program on the analysis of the cooking oil scarcity case to overcome the public unrest over the scarcity of a product and price increases that disrupt consumer living needs so as to maintain a conducive economic climate and not give rise to other cooking oil cartel cases such as Decision Number 15/KPPU-I/2022 which punished 7 (seven) of 27 (twenty-seven) companies with a fine of IDR 71.28 billion. Therefore, consumers will prosper and business actors will find it difficult to make prohibited agreements in the world of business competition through the implementation of a leniency program in Indonesia.

Introduction

The development of business and trade, both nationally and internationally, has resulted in regulations that must continually address legal issues to ensure legal certainty. The existence of legal certainty is a form of protection for the justiciable (those seeking justice).¹ against arbitrary action, which means that a person will and can obtain something that is expected in certain circumstances². Business activities carried out by legal subjects are certainly related to the regulation of business competition so that losses can be avoided if business actors carry out actions that are detrimental to consumers or other business actors. Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, abbreviated as Law Number 5 of 1999, aims to "*requires equal opportunities for every citizen to participate in the production and marketing process of goods and/or services, in a healthy, effective and efficient business climate so as to encourage economic growth and the functioning of a fair market economy*".

The existence of a free market has a significant impact on the nation's economic growth, one of which is providing business actors with the freedom to innovate in the market, thereby creating competitiveness and improving the economic well-being of the community. Business competition can influence policies related to trade, industry, a conducive business climate, business certainty and opportunities, efficiency, the public interest, public welfare, and so on.³ The characteristics of the new economic policy prioritize price instruments, markets, and healthy competition in trade to increase the dynamics of development in each country⁴. Competition law protects competition and healthy

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² Mario Julyano and Aditya Yuli Sulistyawan, 'Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning' (2019) 1 Crepido 13.

³ Andi Fahmi Lubis, et al. *Competition Law* (Ningrum Natasya Sirait et al., ed., Second Edition, Business Competition Supervisory Commission 2017).

⁴ Lucian Budi Kagramanto, "Harmonization of Competition Policies and Laws to Improve Public Welfare", Speech at the Inauguration of the Professorship in the Field of Business Competition Law at the Faculty of Law, Airlangga University, June 6, 2009, p.2

competition processes by preventing and sanctioning anti-competitive actions.⁵ This regulation provides legal protection for consumers if business actors commit detrimental actions that disrupt consumer welfare. Consumer welfare, based on Law Number 5 of 1999, is implicitly regulated through Article 3 as stipulated;

The purpose of establishing this law is to⁶;

- a. Maintaining public interests and increasing national economic efficiency as an effort to improve people's welfare;
- b. Creating a conducive business climate through healthy business competition regulations so as to guarantee the certainty of equal business opportunities for large business actors, medium business actors and small business actors;
- c. Prevent monopolistic practices and/or unfair business competition caused by business actors; and
- d. Creating effectiveness and efficiency in business activities

The philosophical purpose of the formation of Law Number 5 of 1999 is to develop the economic sector which must be directed towards realizing the welfare of the people based on Pancasila and the 1945 Constitution. The Competition Law is a synthesis of 2 diametric points, namely *free fight liberalisme* which adheres to unlimited free competition and *state* which prioritizes state ownership and control in the economy⁷. The government wants every party involved in business competition to contribute to the economic empowerment of the community. Ideally, this healthy competition is aimed at increasing *consumer and producer welfare* by reducing *deadweight loss* (economic inefficiency factors)⁸.

Based on sociological aspects, every business actor is only in a healthy and fair competitive situation, so that it does not give rise to the concentration of economic power in a particular business actor. A healthy and fair competitive situation means that business actors do not control the production and/or marketing of goods or services that result in losses to the public interest. In an oligopolistic market structure, where there are only a few business actors in the market, the possibility of business actors working together to determine product prices and production quantities for each business actor is greater.⁹ Therefore, it will be easier for business actors to form cartels and develop them in oligopolistic markets as a strategy to influence prices by regulating production volumes, known as cartels.

Consumer welfare in a competitive business environment provides opportunities and the ability to meet daily needs while maintaining public interest and economic efficiency. Business activities are increasingly competitive over time, motivating business actors to seek ways to gain profits in the market. The majority of business actors enter into agreements with each other to influence prices by regulating the production of goods in the market. This act of influencing prices by regulating production is called a cartel, thus preventing the realization of public welfare and economic efficiency. In Indonesia, over the past 10 years, there have been several cartel cases involving airline ticket price fixing, resulting in consumers paying high prices. Then there is the cartel case in the Aneka Pangan Industrial Salt and the alleged imported beef cartel carried out by 32 (thirty-two) reported parties.

In 2022, Indonesia experienced a cooking oil shortage due to an imbalance between supply and demand. This shortage disrupted people's daily lives, even leading to scrambles for cooking oil in several shopping centers, including supermarkets and minimarkets. Not only was there a shortage, but the price difference set by producers was so high that consumers were reluctant to buy

⁵ Business Competition Supervisory Commission, 'Guidelines for Article 11 Concerning Cartels', KPPU (KPPU 2011).

⁶ Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition 1999.

⁷ A. Junaidi, "State and Market in the Framework of Competition Policy: Competitive Nationalism". Republic of Indonesia Business Competition Supervisory Commission, 2011. p. 3

⁸ Ibid., h. 4

⁹ Andi Fahmi Lubis, et al., "Competition Law". Second Edition, Jakarta: Business Competition Supervisory Commission (KPPU). p. 144

cooking oil. The scarcity and high price of cooking oil were also caused by allegations of hoarding by food mafias circulating among the public.¹⁰

The scarcity of cooking oil has resulted in *panic buying*. This raises suspicions of cartels carried out by business actors through production arrangements based on prohibited agreements. According to legal expert Richard Posner, a cartel is an agreement or competitive contract between sellers to regulate sales prices. Sales arrangements actually do not provide consumers with the opportunity to choose goods or services fairly. Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition prohibits business actors from collaborating with other business actors to influence prices in order to gain more profits than other competitors. Cartels will force consumers to pay more for a product, whether it is a luxury item or goods commonly needed by the public such as medicines and vitamins.¹¹ Symptoms of cartel behavior can be seen in the disruption of distribution and logistics processes, leading to cooking oil shortages. In terms of distribution, only a few regions sell cooking oil, leading to competition for purchases and consumers' inability to meet their daily needs.

In several countries around the world, cartel behavior by business actors in business competition is categorized as an extraordinary crime. Cartels are categorized as extraordinary crimes because they disrupt the public's well-being in accessing essential goods and services. People are limited in their choice of goods at affordable prices. In connection with logistical constraints on cooking oil, prices have risen, driving up significant inflation. Cartels are categorized as extraordinary crimes because the country regulates such behavior based on the principle of *per-se illegal*. The regulation states clearly what has become the provisions regulated in Article 5 of the UULPM regarding price fixing cartels, use of *Per se Illegal* bringing the understanding that the agreement that occurred could actually hinder competition, without the need for an in-depth study of what the price setting did to its impact on the market and consumers.¹²

Approach *Per se illegal* is the correct approach that action on an agreement or business activity *illegal* by law without needing to see the impact or economic analysis that arises, because the impact of an agreement in the form of an agreement is clear and will definitely degrade the market, either by reducing, damaging or even eliminating competition.¹³ Law enforcement against cartel crimes in Indonesia according to Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition uses the principle *Rule of reason*.

Enforcement of cartel behavior in Indonesia according to the principles *Rule of Reason* is the existence of a business actor making an agreement with another business actor with the intention of influencing prices by regulating production which can result in monopolistic practices and/or unfair business competition. The principle of enforcement through *rule of reason*. The Business Competition Supervisory Commission (KPPU) will hear the reasons given by business actors for entering into agreements with other actors that could potentially constitute cartel activity. The reasons given by business actors for engaging in acts that hinder trade can be considered acceptable (*reasonable*) or unacceptable (*unreasonable restraint*) when¹⁴:

1. Business activities show signs of reduced production or rising prices. If these signs are present, further investigation is necessary;
2. Are the activities of business actors of a legal nature? *naked* (directly) or *ancillary* (additional). If the activity is of a nature *naked*, then it is an act that is against the law. Whereas if *ancillary*, then it is permitted;
3. The perpetrators have *market power*. When business actors have *market power* then there is a possibility that they will abuse that power;

¹⁰ Edelweis Lararenjana, "Factors Causing the Current Scarcity of Cooking Oil, Here's the Review". merdeka.com. (2022). <https://www.merdeka.com/sumut/faktor-penyebab-kelangkaan-minyak-goreng-saat-ini-berikut-ulasannya-klm.html> accessed on March 25, 2023

¹¹ Business Competition Supervisory Commission, 'Guidelines for Article 11 Concerning Cartels', KPPU (KPPU 2011).

¹² Dimas Aryadiputra, Deny Slamet Pribadi and Aryo Subroto, 'Differences in the Application of the Per Se Illegal Approach and the Rule of Reason in the KPPU Decision on Price-Fixing Cartels' (2022) 18 Legal Treatise 1.

¹³ Dimas Aryadiputra. *ibid*.

¹⁴ KPPU, 'KPPU Regulation No. 4 of 2010 Concerning Guidelines for Article 11 Concerning Cartels Based on Law No. 5 of 1999 Concerning the Prohibition of Monopolistic Practices and Unfair Business Competition' (2010) 4 Kppu 29.

4. Are there high barriers to entry into the market? Even though business actors have *market power*, however, if there are no significant barriers to entry into the market, it will be easy for new business actors to enter the market;
5. The actions of business actors when they create substantial efficiencies and increase the quality of products or services or provide innovation. If these reasons are not proven, then the actions are *illegal*;
6. The actions of these business actors are indeed necessary to achieve efficiency and innovation. This means that it must be proven whether the actions of these business actors are the best alternative to achieve these goals;
7. It is necessary to have "*balancing test*" This means that it is necessary to measure the benefits obtained from the actions of business actors compared to the negative consequences. If the benefits obtained are greater than the losses, then the action is justified.

Enforcement of cartels with principles *rule of reason* This is compounded by the difficulty of identifying business actors involved in cartels. This difficulty arises because cartels predominantly rely on unwritten agreements. Detecting cartels is also not easy because cartel actors (*cartelist*) tends to carry out its behavior secretly and therefore special efforts are needed from the business competition authorities to reveal the existence of the cartel.¹⁵ Specific measures to enforce cartels in Indonesia have not been specifically regulated under Law Number 5 of 1999. The alleged cooking oil shortage that occurred in 2022 strongly suggests cartel behavior by business actors. Therefore, it is necessary to understand the reasons behind the disruptions in cooking oil distribution, leading to market shortages.

Leniency Program is the key to inviting cartel actors to admit both voluntarily and independently through cooperation to uncover cartel actions that are detrimental to the market. Business actors who become *whistle-blower* This will be exempt from fines or have the fines reduced depending on the extent to which the business actor assists the competition supervisory agency in disclosing the cartel in question.¹⁶ In the case of suspected cartel behavior in cooking oil products that results in market shortages, this program makes it easier to detect unfair business competition. *Leniency Program* disclosure to business actors to be able to admit that they have carried out collusive actions, whether written or unwritten, in setting prices and regulating production in the market. *Leniency program* is a system of forgiveness (*amnesty*) which frees cartel members who report cartel practices to the Business Competition authorities, can be in the form of exemption from some or all of the punishment and/or fines that should be determined.¹⁷

In reality, this program is an effective breakthrough in dealing with cartels as has been proven in various countries.¹⁸ Indonesia in proving the existence of an alleged cartel still uses direct evidence (*Direct Evidence*) and indirect evidence (*Indirect Evidence*). The lack of enforcement of cartel behavior in Law Number 5 of 1999 is still weak legal protection for consumers because the cartel's actions can be revealed if the business actor must take the initiative that there is a cartel agreement with other business actors. For now, *Leniency Program* This has been implemented by 50 (fifty) countries almost all over the world, such as Japan, Australia, Brazil, the European Union¹⁹.

Implementation *Leniency Program* If regulated through antitrust legislation in Indonesia, it would redress the losses experienced by consumers by eliminating pricing policies and regulating the production of goods in the market. *Leniency program* can provide benefits to business actors in the form of forgiveness or light sanctions for unfair business competition through cartel agreements.

Leniency Program It is important to regulate it in the law, especially in the business competition law because if it is not regulated in the law, the business actors who are seen as cartels will not feel

¹⁵ KPPU, KPPU Regulation No. 4 of 2010 concerning Guidelines for Article 11 concerning Cartels Based on Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

¹⁶ *Op.Cit.*, Andi Fahmi Lubis, et al, "*Competition Law*". Second Edition, Jakarta: Business Competition Supervisory Commission (KPPU). p. 113

¹⁷ Miftahur Rachman, 'Leniency Program as an Effort to Eradicate Cartels in Business Competition Law in Indonesia' [2017] *Business Law Review* 9.

¹⁸ Miftahur Rachman. *ibid.*

¹⁹ Anita Nindriani and Pujiyono, 'Prospects of the Leniency Program as an Effort to Uncover Cartel Practices in Competition Law in Indonesia' (2020) *VIII Journal of Private Law* 29 <file:///C:/Users/arya_/Downloads/40359-100961-1-SM (1).pdf>.

protected because there is no legal certainty which results in a legal vacuum, and even though there are no regulations related to it *leniency program*. In fact, if business actors want to cooperate with the KPPU to reveal cartels, this can still be done, but this does not reduce the punishment because there are no regulations and the security of the reporter is also not regulated, so this does not support business actors to report the occurrence of cartels to the KPPU because there is no legal certainty.

Business competition regulations in Indonesia currently do not regulate the implementation of *Leniency program*. This will certainly create a legal vacuum and not provide a deterrent effect for business actors who operate cartels in Indonesia. The program is not yet regulated because Indonesia uses the principle of *Rule of reason* in handling cartel cases. Several studies have concluded that the program *leniency* has effectively helped eradicate, prevent or hinder the creation of cartels and the continuation of cartels²⁰.

Cartel activities not only harm consumers but also discourage foreign investors from entering the national market. Price fixing and production management practices are still common in Indonesia, causing public unrest. In fact, onion importing companies control 50% of the supply, thus influencing market prices.²¹ Therefore, it is necessary to regulate *Leniency Program* to be able to reveal the alleged cartel which resulted in the scarcity and increase in cooking oil products on the market, resulting in *panic buying* in the consumer realm.

Method

The research method used in this writing is normative juridical research (*doctrinal research*). According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues faced.²² This research uses the approach used in this research is an approach using legislation. (*Statute Approach*), conceptual approach (*Conceptual Approach*), and case approach (*Case Approach*). In connection with the type of research which is normative juridical, this research uses a normative research method because the method used in this research is to examine library materials related to the disclosure of cartel behavior through *leniency program* for consumer protection.

Findings and Discussion

Characteristics of the Leniency Program in Proving Cartels from a Business Competition Perspective (Cooking Oil Scarcity Case)

The Leniency Program is a form of forgiveness for reported parties who assist in the enforcement of competition law in uncovering cartel cases. Several countries have implemented this program to detect difficult-to-solve cartel cases with the assistance of reported parties or informants. For reported parties, the program offers benefits, including reduced sanctions based on appreciation for their participation in the cartel case. Indonesia itself has regulated such characteristics. *leniency program* accommodated through Government Regulation Number 44 of 2021 concerning the Implementation of the Prohibition on Cartels, Monopolistic Practices, and Unfair Business Competition following the government's cancellation of the Draft Law (RUU). Implicitly, the KPPU of the Republic of Indonesia has implemented a version of *leniency program* in the form of a commitment to maintain the confidentiality of the reporter or reported party who participates in or knows about cartel actions in the market.

The success of law enforcement against cartel actions through *leniency program* It can mitigate the impact of losses and create consumer welfare by providing the opportunity to choose prices that align with their economic capabilities. The impact of cartel activities on the market will burden consumers by preventing them from choosing fair prices. Furthermore, consumers will experience difficulties or even be unable to purchase goods if the price does not align with their economic capabilities. Cartel activities carried out by business actors aim to gain greater profits by entering

²⁰ Joan Ramon Borrell et al., "The leniency program: obstacles on the way to collude," Journal of Antitrust Enforcement, Januari, 2015, h.3

²¹ Sahat Aditua F. Silalahi, 'Alleged Existence of Food Cartels and Efforts to Overcome Them' (2013) V Brief Info 13 <https://berkas.dpr.go.id/puslit/files/info_pendek/Info_Pendek-V-6-II-P3DI-Maret-2013-58.pdf>.

²² Mahmud Marzuki, *Legal Research* (Prenada Media 2005).35

into agreements with other business actors to fix prices or regulate production. This will create economic instability and the ineffectiveness and efficiency of the economy will not be felt by consumers as the parties who need the goods or services sold by these business actors.

Leniency Program Concepts

Indonesia has not yet regulated the implementation of *Leniency Program* in enforcing cases of prohibited agreements. However, the draft law that regulates *leniency program* has been revoked by the government and accommodated through Law Number 6 of 2023 concerning Job Creation through derivative regulations through Government Regulation Number 44 of 2021. Several countries in the world such as the United States, Brazil, and Japan have implemented *leniency program*. Almost all countries implementing this program have achieved success in uncovering cartel cases. Indonesia has indirectly implemented this concept *leniency program* which is regulated in Article 38 of Law Number 5 of 1999 that;

- 1) Any person who knows that a violation of this Law has occurred or is reasonably suspected of having occurred may report it in writing to the Commission with a clear explanation of the violation that has occurred, including the identity of the reporter;
- 2) Any party who suffers a loss as a result of a violation of this Law may report in writing to the Commission with complete and clear information about the violation that has occurred and the losses incurred, including the identity of the reporter;
- 3) The identity of the reporter as referred to in paragraph (1) must be kept confidential by the Commission;
- 4) The procedures for submitting reports as referred to in paragraph (1) and paragraph (2) shall be further regulated by the Commission.

Draft *leniency program* provide an opportunity for cartel members who first report the cartel agreement without being subject to sanctions for the cartel's actions. *Leniency program* invites every business actor who wants to contribute to ensuring a more conducive market for business activities by collaborating with law enforcement. Based on research conducted by Hinloopen and Soetvent, the regulation of business competition with *leniency program* produce greater success.²³ The implementation of this program is considered very effective in eradicating cartels, because with this program business actors can change their behavior in running their businesses, business actors have a more competent competitive spirit but do not engage in monopolistic practices.²⁴

Leniency program was initiated by the United States in 1973 and began to have a big impact after being revised. *Corporate Leniency* in 1993.²⁵ The *leniency program* arrangements in these countries are similar and operate in parallel with those in the United States and the European Union, the two jurisdictions with the highest acceptance of *leniency programs* in the world. In the case of the cooking oil shortage, which is suspected to be a cartel activity, there is *leniency program* it will be faster for the disclosure. *Leniency program* a way to overcome the difficulties in exposing cartels, with various efforts made by several countries to obtain recognition from companies, then the cartel's actions will be revealed effectively. *Leniency program* is legal immunity or legal *leniency* that can be received by individuals, company employees, or companies that are the first to provide information related to cartel practices.

Some business actors in the sale of cooking oil have created obstacles in the form of high pricing and production regulations. *leniency program* is the only way to encourage business actors in it to reveal the scarcity of cooking oil. The practitioner *leniency program*. This has been implemented in various countries to detect cartels and also aims to obtain initial information regarding the existence of cartels.²⁶ As an example of the implementation of the *leniency program* in Australia, in

²³ Zulvia Makka, "Implementation of the Leniency Program in Enforcing Business Competition Law." Proceedings of the National Seminar on Law and Sustainable Development. Vol. 2. (2021). pp. 126-140

²⁴ Ibid. hlm.135

²⁵ Anita Nindriani, "Prospects of the Leniency Program as an Effort to Uncover Cartel Practices in Competition Law in Indonesia." Jurnal Privat Law. Vol. VIII. No. 1. 2020. pp. 28-35

²⁶ Riris Munadiya, "Indirect Evidence in Handling Business Competition Cases." Journal of Business Competition, Edition 5, 2011, p. 160

September 2009, the ACCC (*Australian Competition and Consumer Commission*) conducted an investigation into Prysmian Cavi e Sistemi (an Italian-based company) which had entered into an agreement with Nexans (a French-based company) and Viscas (a Japanese company). The problem in this case was the agreement between these companies to eliminate competition in the tender process for underground and submarine cable supplier projects. The resolution of this case using *leniency program* to find out that there is a confidentiality agreement with the help of informants to reveal the case.

According to *United Nations Convention on Trade and Development* (UNCTAD), *leniency program* is a regulation designed to provide incentives for business actors who are indicated as members of a cartel who, on their own initiative, are willing to cooperate with competition authorities.²⁷ The author believes that although the scarcity of cooking oil does not prove the existence of a cartel, but with Indonesia implementing...*leniency program* It is possible that behind this there are confidentiality agreements made by business actors by exploiting the favorable circumstances resulting from the government's policies.

Draft *leniency program* It is not intended to grant pardons to the reported cartel perpetrators. Rather, it is intended to destroy the core of the cartel that is being carried out secretly. In general, if Indonesia has implemented *leniency program* to run effectively, the following must be done;

1. There is active enforcement of cartel laws, where there are also legal threats and risks for cartel actors who do not submit complaints.*leniency*;
2. Fines imposed for cartelists who did not apply *leniency* which is absolutely imposed, while the fine sanction given to the first applicant from *leniency* smaller than the applicant *leniency* further in the same case;
3. *Leniency program* must be transparent and predictable to enable potential applicants to predict what the return on an application will be *leniency* which they propose;
4. To attract cartelists in the international sphere, *leniency program* must protect the confidentiality of the applicant's information sufficiently so that the information is not used by other parties in the process *leniency program* elsewhere²⁸.

Therefore, the resolution of prohibited agreements or so-called cartels is revealed effectively and is able to destroy obstacles from law enforcement in revealing suspected cartels carried out by business actors based on fair business competition laws.

Market Structure and Behavioral Changes in Analyzing the Case of Cooking Oil Scarcity Oligopolistic Market Structure

The oligopolistic market structure is characterized by more than one business actor in the market. Oligopoly theory has a long history.²⁹ Term *oligopoly* first used by Sir Thomas Moore in his work in 1916, namely "*Utopia*". The work states that prices do not have to be competitive when there is more than one firm in the market. Meanwhile, the oligopoly theory was first formalized by Augustin Cournot in 1838 through his work "*Research on the mathematical principles of wealth theory*". Fifty years later, the theory was refuted by Bertrand. Despite much criticism, Cournot's theory remains the benchmark for other oligopoly theories.

The characteristics of an oligopoly market are as follows

1. There are several Sellers (*Few Sellers*)
There are only a few sellers in the market. This indicates that each firm has a significant market share. The smaller number of firms compared to perfect competition or monopolistic competition is due to the existence of barriers to entry.
2. Interdependence (*Interdependence*)
In both perfectly competitive and monopolistic markets, firm decisions on price and quantity are based solely on market demand and production costs. In oligopoly markets, however, a firm's strategic decisions are largely determined by the strategic behavior of other firms in the market.

²⁷ Ibid.hlm.16

²⁸ Ibid.hlm.67

²⁹ Andi Fahmi Lubis, et al.*Ibid.*page 50

In the four market structures of business competition, when linked to the cooking oil shortage and the alleged cartel behavior of business actors, the market structure tends to be oligopolistic. Oligopolistic markets are characterized by a limited number of business actors, and price wars are frequent. Even when price wars occur, business actors in the market enter into cartel agreements to gain profits. Business actors understand that consumers prefer lower-priced goods or services. Therefore, in order to find ways to gain greater profits, influenced by consumer interest in the product, cartel agreements are made.

The cooking oil shortage that occurred in 2022 was caused by the government's policy to encourage cooking oil businesses to sell at low prices. Businesses viewed the government's policy of setting the Highest Retail Price (HET) as forcing them to sell below the economic price. Setting the HET below the economic price encouraged unscrupulous distributors to deliberately hoard products and sell cooking oil at prices far above the HET.³⁰ Correlation with the oligopoly market structure as the beginning of cartel actions carried out by business actors.

Changes in Business Actors' Behavior Towards Cartel Termination

Cartel behavior towards business actors in selling goods and/or services will disturb the public as consumers who will use the product. Furthermore, cartels are not only detrimental to consumers, but also detrimental to the economic development of a nation, because cartels cause inefficiencies in resources, including natural resources, human resources, and other economic resources. Cartel behavior is an action by business actors to engage in unfair business competition by forming closed agreements as a strategy for economic gain. This inefficiency towards cartel behavior that has occurred a lot by business actors in Indonesia will create a conducive environment for healthy business competition.

Cartel behavior is very dangerous because it can regulate and determine price levels or limit product quantities, which can burden and hinder people's livelihoods. Specifically, stopping cartel behavior can be done through *indirect evidence* regarding agreements between business actors, both economic evidence and evidence of communication or meetings. Characteristic *leniency program* To change the cartel behavior of existing business actors, it is necessary to detect cartel behavior among business actors so that in the future, business actors will have a deterrent effect and not engage in such cartel activities. Cartels are considered the most serious sin for business actors, not only harming consumers but also harming the efficient allocation of national resources.³¹ The most serious sin results in consumer unprosperity, especially in the supply of their daily necessities.

Changes in cartel behavior will be effective if *leniency program* can be implemented in Indonesia. The reason is that the program *leniency* a way to reveal suspected cartel cases that have occurred by business actors through the assistance of information or parties involved in enforcing unfair business competition laws *Leniency program* This facilitates the legalization of cartels for businesses operating under agreements, collusion, or conspiracies. Businesses' perceptions of cartels will be reflected in the stability of product prices and the absence of product shortages in the market. The KPPU's efforts to prevent cartel practices continue to involve outreach to the government, encouraging it to develop policies that prevent cartels. The 2022 cooking oil shortage, suspected of involving price fixing, stemmed from government policies that led businesses to raise prices and restrict product availability.

Government policy is the most dominant factor in determining business behavior in the market. According to KPPU Regulation No. 4 of 2023 concerning the Provision of Advice and Considerations on Government Policy, several questions policymakers should consider to prevent cartel behavior among business actors are as follows:

³⁰ Supianto, "Allegations of a Cooking Oil Cartel Not Supported by Strong Evidence", *jurnas.com*, <https://www.jurnas.com/artikel/134589/Dugaan-Kartel-Minyak-Goreng-Tidak-Didukung-Bukti-Kuat/>, accessed on May 5, 2023

³¹ Nadhifa Tri Fanny and Sandy Ekki Wiratama Buana, "Indications of an SMS (Short Message Service) Tariff Cartel Between Cellular Operators (Analysis of the KPPU Decision in Case Number 26/KPPU-L/2007)". Ahmad Dahlan Legal Perspective. Vol. 01. Issue 2.2021. pp. 112-128

- 1) Government policy that regulates the obligation to be a member of an association or business association;
- 2) Government policy that grants authority to associations or groups of business actors;
- 3) Government policy regulates provisions that allow business actors to make agreements;
- 4) Government policy regulates price setting by government agencies.

In essence, cartel behavior will not disappear from business actors as it is driven by government policies that indirectly must be implemented to ensure the implementation of these business activities. The cooking oil shortage in 2022 is clearly the result of government policies that disregard the interests of business actors, who are, of course, seeking profits from these activities. Therefore, synergy between business actors and the government is needed to stop cartel behavior, adhering to the principle of fairness in business. According to Aristotle, justice is an action that lies between giving too much and too little, which can be interpreted as giving something to each person according to what is rightfully theirs.³² So with the existence of *leniency program* can help stop cartel behavior by business actors.

An Economic Approach to Analyzing the Case of Cooking Oil Scarcity Theory *Barrier to Entry*

Understanding *Barriers to entry* is a thing or condition in the market that can hinder/prevent potential competitors from entering the market who can then become competitors³³. In general, every company can freely enter and exit the industry.³⁴ In general, the *action barriers to entry* resulting in new companies having difficulty entering or merging with existing companies. In the economic approach to *Barrier to entry* There are several market structures, namely;

a. Monopoly Market

The monopoly market has *barrier to entry* This is because companies in this market have become sole producers. Their products cannot be purchased elsewhere, or there are no substitutes, allowing producers to set their own selling prices. There are many legal regulations or requirements for entry, and the capital required to enter is also very large, making it difficult for other companies to enter.

b. Oligopoly Market

The oligopoly market has *barrier to entry* high. In an oligopoly market, there are more competing companies than in a monopoly market, usually several large companies dominate this market, the products produced are different, only a few companies have control over raw materials therefore producers do not have enough power to determine prices, the capital required to enter this industry is also large³⁵

Problems that occur in *barrier to entry* The shortage of cooking oil is caused by new business actors experiencing difficulties entering the market. One factor is structural barriers that burden new companies with selling products at a cost. *high sunk costs*, resource ownership and economies of scale, and capital structures that do not comply with applicable regulations. The oil shortage has been a trigger for the limited number of new business actors able to compete with established players. The author analyzes that the existing market entry barriers are being abused by established players to control prices and regulate products, resulting in consumers being burdened by either high prices or product shortages.

Cooking oil production business actors are more dominant in using strategic barriers by engaging in price wars (*price war*). This price war is a strategy of established businesses to eliminate new ones from the market. The relationship with the cooking oil shortage is due to established businesses winning the price war and eliminating other businesses, then these incumbents raise

³² IGde Suranaya Pandit, "The Concept of Justice in the Perception of Public Administration Bioethics". *Journal of Public Administration*. pp.14-20

³³ Barrier to Entry Theory. UPN Veteran Jakarta Repository. <https://repository.upnvj.ac.id/4682/4/BAB%20I.pdf> accessed on May 5, 2023, p. 5

³⁴ Teori Barrier To Entry. Ibid. hlm.5

³⁵ Barrier to Entry, Market Type and Level of Barriers and Types of Barriers or Entry Barriers". <https://www.bigbrothersinvestment.com/detailpost/barriers-to-entry> accessed on May 5, 2023

prices by limiting production. This, incumbents have ensured that consumers find it difficult to refuse to purchase the goods even though they are charged at a high price. One concrete example of the cooking oil shortage that occurred in 2022 was the government's policy of lowering the Highest Retail Price (HET) to a lower economic value, resulting in a cooking oil shortage in the market as a form of protest by businesses who did not receive profits from the sale of their products.

Distribution of Cooking Oil Products Due to Cartel Agreements

The disruption to the distribution of cooking oil products has disrupted consumer demand. Various factors contribute to the cooking oil shortage, including government policies regarding B30, and even illegal agreements between businesses, leading to allegations of cartel activity. The distribution of goods from producers to consumers through these various channels certainly doesn't happen in a vacuum.³⁶ The process, of course, from the initial producer to the intermediary must reach an agreement on a product that will be sold in the market. Obstruction of the distribution flow of cooking oil cannot be justified by law as a necessity and prosperity of the people. According to the provisions of Law Number 5 of 1999 concerning Monopolistic Practices and Unfair Business Competition, economic development must be directed towards realizing the welfare of the people based on Pancasila and the 1945 Constitution. The existence of a cartel that results in the disruption of the distribution of cooking oil is certainly contrary to the values of consumer welfare.

*Leniency program*able to address all the obstacles in the distribution of cooking oil products due to cartels. The role of the program is to seek informants or reported parties who are involved in the reasons related to the disruption of cooking oil distribution in the community. Generally, obstacles in the distribution of a cooking oil product resulting in scarcity are a strategy of business actors to gain profits by burdening consumers. Based on reports of widespread price increases, at the end of the year, it was reported that the price of thermal paper increased by 10 (ten) percent due to the cartel, which had previously experienced a decline in the last few years.³⁷In the case of the cartel that occurred in England, almost the majority of business actors formed a cartel for products that were in high demand and sought the right opportunity to carry out the cartel action.

Consumer Losses as a Impact of the Cooking Oil Cartel

Consumers are marginalized and relatively weak in trade transactions, often incurring losses or being burdened by pricing set by businesses. Referring to Law Number 8 of 1999 concerning Consumer Protection,*aims to create a consumer protection system that contains elements of legal certainty and information transparency as well as access to information*"³⁸. Nowadays, very few business actors use a perfectly competitive market structure because the increasing number of competitors makes it increasingly difficult to achieve high profits. Some theories say that the purpose of competition is to benefit many people and to protect competition itself by eliminating or preventing the emergence of restraints on private or public businesses that result in or influence detrimentally the competitive process itself.³⁹However, the negative side of competition will have a negative impact on consumers if business actors use unhealthy strategies to gain more profits.

The negative impacts that cause unhealthy business competition and are detrimental to various parties, from business actors, consumers, to the government.⁴⁰The success of healthy business competition depends on consumer welfare, including low product prices and unlimited product supply to the market. Law No. 5 of 1999 stipulates that business actors are prohibited from

³⁶ Yati Nurhayati, "The Constitutionality of Distribution Agreements in Healthy Business Competition." Constitutional Journal. Vol. 8. No. 6. 2011. Pp. 1020-1058

³⁷ Margaret Levenstein, "Contemporary International Cartels And Developing Countries: Economic Effects and Implications For Competition Policy". Antitrust Law Journal. Vol.71.No.3. (2004).801-852

³⁸ Article 3 letter d

³⁹ L. Budi Kagramanto, Ria Setiawati and Sinar Aju Wulandari, "Competition Law Textbook". 1st edition. Eternal Nusantara Literacy Group: Surabaya. p. 66

⁴⁰ I Putu Santika Putra, et al., "The Influence of the Cartel System on the Stability of Business Competition in Indonesia". Journal of Legal Preferences. Vol. 1. No. 2. 2020. pp. 117-120

engaging in unfair business competition.⁴¹ Redress for consumer losses due to cooking oil shortages involves more than just compensation for material losses. The most important aspect of redressing consumer losses resulting from cartel actions is the implementation of pro-competition government policies.

The KPPU's decision has had a positive impact on competing businesses in the cooking oil sector. Cooking oil companies are more cautious in setting prices. On the other hand, the government can encourage the resolution of cartel issues in Indonesia, through cooperation with the KPPU. The public, as consumers of products sold by business actors, plays a more careful role in reviewing every policy issued by the government. This means that if a government policy is issued that is not pro-competitive, the public is obliged to respond quickly by filing a complaint with competition law enforcement to prevent business actors from taking detrimental actions through agreements prohibited by fair business competition. Therefore, the objectives of regulating the prohibition of monopolistic practices, which aim to safeguard the public interest, create a conducive business climate, and prevent monopolistic practices, can be implemented properly, especially consumer losses due to cartels can be prevented more quickly.

Conclusion

Characteristics *Leniency Program* is a form of forgiveness for the reported party as part of a cartel group who participated in assisting in the process of uncovering alleged cartel cases handled by law enforcement. This program motivates the reported party to receive legal leniency based on the percentage value of evidence that contributed to the cartel's disclosure. The alleged cartel case of cooking oil shortages in Indonesia will make it possible that behind this case there is a forbidden agreement kept secret by business actors, although after investigation it is not a cartel case but rather caused by government policy. The concept of this program does not only invite reported parties suspected of cartel activities, but also be. As cooking oil products are controlled by oligopolistic business actors and as it is easy to engage in price wars, the potential for such cartels is easy to grow. Therefore, with the existence of *leniency program* will suppress agreements that are prohibited from being made by business actors in business competition, namely cartels, and have a positive impact on the welfare of society as the final party to the products sold by these business actors.

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⁴¹ Sheila Namira Marchellia, "The Use of Antitrust Immunity and Cartels During the Pandemic." *Journal of Business Competition*. Vol. 1. No. 1. 2021. pp. 16-26

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